



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

COURT (CHAMBER)

CASE OF BODÉN v. SWEDEN

(Application no. 10930/84)

JUDGMENT

STRASBOURG

27 October 1987

In the Bodén 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. G. LAGERGREN,

Mr. F. GÖLCÜKLÜ,

Mr. L-E. PETTITI,

Mr. R. MACDONALD,

Mr. R. BERNHARDT,

Mr. J. DE MEYER,

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

Having deliberated in private on 25 March and 24 September 1987,

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 July 1986, within the three-month period laid down by Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. The case originated in an application (no. 10930/84) against the Kingdom of Sweden lodged with the Commission on 10 January 1984 under Article 25 (art. 25) by a Swedish citizen, Mr. Gunnar Bodén.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Sweden recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose 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 (art. 6-1) of the Convention.

2. In response to the inquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicant stated that he did not wish to take part in the proceedings pending before the Court.

* Note by the registry: The case is numbered 18/1986/116/164. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

3. The Chamber of seven judges to be constituted included, as *ex officio* members, 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 § 3 (b)). On 26 September 1986, the President drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr. F. Gölcüklü, Mr. L.-E. Pettiti, Mr. R. Bernhardt, Mr. A.M. Donner and Mr. J. De Meyer (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43). Mr. R. Macdonald, substitute judge, subsequently replaced Mr. Donner, who was prevented from taking part in the consideration of the case (Rules 22 § 1 and 24 § 1).

4. The Swedish Government ("the Government") informed the Registrar on 29 October 1986 that negotiations were being conducted with the applicant with a view to arriving at a friendly settlement and then, on 4 February 1987, that the negotiations had proved unsuccessful.

5. Mr. Ryssdal, who had assumed the office of President of the Chamber (Rule 21 § 5), ascertained, through the Registrar, the views of the Agent of the Government and the Delegate of the Commission regarding the need for a written procedure. Having regard to their concurring statements, he decided on 26 February 1987 that it was not necessary for memorials to be filed (Rule 37 § 1) and directed that the oral proceedings should open on 23 March 1987 (Rule 38).

Prior to that, on 12 and 18 February, the applicant had lodged claims for just satisfaction under Article 50 (art. 50) (Rule 49 taken together with Rule 1 (k)). He provided further particulars of these claims on 24 April at the request of the President.

6. The hearing was held in public at the Human Rights Building, Strasbourg, on the appointed day. Immediately before it opened, the Court had held a preparatory meeting.

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. P. LÖFMARCK, Under-Secretary

for Legal Affairs, Ministry of Transport and
Communications,

Mr. H. BERGLIN, Legal Adviser,

Ministry for Foreign Affairs, *Advisers;*

- for the Commission

Mr. GAUKUR JÖRUNDSSON,

Delegate.

The Court heard addresses by Mr. Corell for the Government and by Mr. Gaukur Jörundsson for the Commission, as well as their replies to the questions put by the Court and several judges.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

7. The applicant, Mr. Gunnar Bodén, was born in 1939. He is a Swedish citizen resident in Falun and a car driver by profession. He owned, together with his brother Mr. B. Bodén, the properties Källviken 1:18, 1:25 and 1:26.

8. On 30 June 1977, the Falun Municipal Council (kommunfullmäktige) adopted an area plan (områdesplan) with a view to the development of a housing estate in an area including the applicant's properties. On 9 February 1978, the Municipal Council decided to apply to the Government for an expropriation permit for this area.

9. The applicant objected to the expropriation in respect of two of the three properties concerned, because, as he submitted to the Government, he doubted that they were needed for the development contemplated and, further, he wanted to live with his mother in his parents' home situated on one of the properties. He claimed that, when working out and adopting the area plan, the Municipal Council had not taken his interests sufficiently into account, something that would have been possible within the framework of a somewhat modified plan. However, the Government, taking the view that the Municipal Council had shown the need to include the applicant's properties, concluded that the conditions laid down in the Expropriation Act 1972 (expropriationslagen 1972:719 - "the 1972 Act") were satisfied. On 1 March 1979, they issued an expropriation permit.

