



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

COURT (CHAMBER)

CASE OF PUDAS v. SWEDEN

(Application no. 10426/83)

JUDGMENT

STRASBOURG

27 October 1987

In the Pudas 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. B. WALSH,

Mr. R. MACDONALD,

Mr. C. RUSSO,

Mr. J. GERSING,

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 on 24 September 1987,

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

PROCEDURE

1. The case was brought before the Court by the European Commission of Human Rights ("the Commission") on 13 March 1986, within the three-month period laid down by Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 10426/83) against the Kingdom of Sweden lodged with the Commission on 30 March 1983 under Article 25 (art. 25) by a Swedish citizen, Mr. Bengt Pudas.

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 Articles 6 § 1 and 13 (art. 6-1, art. 13).

2. In response to the inquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicant expressed the wish to take part in the proceedings before the Court and designated the lawyer who would represent him (Rule 30).

* Note by the Registrar: The case is numbered 12/1986/110/158. 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 19 March 1986, the President drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr. J. Cremona, Mr. B. Walsh, Mr. R. Macdonald, Mr. C. Russo and Mr. J. Gersing (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43). Mr. J. De Meyer, substitute judge, subsequently replaced Mr. Cremona, who was prevented from taking part in the consideration of the case (Rules 22 § 1 and 24 § 1).

4. Having assumed the office of President of the Chamber (Rule 21 § 5), Mr. Ryssdal consulted, through the Registrar, the Agent of the Swedish Government ("the Government"), the Delegate of the Commission and Mr. Pudas' lawyer regarding the need for a written procedure (Rule 37 § 1). On 16 June 1986, he directed that the said Agent and lawyer should each be entitled to file a memorial by 16 August and that thereafter the Delegate should have one month to lodge a memorial in reply.

5. The Registrar received the applicant's memorial on 6 August 1986. On 19 August, he received a letter dated 14 August from the Agent of the Government stating that they had nothing to add to the observations they had previously submitted to the Court in a letter of 11 April 1986. On 2 September, the Secretary to the Commission indicated that the Delegate did not intend to present any written observations.

6. On 26 February 1987, the President set 23 March down as the date for the opening of the oral proceedings, having first consulted, through the Registrar, the Agent of the Government, the Delegate of the Commission and the lawyer for the applicant (Rule 38).

7. 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;*

- for the applicant

Mr. G. RAVNSBORG, Lecturer in Law
at the University of Lund, *Counsel.*

The Court heard addresses by Mr. Corell for the Government, by Mr. Gaukur Jörundsson for the Commission and by Mr. Ravensborg for the applicant, as well as their replies to its questions.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

8. The applicant, Mr. Bengt Pudas, is a Swedish citizen born in 1959. He lives at Hedenäset, which is situated in the Municipality of Övertorneå and the County of Norrbotten, in the North of Sweden.

9. On 1 February 1980, the County Administrative Board (länsstyrelsen) of Norrbotten granted him a taxi traffic licence, and, on 20 May, a licence to carry passengers and their goods on specified interurban routes (linjetrafik). The licences were expressed to be valid until further notice.

10. The applicant commenced his combined taxi and interurban traffic business on 20 May 1980. Two vehicles (a Peugeot 505 - mainly for the taxi traffic; and a seven-seater Citroën - mainly for the interurban traffic) were used in the business, which occupied the applicant, his father and a third driver on a part-time basis. By way of interurban traffic, the applicant offered a service of two journeys a week at scheduled times. This service was available on request and had to be ordered one day in advance.

A. County Traffic Company's application to the County Administrative Board

11. On 2 April 1981, the County Traffic Company of Norrbotten (länstrafiken i Norrbotten AB) (see paragraph 20 below) filed an application with the County Administrative Board (see paragraph 19 below) for a licence to provide interurban transport on routes including those covered by Mr. Pudas' second licence. The County Traffic Company at the same time requested that this licence be revoked, as well as a licence held since 1973 by a certain Mr. Wälimaa.

In support of its application, the Company submitted that two traffic services in two different regions were to be united into one regular service with a single time-table, to be provided by the bus service business owned by Mr. Wälimaa and others.

The applicant opposed the revocation of his licence.

B. Decision to revoke Mr. Pudas' licence

12. On 17 August 1981, the County Administrative Board granted the County Traffic Company a licence, valid as from 1 September 1981, to provide interurban transport of passengers and goods on the routes indicated in its request. In another decision on the same day, the Board revoked the applicant's and Mr. Wälimaa's licences for interurban traffic, inter alia on the following grounds:

"The plans for the future transport service offered by the County Company include a regular bus service which is to be created between the places in question. Such a plan will, in the opinion of the Board, enable a better network of routes to be created for the area and transport to be co-ordinated in one route. Bearing this in mind, it is the opinion of the Board that the transport service in the area will be improved in such a way that the licence applied for by the County Company cannot be refused. Consequently, the former licences, issued to (the applicant) and Mr. Wälimaa, shall be revoked."

By virtue of a subsequent order, Mr. Pudas' licence was to cease to be valid as from the date on which the revocation of 17 August became final. Shortly thereafter, the County Traffic Company contracted out to the company owned by Mr. Wälimaa and others the running of a bus service on the routes covered by its new licence.

C. Appeals by Mr. Pudas against the revocation of his licence

13. The applicant lodged an appeal with the Board of Transport (transportrådet), in which he alleged, inter alia, the following. The County Traffic Company's application for a licence for the routes covered by his licence had been motivated not by any public interest in improving the transport service, but by an arrangement between the Company and Mr. Wälimaa (see paragraphs 11 and 12 above). Only very serious reasons, such as misconduct of the licence-holder, could justify revocation. When revoking his licence, the County Administrative Board had failed to take due account of his interests. Finally, the transport service on the routes concerned was not likely to be improved simply by being carried out by Mr. Wälimaa and others instead of by himself.

The Board of Transport rejected the appeal on 14 May 1982.

14. Mr. Pudas thereupon lodged a further appeal with the Government (Ministry of Transport and Communications), in which he referred to his arguments submitted to the Board of Transport.

15. The Government dismissed the appeal on 21 October 1982. In response to a further request from the applicant, the Government declined, on 13 January 1983, to review their previous decision.

II. RELEVANT DOMESTIC LAW

A. General description of the licence system

16. The relevant law is to be found in the Act and the Ordinance of 1979 on Commercial Transport (yrkestrafiklagen 1979:559 - "the 1979 Act", and yrkestrafikförordningen 1979:871 - "the 1979 Ordinance").

Section 4 in Chapter 1 of the 1979 Act defines commercial transport as a transport service of goods or passengers by car, truck or bus offered to the public for a fee. Such service may only be performed by persons possessing a transport licence (Chapter 2, section 1).

B. Conditions for the issue of licences

17. Under the 1979 Act (Chapter 1, section 5), there are three kinds of passenger transport licences, which can briefly be described as follows:

- transport on request, where the vehicle, with a driver, is put at the customer's disposal and the price is determined according to the customer's use of it (beställningstrafik);
- tourist transport, which comprises commissioned tours for sightseeing, etc. (turisttrafik); and
- regular transport on defined routes within or between specified urban areas - interurban traffic (linjetrafik) -, where the vehicle is not put at the customer's disposal.

Only persons (physical or legal) deemed suitable to conduct the service may obtain a licence. In examining applications, such factors as professional skill and personal and economic circumstances are considered, with a view to ensuring that the transport is effected under safe conditions by economically stable undertakings (Chapter 2, section 3, of the 1979 Act). A further condition is that the intended service is deemed necessary and appropriate (Chapter 2, section 11). The reason for this is the overall objective of establishing an adequate transport network and preventing any harmful surplus service. This objective extends to ensuring that transport operators who work on days and at hours that are not profitable are not exposed to uncontrolled competition from others who only provide a service when profitable.

The licensing authority makes licences to carry passengers on interurban routes subject to specific conditions, concerning such matters as routes and time-tables (Chapter 2, section 23, and Chapter 3, sections 5 and 6, of the 1979 Ordinance). The Board of Transport sets the rates to be charged (*ibid.*, Chapter 3, sections 1 to 3).

C. Organisation and administration of the transport system

18. Norrbotten is one of the vast and sparsely populated counties in Sweden where an adequate transport service is not feasible unless publicly-funded transport is provided. It is estimated that an average of 50 per cent of passenger transport costs in Sweden are borne out of public funds and that this percentage is even higher in the Northern parts of the country.

19. Licences to carry passengers on interurban routes are normally issued and revoked by the County Administrative Board.