10. The decision indicated that the issue of the permit had to be followed by the institution of proceedings by the Municipality before a real estate court not later than 3 March 1980. An action, the object of which was to settle the terms of the expropriation (see paragraph 15 below), was commenced on 28 February 1980 before the Real Estate Court at the Falun District Court (tingsrätten).

11. The applicant, his brother and the Municipality were involved in negotiations for a settlement until 2 July 1984. On that date, before the main hearings started, they finally concluded an agreement: the applicant and his brother were to sell the properties to the Municipality, which was to lease back to the applicant for a period of five years, with a possibility of prolongation, a house situated thereon. On 17 August, the Real Estate Court struck the case off its list since, as a result of the settlement, the Municipality had withdrawn its claim for expropriation.

12. On 17 December 1986, after the present case had been brought before the European Court of Human Rights, the Municipality of Falun concluded an agreement with the applicant for the repurchase by him of the properties for 235,000 Swedish crowns, the same amount as it had paid for them in 1984.

II. RELEVANT DOMESTIC LAW

A. Town-planning law

13. The Building Act 1947 (byggnadslagen 1947:385 - "the 1947 Act") is the main legal instrument governing planning in respect of the use of land for construction and urban development. It provides for the drawing up of a master plan (generalplan), which establishes within a municipality the framework for other and more detailed plans, namely city plans (stadsplaner) and building plans (byggnadsplaner).

As in the present case, a municipal council may draw up an area plan, instead of a master plan. The manner in which area plans are elaborated and their content are not expressly governed by the 1947 Act but general principles of administrative law are, of course, applicable.

B. Legislation on the issue of expropriation permits

14. The issue of expropriation permits is governed by the 1972 Act. Under Chapter 3, section 1, such a permit is normally granted by the Government.

For cases like the present, the grounds justifying the issue of a permit are stated in Chapter 2, section 1, of the 1972 Act (as amended by the Act of 1976:46), which reads as follows (translation from Swedish):

"Expropriation is allowed in order to enable a municipality to acquire rights over land which is needed, as a result of future societal requirements, for urban development (tätbebyggelse) or constructions in connection with such development. ... Within areas of urban development expropriation is allowed only if there is reason to assume that, within a foreseeable time, the area will be subject to building or other construction activities which are deemed important in the general interest, or if there is an urgent necessity for the municipality to acquire rights over the land for the furthering of planned building or for any other similar reason. ..."

However, a permit must not be granted if the purpose of the expropriation can be attained by other appropriate means, or if the disadvantages of the expropriation would outweigh, from general and individual points of view, its advantages (Chapter 2, section 12, of the 1972 Act).

15. Under Chapter 3, section 4, of the 1972 Act, the sole effect in law of the issue of an expropriation permit is to confer on its holder an entitlement to acquire the designated property. Consequently, the issue of a permit leaves legally intact the owner's right to use, sell, let or mortgage his property (see also paragraph 17 below), and does not automatically lead to expropriation.

Before the expropriation can be finalised, its terms - such as the compensation to be paid to the owner and the boundaries of the expropriated area - have to be settled in proceedings before a real estate court. Moreover, the expropriation is not completed until the compensation - in principle equivalent to the market value - has been paid.

16. The proceedings before the real estate court have to be instituted by the holder of the permit within the time-limit which it specifies, failing which the permit will lapse (Chapter 3, section 6, of the 1972 Act).

The 1972 Act is silent as to the length of this time-limit and as to the criteria upon which it is to be fixed. However, Chapter 3, section 6, provides that it may be extended in special circumstances, or reduced if the owner so requests and establishes that the inconvenience for him in the expropriation remaining pending has increased significantly. No decision to reduce the time-limit can be taken until one year has elapsed since the issue of the expropriation permit.