20. According to the Act of 1978 on "Principals" for various forms of public transport of passengers (Lag 1978 : 438 om huvudmannaskap för viss kollektiv persontrafik - "the 1978 Act"), each county shall have a "Principal" ("huvudman") responsible for the local and regional public traffic by road (section 1) and, in particular, for ensuring the availability of proper transport facilities at a cost which does not impose an undue burden on taxpayers.

The Principal, which is constituted by the County Council (landstinget) and the local municipalities (kommunerna) together, has overall responsibility for public transport within the county. In some counties the Principal's tasks are carried out by a public entity (kommunalförbund). However, in most counties, including that of Norrbotten, they are performed by a company, known as the County Traffic Company, which is wholly owned by the County Council and the municipalities.

The Principal may either hold the licences itself or operate a system under which they are held by private transporters. In the former event, the Principal may provide the service under its own management or arrange for private persons to run the traffic under contract. Even where the licence-holder is a private transporter, he is dependent on funding from the Principal in order to cover deficits.

D. Conditions for revocation of licences to carry passengers on interurban routes

21. A licence must be revoked if it has been misused in such a way that the holder can no longer be deemed suitable to provide the service, though in less serious cases a warning may be issued; it must also be revoked if the service is not maintained (Chapter 3, sections 1 and 2, of the 1979 Act).

A licence must also be revoked where, inter alia, a municipality or a Principal applies for a licence and establishes that the transport facilities in the area will probably be improved if it takes over the licence itself (Chapter 3, section 5, of the 1979 Act). In addition, a licence may be revoked, following an application by a prospective transporter, when there are good grounds to suppose that this will be conducive to the most rational organisation of transport.

E. Remedies available against revocation of licences to carry passengers on interurban routes

22. An appeal against any such decision by a County Administrative Board to revoke a licence lies to the Board of Transport. In its capacity as authority of final instance, the Government (Ministry of Transport and Communications) may review decisions by the Board.

23. 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.

This principle is subject to an important exception, in that no appeal may be made against decisions of the Government. There is, however, a limited possibility to file a petition with the Supreme Administrative Court for re-opening of the proceedings (*resningsansökan*) in respect of decisions of the Government as well as other authorities. Further particulars regarding this remedy appear in the *Sporrong and Lönnroth* judgment of 23 September 1982 (Series A no. 52, pp. 19-20, § 50).

24. The civil liability of the State is dealt with in Chapter 3 of the Civil Liability Act 1972 (*skadeståndslagen 1972:207*).

According to section 2, 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.

25. Finally, when a new licence has been granted, the former licence-holder may call on the new licence-holder to "redeem" the vehicles and other equipment used in his enterprise. Any such request must be lodged not later than two months after the revocation became effective. Redemption cases are dealt with by the Bus and Taxi Assessment Board in accordance with the provisions of a 1969 Ordinance (*kungörelsen 1969 : 690 om buss- och taxivärderingsnämnden*). This Board determines the scope of the redemption and the amount to be paid. The assets are to be given a value corresponding to what could be obtained on a sale under normal conditions. If the assessment would produce a manifestly unfair result, the amount may, however, be adjusted.

The Board must give the parties the opportunity to state their case in writing or orally. The Board may also have an enquiry carried out by independent experts. The expenses of the proceedings are to be borne, as a rule, by the new holder of the licence.

The Board is composed of a chairman and two other members. The chairman must be an experienced judge.

PROCEEDINGS BEFORE THE COMMISSION

26. In his application of 30 March 1983 to the Commission (no. 10426/83), Mr. Pudas complained that the revocation of his licence to transport persons on specified interurban routes violated Article 1 of Protocol No. 1 (P1-1). Furthermore, he alleged that there had been a breach of Article 6 § 1 (art. 6-1) of the Convention as he had no possibility of having the revocation reviewed by a court. He also relied on Article 13 (art. 13), maintaining that he had no "effective remedy" against that decision.

27. On 5 December 1984, the Commission declared admissible, as raising issues under Articles 6 and 13 (art. 6, art. 13) of the Convention, the applicant's complaint that he had no remedy before a court in respect of the revocation of his licence. The remainder of the complaints were declared inadmissible.

In its report of 4 December 1985 (Article 31) (art. 31), the Commission expressed the unanimous opinion that there had been a breach of Article 6 § 1 (art. 6-1) and that no separate issue arose under Article 13 (art. 13).

The full text of the Commission's opinion is reproduced as an annex to the present judgment.

AS TO THE LAW

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

28. The applicant complained that under Swedish law he did not have the possibility of having the revocation of his transport licence reviewed by a court. He alleged a violation of Article 6 § 1 (art. 6-1), which, as far as is relevant, provides:

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

29. 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)

30. 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).

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

31. 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.

32. Before the Convention institutions, the applicant alleged that a secret agreement between the County Traffic Company and Mr. Wälimaa formed the background to the revocation of his licence and that there had been an abuse of power on the part of the authorities. He also pointed out that as a result of the revocation he lost an important part of his business and livelihood.

33. The Government first observed that under the 1979 Act there was no right to obtain a licence of the kind at issue, in the sense that it would automatically be granted to anyone who satisfied certain conditions. Secondly, they argued, the licence concerned did not constitute a "right" for Mr. Pudas, since it was issued not for a fixed period of time but merely

"until further notice" (see paragraph 9 above). Thirdly, they contended that the revocation of the licence depended essentially on an assessment of policy issues not capable of or suited to judicial control (see paragraphs 17 and 21 above). On this latter point, the Government referred to the van Marle and Others judgment of 26 June 1986 (Series A no. 101, p. 12, § 36).

34. The Court agrees with the Commission that, on being granted a licence, the applicant acquired certain consequential rights.

To begin with, subject to the possibility of its being revoked, the licence conferred a "right" on the applicant in the form of an authorisation to carry out a transport service in accordance with the conditions prescribed in it and laid down by domestic law (see paragraphs 9, 16 and 17 above). It is true that the licence did not specify the conditions on which it could be revoked and that the law allows a certain discretion as regards revocation, but it follows from generally recognised legal and administrative principles that the authorities did not have an unfettered discretion in this respect.

The applicant could plausibly and arguably maintain that according to Swedish law he was entitled to continue his business under the licence. The Court notes that in his appeal to the Board of Transport, he contended the following (see paragraph 13 above): the County Traffic Company's application to the County Administrative Board for a transfer of his licence was not motivated by any public interest in improving the transport service on the routes in question, but by an arrangement between the Company and another transport business; transport service was not likely to be improved if it were carried out by this other business rather than by his own. He was, as the Delegate of the Commission pointed out at the hearing, thus challenging not only the wisdom of the revocation as a matter of policy but also its lawfulness.

In addition, the proceedings complained of were capable of leading - and did in the event lead - to confirmation of the decision being challenged, namely the revocation by the County Administrative Board of the applicant's licence; they were therefore directly decisive for the right at issue.

2. Civil character of the right

(a) Relevant principles

35. According to the well established case-law of the Court, the concept of "civil rights and obligations" is not to be interpreted solely by reference to the respondent State's domestic law and Article 6 § 1 (art. 6-1) applies irrespective of the status of parties, as of the character of the legislation which governs how the dispute is to be determined and the character of the authority which is invested with jurisdiction in the matter; it is enough that the outcome of the proceedings should be decisive for private rights and obligations (see notably the Deumeland judgment of 29 May 1986, Series A

no. 100, p. 22, § 60, and the Baraona judgment of 8 July 1987, Series A no. 122, pp. 17-18, § 42).

(b) Application of these principles in the instant case

36. The Government contended that the provision of public transport services in Sweden carries the "predominant stamp of a public-law activity". Thus, the responsibility for ensuring the availability of proper transport facilities is placed by law on public authorities (see paragraphs 19-20 above).

Administrative authorisation, the Government further submitted, is required to carry out the activities in question and such authorisation - as well as, where appropriate, its revocation - depends partly on a discretionary assessment, for example of the necessity and appropriateness of a given service on a given route. A licence, if granted, is normally subject to a number of conditions as to, for instance, the routes to be covered, the regularity of the service offered and the maximum rates to be charged. To the extent that it may be said that the applicant entered into contractual relationships with his customers, he was legally obliged to do so. In short, the applicant had to perform a service regulated in almost every detail by the public authorities. These regulations are provided for by law mainly with a view to securing the public interest of having a rational transport system (see paragraphs 16, 17 and 21 above).

Finally, unlike the situation of a businessman operating in the private sector, a substantial, and often even a major, part of the licence-holder's costs of running the business is covered out of public funds (see paragraph 18 above).