17. Some reasons for restricting the time-limit and, hence, the duration of the validity of expropriation permits were stated in the Bill 1972:109, page 227, which led to the 1972 Act (translation from Swedish):

"Naturally, the mere issue of an expropriation permit often places [the owner] in a state of uncertainty. In practice, his opportunities for disposing of his property by selling it, assigning the use thereof or having premises erected thereon are considerably restricted. He may also have difficulty in deciding whether to incur expenditure on upkeep or modernisation. The disadvantages resulting from an expropriation permit are evidently increased if the judicial proceedings are not set in motion for a long time."

C. Remedies available

18. Generally speaking, the Swedish administration is not subject to supervision by the ordinary courts. Those courts entertain proceedings against the State only in contractual matters, on questions of extra-contractual liability and, under some statutes, in respect of administrative decisions.

Judicial review of the administration's acts is therefore primarily a matter for administrative courts. These courts comprise three levels: the county administrative courts (*länsrätterna*); the administrative courts of appeal (*kammarrätterna*); and the Supreme Administrative Court (*regeringsrätten*). They are composed of independent judges and enjoy, as a rule, wide powers which enable them not only to set aside administrative acts but also to vary or substitute them. There is, however, an important exception to this principle, in that no appeal may be made against decisions of the Government (see paragraph 20 below).

1. Appeals against municipal decisions to adopt an area plan or apply for an expropriation permit

19. Chapter 7, section, 1 of the Municipal Act of 1977 (kommunallagen 1977:179) provides for and regulates, in a general way, the right to appeal (kommunalbesvär) against decisions by municipalities. This Act enables residents of the municipality to challenge, for instance, a municipal council's decision to adopt an area plan or apply for an expropriation permit.

At the relevant time, this remedy was exercisable before the County Administrative Board (länsstyrelsen), but only on the following grounds: failure to observe the statutory procedures, infringement of the law, ultra vires conduct, violation of the complainant's own rights, or other unfairness. The appeal had to be filed within three weeks from the date on which approval of the minutes of the decision had been announced on the municipal notice-board. The County Administrative Board's decision could, within three weeks from its notification to the complainant, be the subject of an appeal to the Supreme Administrative Court.

These provisions were slightly amended in 1980, with effect from 1 January 1981, in that the first appeal now has to be made to the Administrative Court of Appeal and not to the County Administrative Board.

2. Appeals against a decision to issue an expropriation permit

20. Swedish law contains no provision for appeals to the ordinary or the administrative courts against the Government's decisions to issue expropriation permits. Accordingly, such decisions are in principle not subject to court review.

However, there is a limited possibility to file a petition before the Supreme Administrative Court for re-opening of the proceedings (resningsansökan). Further particulars of this remedy appear in the Sporrang and Lönnroth judgment of 23 September 1982 (Series A no. 52, pp. 19-20, § 50).

3. Possibilities of compensation for prejudice

21. The 1972 Act does not in principle provide for compensation for prejudice resulting from the length of the validity of, or failure to utilise, an expropriation permit. It does, however, contain one exception (Chapter 5, section 16): compensation is payable for prejudice occasioned by the issue of an expropriation permit if the authority or person to whom it was granted has instituted, but subsequently abandoned, proceedings before a real estate court (see paragraphs 15-16 above).

22. According to Chapter 3, section 2, of the Civil Liability Act 1972 (skadeståndslagen 1972:207), acts of public authorities may give rise to an

entitlement to compensation in the event of fault or negligence. However, under section 7, an action for damages will not lie in respect of decisions taken by Parliament, the Government, the Supreme Court, the Supreme Administrative Court or the National Social Security Court.

PROCEEDINGS BEFORE THE COMMISSION

23. In his application of 10 January 1984 to the Commission (no. 10930/84), Mr. Gunnar Bodén complained that the expropriation permit had been issued in breach of Article 1 of Protocol No. 1 (P1-1) and that he had no possibility of having the dispute relating to the issue of the permit reviewed by a tribunal satisfying the requirements of Article 6 § 1 (art. 6-1) of the Convention.