37. In the Court's view, however, these features of public law do not suffice to exclude from the category of civil rights under Article 6 § 1 (art. 6-1) the rights conferred on the applicant by virtue of the licence. The maintenance of the licence to which the applicant claimed to be entitled was one of the conditions for the exercise of his business activities. Furthermore, public transport services in Sweden are not ensured by a State monopoly but both by public bodies and by private persons (see paragraph 20 above). At least in the latter event, the provision of such services takes the form of a commercial activity. It is carried out with the object of earning profits and is based on a contractual relationship between the licence-holder and the customers.

38. The dispute between Mr. Pudas and the Swedish authorities did therefore concern a "civil right" and Article 6 § 1 (art. 6-1) is thus applicable to the present case.

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

39. The Government admitted that, should the Court find Article 6 § 1 (art. 6-1) to be applicable, the applicant was not afforded the safeguards it sets out. The Court nevertheless has to ascertain whether Mr. Pudas enjoyed the "right to a court", as 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).

40. The dispute in question was determined by the Government (Ministry of Transport and Communications) in its capacity as authority of final instance (see paragraph 22 above). The Government's decision rejecting Mr. Pudas' appeals against the revocation of his licence by the County Administrative Board was not open to review as to its 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 § 1 (art. 6-1) (see paragraph 23 above).

41. Admittedly, holders of an interurban traffic licence can challenge the lawfulness of a revocation by requesting the Supreme Administrative Court to re-open the proceedings. However, for the reasons set out in the Sporrang and Lönnroth judgment of 23 September 1982 (Series A no. 52, p. 31, § 86), this extraordinary remedy does not meet the requirements of Article 6 § 1 (art. 6-1).

C. Conclusion

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

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

43. 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 § 1 (art. 6-1), the Court, like the Commission, does not find it necessary to examine the case under Article 13 (art. 13); this is because its requirements are less strict than, and are here absorbed by, those of Article 6 § 1 (art. 6-1) (see the above-mentioned *W v. the United Kingdom* judgment, Series A no. 121, p. 37, § 86).

III. ALLEGED BREACH OF ARTICLE 1 OF PROTOCOL NO. 1 (P1-1)

44. Before the Commission, the applicant alleged that the withdrawal of his interurban traffic licence, and the manner in which it was accomplished,

constituted a violation of Article 1 of Protocol No. 1 (P1-1), which in substance guarantees the right of property.

Although the Commission declared this claim inadmissible, the applicant maintained it in his memorial to the Court. However, he did not revert to the matter during the subsequent public hearing. In those circumstances, the Court considers that it is not called upon to examine whether it has jurisdiction to entertain the complaint under Article 1 of Protocol No. 1 (P1-1) and, if so, whether there has been a breach of this provision.

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

45. 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."

By way of just satisfaction, Mr. Pudas sought financial compensation for prejudice allegedly suffered and reimbursement of costs and expenses.

A. Damage

46. The applicant claimed "ten to fifteen times" the sum of 70,000 Swedish crowns (SEK), together with interest, as "compensation" in respect of damage resulting from the revocation of his licence.

47. As regards possible pecuniary damage sustained, the evidence submitted does not warrant the conclusion that, had Mr. Pudas been able to challenge the revocation of his licence before a tribunal, the decision would have been in his favour. Neither is it for the Court to inquire into the merits under Swedish law of the revocation. No award can therefore be made in respect of pecuniary damage.

48. However, the Court considers that the applicant suffered, by reason of the absence of a court remedy, some non-pecuniary prejudice and that, contrary to the view of the Government and the Commission, sufficient satisfaction would not be provided solely by the finding of a violation. The Court accordingly awards financial compensation to Mr. Pudas under this head. Deciding on an equitable basis, it fixes the amount thereof at 20,000 SEK.

B. Costs and expenses

49. The applicant claimed in respect of costs and expenses:

(a) 14,000 SEK for travel, effected by himself, his counsel (Mr. Andersson) and his personal adviser (Mr. Puranen), to the County Administrative Board in Luleå and to the Government offices in Stockholm for meetings with the Minister of Transport and Communications;

(b) 3,100 SEK for Mr. Andersson's fees in connection with his representation before the national authorities;

(c) 3,000 SEK for "research (compensation for travel and subsistence allowance)", paid to Mr. Puranen;

(d) 5,000 SEK for "loss of ordinary income" incurred by Mr. Puranen;

(e) 126,000 SEK for lawyer's fees (90 hours at 1,400 SEK per hour) paid in connection with his representation before the Strasbourg institutions.