24. On 5 December 1985, the Commission declared admissible the applicant's complaint under Article 6 § 1 (art. 6-1). The remainder of the application was declared inadmissible.

In its report of 15 May 1986 (Article 31) (art. 31), the Commission expressed the unanimous opinion that there had been a breach of Article 6 § 1 (art. 6-1). The full text of the Commission's opinion is reproduced as an annex to the present judgment.

FINAL SUBMISSIONS MADE TO THE COURT BY THE GOVERNMENT

25. At the hearing on 23 March 1987, the Government requested the Court "to find that the complaint falls outside the scope of Article 6 § 1 (art. 6-1)".

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 (art. 6-1)

26. The applicant complained that he did not have the opportunity under Swedish law to challenge before a court an expropriation permit affecting two properties of which he was part-owner (see paragraphs 7-9 above). He alleged a violation of Article 6 § 1 (art. 6-1) of the Convention, which, so far as is relevant, reads:

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

27. In view of the submissions made, the first issue to be resolved is the applicability of this provision and, more particularly, whether the instant case involved the "determination" of a "civil right".

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

28. According to the Court's established case-law, Article 6 § 1 (art. 6-1) extends only to "contestations" (disputes) over "civil rights and obligations" which can be said, at least on arguable grounds, to be recognised under domestic law; it does not in itself guarantee any particular content for "civil rights and obligations" in the substantive law of the Contracting States (see, as the most recent authority, the *W v. the United Kingdom* judgment of 8 July 1987, Series A no. 121, pp. 32-33, § 73).

29. The applicant's right of ownership of the properties in issue is without doubt - and that was not disputed - a civil right (see, *mutatis mutandis*, the *Sporrong and Lönnroth* judgment of 23 September 1982, Series A no. 52, p. 29, § 79, and the *Poiss* judgment of 23 April 1987, Series A no. 117, p. 102, § 48).

30. As to whether there was a "contestation" within the meaning of Article 6 § 1 (art. 6-1), regard should be had to the principles enunciated in the Court's case-law, summarised in the *Bentham* judgment of 23 October 1985 (Series A no. 97, pp. 14-15, § 32):

(a) Conformity with the spirit of the Convention requires that the word "contestation" (dispute) should not be construed too technically and should be given a substantive rather than a formal meaning.

(b) The "contestation" (dispute) may relate not only to the actual existence of a right but also to its scope or the manner in which it may be exercised. It may concern both questions of fact and questions of law.

(c) It must be genuine and of a serious nature.

(d) The expression "contestations sur (des) droits et obligations de caractère civil" (disputes over civil rights and obligations) covers all proceedings the result of which is decisive for such rights and obligations. However, a tenuous connection or remote consequences do not suffice for Article 6 § 1 (art. 6-1): civil rights and obligations must be the object - or one of the objects - of the "contestation" (dispute); the result of the proceedings must be directly decisive for such a right.

31. The Government maintained that the issue of the expropriation permit was purely a policy decision and that there was consequently no genuine "contestation" (dispute) concerning questions of law or of fact susceptible of judicial assessment; what was involved was rather an assessment "so far removed from the exercise of the normal judicial function that the safeguards in Article 6 (art. 6) cannot be taken as covering

resultant disagreements". The Government in this respect referred to the van Marle and Others judgment of 26 June 1986 (Series A no. 101, p. 12, § 36).

32. The Court does not share this view.

According to his pleadings before the Commission, Mr. Gunnar Bodén's allegations were, *inter alia*, that the application of the 1972 Act was arbitrary in his case and that the responsible authorities had not properly appreciated the public interest in expropriating his properties. More importantly, the Government informed the Court that before the permit was issued, the applicant had submitted arguments contesting that his properties were needed for the development contemplated and contending that, when working out and adopting the area plan, the Municipal Council had not taken his interests sufficiently into account (see paragraph 9 above). This being so, it appears that there existed a serious disagreement between Mr. Gunnar Bodén and the Swedish authorities which raised questions going to the lawfulness, under the applicable Swedish legislation, of the issue of the permit (see paragraph 14 above).