50. 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. They contested, however, the first item on the ground that the expenses referred to had not been incurred for a purpose which fell "within the sphere of examination by the Strasbourg organs". They also took issue on the fourth item, since they did not see in what respect such costs had been incurred. Finally, as to the fifth item, they maintained that the claimed number of hours and the hourly rate were excessive.

51. As to the first and fourth items - travel expenses and loss of income on the part of Mr. Puranen -, no evidence has been furnished showing that they involved costs necessarily incurred with a view to preventing or obtaining redress for the matter found by the Court to constitute a violation of Article 6 § 1 (art. 6-1) of the Convention. No compensation is therefore recoverable under these heads.

52. On the other hand, the fees of Mr. Andersson and Mr. Puranen, set out in the second and the third heads of claim, were not contested by the Government.

53. Nor was it disputed that the fifth item of expenditure, namely the legal fees paid in connection with the applicant's representation before the Strasbourg institutions, was actually incurred. However, the Court, like the Government, is not convinced that these fees were all incurred necessarily and were reasonable as to quantum.

In these circumstances, the Court is unable to award the totality of the amount claimed; it considers on an equitable basis that the applicant is entitled to recover as reasonable reimbursement for the fees in question the sum of 50,000 SEK, from which must be deducted the 2,720 French francs (FF) already received from the Council of Europe in respect of legal costs.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that Article 6 § 1 (art. 6-1) of the Convention applied in the instant case;
2. Holds that the said Article 6 § 1 (art. 6-1) has been violated;
3. Holds that it is not necessary also to examine the case either under Article 13 (art. 13) of the Convention or under Article 1 of Protocol No. 1 (P1-1);
4. Holds that the respondent State is to pay to the applicant, in respect of non-pecuniary damage, 20,000 (twenty thousand) Swedish crowns and, in respect of costs and expenses, 56,100 (fifty-six thousand one hundred) Swedish crowns, less 2,720 (two thousand seven hundred and twenty) French francs to be converted into Swedish crowns at the rate applicable on the date of delivery of the present judgment;
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 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 is annexed to the present judgment.

R.R.
M.-A.E.

SEPARATE OPINION OF JUDGE DE MEYER

(Translation)

While concurring in the result, I very much regret that I cannot agree with certain parts of the supporting reasoning in the judgment.

The reasons set forth in paragraphs 34 and 37 amply suffice to establish that "the instant case involved the 'determination' of a 'civil right'"¹.

It was pointless to repeat, in paragraphs 30, 31 and 35, a number of general considerations already expressed in previous judgments, the more so as some of these considerations are seriously open to dispute.

In particular, paragraph 30 once again contains the assertion that Article 6 § 1 (art. 6-1) of the Convention 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".

As shown recently in the cases of *W, B, R and O v. the United Kingdom*², this unfortunate assertion, which was refuted beforehand by Judge Lagergren in the *Ashingdane* case³, is contested by at least six members of the Court. It was not repeated in the judgment on the *Baraona* case⁴. Neither should it have been repeated in the present case.

Furthermore, the statements reproduced in paragraph 31 put too much weight on the word "contestations" (disputes), which appears only in the French text of Article 6 § 1 (art. 6-1) of the Convention and which has no equivalent in the English text. The latter refers, more generally, to the determination of rights and obligations and not only to decisions to be taken on "contestations" concerning rights and obligations.

Excessive reliance on the notion of "contestations" may entail too narrow an interpretation and application of the principles which those who drafted the provisions concerned were attempting to define.

Similarly, the requirement that the "contestation" must be "genuine and of a serious nature" may likewise have too restrictive an effect.

If reference is to be made to previous judgments, what should not be forgotten above all is the statement made by the Court in 1968 in its judgment on the *Wemhoff* case : "given that [the Convention] is a law-making treaty, it is ... necessary to seek the interpretation that is most appropriate in order to realise the aim and achieve the object of the treaty, not that which would restrict to the greatest possible degree the obligations undertaken by the Parties"⁵.

¹ Paragraph 29 in fine of the judgment.

² Judgments of 8 July 1987, Series A no. 120, p. 32, and no. 121, pp. 39, 83 and 129.

³ Judgment of 28 May 1985, Series A no. 93, p. 27.

⁴ Judgment of 8 July 1987, Series A no. 122.

⁵ Judgment of 27 June 1968, Series A no. 7, p. 23, § 8.