Furthermore, the expropriation permit was decisive for the applicant's property rights. It affected the very substance of ownership in that it authorised the Municipality of Falun to expropriate at any moment within the time-limit set in the permit. Mr. Gunnar Bodén's right of property thereby became precarious and defeasible (see the above-mentioned Sporrøng and Lönnroth judgment, Series A no. 52, p. 23, § 60).

The objections lodged by the applicant with the Government against the Municipal Council's request for an expropriation permit thus gave rise to a "contestation" (dispute) over one of his "civil rights", as those expressions are understood for the purposes of Article 6 § 1 (art. 6-1). This provision is therefore applicable to the present case.

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

33. The Government admitted, should the Court find Article 6 § 1 (art. 6-1) to be applicable, that the applicant was not afforded the safeguards it sets out. The Court nevertheless has to ascertain whether the applicant enjoyed the "right to a court", guaranteed to him under Article 6 § 1 (art. 6-1) (see the Golder judgment of 21 February 1975, Series A no. 18, p. 18, § 36).

34. The Government pointed out that both the Falun Municipal Council's decision to adopt an area plan and its decision to request an expropriation permit could be challenged before the County Administrative Board and, subsequently, the Supreme Administrative Court (see paragraph 19 above). However, these two decisions were only preparatory steps which, in themselves, did not at that stage interfere with the applicant's civil rights (see the above-mentioned Sporrøng and Lönnroth judgment, Series A

no. 52, pp. 30-31, § 85). This being so, the Court finds no reason to undertake a further examination of these remedies.

35. The Government's decision as to the issue of the permit was not open to appeal before either the ordinary or the administrative courts, or before any other body which could be considered to be a "tribunal" for the purposes of Article 6 § 1 (art. 6-1) (see paragraphs 18 and 20 above).

Admittedly, the applicant could have challenged the lawfulness of such a decision by requesting the Supreme Administrative Court to re-open the proceedings. However, this extraordinary remedy does not, for the reasons set out in the above-mentioned Sporrang and Lönnroth judgment (p.31, § 86), meet the requirements of Article 6 § 1 (art. 6-1).

36. Nor would the requirements of Article 6 § 1 (art. 6-1) have been satisfied by any possibility which the applicant might have had of seeking compensation for prejudice (see paragraphs 21-22 above). Such an action would have concerned only certain effects of the expropriation permit and would not have determined the lawfulness of its issue.

C. Conclusion

37. There was accordingly a violation of Article 6 § 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

38. Article 50 (art. 50) of the Convention 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."

In letters received on 12 and 18 February 1987, the applicant sought by way of just satisfaction financial compensation for prejudice allegedly suffered and reimbursement of costs and expenses incurred. At the hearing on 23 March 1987, the Government stated that the applicant had not provided the Court with any precise information as to damage. As to his costs and expenses, they suggested that the Court should ask him to furnish further particulars, which he did on 24 April 1987. The Government and the Commission have not submitted any further comments.

The Court considers that in the circumstances the question of just satisfaction is ready for decision (Rule 53 § 1 of the Rules of Court).

A. Damage

39. The applicant claimed 100,000 Swedish crowns (SEK) as compensation for pecuniary damage attributable to the increase in building costs over ten years.

The Government disputed that any issue of compensation for pecuniary damage arose in the present case under Article 50 (art. 50).

40. The breach found by the Court consists of the absence of a court remedy for the applicant to challenge the lawfulness of the issue of the expropriation permit.

However, the applicant has not adduced sufficient evidence to establish that, had such a remedy been available to him, the domestic court would have arrived at a decision in his favour. Neither is it for the Court to inquire into the merits, under Swedish law, of the issue of the permit.

It must also be observed that the parties concerned finally reached agreement as to the transfer of the properties in 1984 and as to their re-purchase in 1986.

Consequently, the Court sees no cause to award the applicant any compensation in respect of pecuniary damage.

41. The applicant also sought 85,000 SEK for non-pecuniary damage. As regards this claim, the Court shares the view of the Commission and the Government that, in the particular circumstances, the finding of a violation constitutes in itself adequate just satisfaction for the purposes of Article 50 (art. 50).

B. Costs and expenses

42. The applicant claimed:

(a) 5,400 SEK in respect of legal fees referable to the Strasbourg proceedings;

(b) 7,000 SEK for miscellaneous expenses (translation, typing, telephone, postage, etc.);

(c) 7,710 SEK for the costs of registering ownership of the re-purchased properties;

(d) 2,000 SEK for loss of earnings occasioned by his having been obliged to visit the offices of various Swedish authorities;

(e) 7,000 SEK for his own work in preparing the case.

The Government expressed their readiness to reimburse, in the event of the Court finding a violation of the Convention, all costs and expenses reasonably incurred by the applicant in connection with his case.

43. (a) It was not disputed, and the Court considers, that the legal fees claimed were actually and necessarily incurred and reasonable as to quantum (see, *inter alia*, the Zimmermann and Steiner judgment of 13 July 1983, Series A no. 66, p. 14, § 36).

(b) Although the applicant did not supply any vouchers, the Court is also satisfied that he incurred certain miscellaneous expenses with a view to obtaining redress of the violation by the Convention institutions. It finds it equitable to award 3,500 SEK under this head.

(c) On the other hand, the costs of registering ownership of the repurchased properties are not attributable to the absence of a court remedy. There is consequently no causal link between the violation found by the Court and these costs.

(d) It has not been established that there is a sufficient connection between the visits alleged to have occasioned a loss of earnings and the matter held by the Court in the present judgment to be in breach of Article 6 § 1 (art. 6-1).

(e) Since the applicant was assisted by a lawyer before the Commission and did not take part in the proceedings before the Court (see paragraph 2 above), the Court does not consider that the item of 7,000 SEK claimed for his own work can be regarded as "necessary" for the purposes of Article 50 (art. 50).

Mr. Gunnar Bodén is consequently entitled to be reimbursed, for costs and expenses, the sum of 8,900 SEK, from which must be deducted the amount of 3,410 French francs already paid in respect of legal costs by the Council of Europe.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that Article 6 § 1 (art. 6-1) applied in the instant case;
2. Holds that Article 6 § 1 (art. 6-1) has been violated;
3. Holds that the respondent State is to pay to the applicant in respect of costs and expenses the sum of 8,900 (eight thousand nine hundred) Swedish crowns, less 3,410 (three thousand four hundred and ten) French francs to be converted into Swedish crowns at the rate applicable on the date of delivery of the present judgment;
4. 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 27 October 1987.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 § 2 (art. 51-2) of the Convention and Rule 52 § 2 of the Rules of Court, the separate opinion of Mr. De Meyer, joined by Mr. Pettiti, is annexed to the present judgment.

R.R.
M.-A.E.

**SEPARATE OPINION OF JUDGE DE MEYER JOINED BY
JUDGE PETTITI**

My remarks concerning paragraphs 30 and 31 of the judgment of today's date in the Pudas case¹ also apply to paragraphs 28 and 30 of the judgment in the present case.

The reasons set forth in paragraphs 29 and 32 of the present judgment suffice to establish that "the instant case involved the 'determination' of a 'civil right'"². Those in paragraph 32 furthermore suffice to establish, as far as necessary, that there was a dispute ("contestatation") concerning that right.

¹ Judgment of today, Series A no. 125-A, p. 21.

² Paragraph 27 in fine of the judgment, p. 39 above.