



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

COURT (CHAMBER)

CASE OF FREDIN v. SWEDEN (No. 1)

(Application no. 12033/86)

JUDGMENT

STRASBOURG

18 February 1991

In the Fredin 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 Thór VILHJÁLMSSON,

Mr L.-E. PETTITI,

Mr B. WALSH,

Mr R. MACDONALD,

Mr C. RUSSO,

Mr J. DE MEYER,

Mr S. K. MARTENS,

Mrs E. PALM,

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

Having deliberated in private on 28 September 1990 and on 22 January 1991,

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 14 December 1989, within the three-month period laid down in Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12033/86) against the Kingdom of Sweden lodged with the Commission under Article 25 (art. 25) by two Swedish citizens, Mr Anders Fredin and Mrs Maria Fredin, his wife, on 5 March 1986.

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). It sought a decision as to

* The case is numbered 29/1989/189/249. 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.

** As modified by Article 11 of Protocol No. 8 (P8-11), which entered into force on 1 January 1990.

*** The amendments to the Rules of Court which entered into force on 1 April 1989 are applicable to this case.

whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 6 and 14 (art. 6, art. 14) 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 § 3 (d) of the Rules of Court, the applicants stated that they wished to take part in the proceedings and designated the lawyer who would represent them (Article 30).

3. The Chamber to be constituted included ex officio Mrs E. Palm, 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 27 January 1990, in the presence of the Registrar, the President drew by lot the names of the seven other members, namely Mr Thór Vilhjálmsson, Mr J. Pinheiro Farinha, Mr L.-E. Pettiti, Mr B. Walsh, Mr R. Macdonald, Mr S. K. Martens and Mr R. Pekkanen (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43). Subsequently, Mr C. Russo and Mr J. De Meyer, substitute judges, replaced Mr Pinheiro Farinha and Mr Pekkanen who were unable to take further part in the consideration of the case (Rules 22 § 1 and 24 § 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 § 5) and, through the Registrar, consulted the Agent of the Swedish Government ("the Government"), the Delegate of the Commission and the representative of the applicants on the need for a written procedure (Rule 37 § 1). In accordance with his order, the Government's memorial was received at the registry on 24 April 1990 and the applicants' memorial and their claims for just satisfaction on 8 and 19 June. On 28 August 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 28 August 1990 that the oral proceedings should commence on 25 September 1990 (Rule 38). On 12 September the Commission filed a number of documents which the Registrar had sought from it on the President's instructions. On 21 and 25 September, the applicants' representative filed with the registry further particulars regarding the claim for costs and expenses.

6. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting 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 U. ANDERSSON, Under-Secretary for Legal Affairs,
Ministry of the Environment,

Mr P. BOQVIST, Legal Adviser,

Ministry for Foreign Affairs,

Advisers;

- for the Commission

Mr Gaukur JÖRUNDSSON,

Delegate;

- for the applicants

Mr J. AXELSSON, advokat,

Counsel.

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

7. On 18 December 1990 the applicants filed an additional document with the President's authorisation (Rule 37 § 1, second sub-paragraph).

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. Mr Anders Fredin, an agricultural engineer, and his wife Mrs Maria Fredin own several parcels of land in the municipality of Botkyrka. On the land there is a farm and a gravel pit. The parcel where the gravel pit is located consists of 27 hectares and is called Ström 1:3. It was specifically created in 1969 from parts of the other properties with a view to the exploitation of the pit.

9. When Mr Fredin's mother bought the land in 1960 the commercial exploitation of the gravel pit had been at a standstill since the middle of the 1950s. In the meantime, gravel had been taken only for use on the farm. The Fredins were eager for exploitation to resume and, on 20 March 1960, they signed a licence agreement with two companies ("the Jehanders"), granting them, for an annual fee, the exclusive right to extract gravel from the pit for fifty years. The Jehanders subsequently acquired several other gravel pits in the vicinity and thus obtained, so the applicants allege, a quasi-monopoly on gravel production in the region.

10. In 1963 a prohibition on the extraction of gravel without a permit was introduced through an amendment to the Nature Protection Act 1952 (natskyddslagen 1952:688). On 11 December 1963 the County Administrative Board (länsstyrelsen) of Stockholm County granted Mr Fredin's parents the necessary permit. This provided, inter alia, that exploitation had to be in conformity with a plan drawn up in May 1962; in particular, it had to be carried out in three stages, each of which should not exceed ten years. In addition, restoration works had to be carried out continuously during each stage and financial security lodged to cover the costs thereof.

11. On 4 September 1969 Mr Fredin acquired a fifth of the property by way of a gift from his mother.

12. On 1 July 1973 an amendment to the Nature Conservation Act 1964 (naturvårdslagen 1964:822 - "the 1964 Act") - which had left unaffected the need for a permit - empowered the County Administrative Board to revoke permits that were more than ten years old (see paragraph 35 below).

13. On 31 July 1977 the applicants bought the remainder of the property, which thenceforth belonged as to two-thirds to Mr Fredin and as to one-third to his wife. The County Administrative Board was informed of the change in ownership.

14. Despite a number of requests over the years, the Jehanders had, at the time of the applicants' purchase, still not put the gravel pit to commercial use. The Fredins accordingly instituted court proceedings for breach of contract, but the dispute was resolved by a friendly settlement according to which the licence agreement was deemed to have terminated with effect from 1 October 1979.

15. On 3 October 1979 the applicants requested that the permit to take gravel should be formally transferred to them. With the consent of Mr Fredin's parents they began to exploit the pit in 1980, partly through a new licensee. At about this time the County Administrative Board offered to redeem the exploitation permit from the applicants for a sum, according to them, of around 50,000 Swedish kronor. However, the applicants did not accept the offer. As from 1983 they conducted part of the business themselves through Kagghamra Grus AB, a limited liability company they owned.

16. On 30 May 1980 the County Administrative Board granted the applicants an exemption from the general prohibition in the 1964 Act against building near the seashore and allowed them to build a quay with shiploading equipment. The exemption was valid until further notice, but not for longer than the permit to exploit gravel. The Board stated that the "decision [did] not imply that any position [had] been taken as to the possibility of a future reconsideration of the gravel exploitation activities on the property". The applicants built the quay at a cost of 1,000,000 kronor and also invested some 1,250,000 kronor in the gravel exploitation business over the period from 1980 to 1983.

17. On 24 April 1981 the County Administrative Board asked the applicants to lodge a financial security of 40,000 kronor to cover restoration costs, this amount being subsequently increased to 75,000 kronor.

18. After the applicants had provided the security required, the County Administrative Board, by "partial decision" of 14 April 1983, amended its decision of 11 December 1963 (see paragraph 10 above) by transferring the permit to them. The Board added that it planned to issue new directives concerning restoration work and that, in view of the 1973 amendment of the

1964 Act (see paragraph 12 above), it intended to re-examine the permit question in 1983 with a view to a possible termination of the activities.

19. On 25 August 1983 the County Administrative Board notified the applicants that, in the interest of nature conservation, it was contemplating amending the permit so as to provide that exploitation of the gravel pit should cease by 1 June 1984.

20. In a memorandum dated 14 May 1984, the County Administrative Board indicated two possible ways of discontinuing the exploitation. One was to stop extraction as soon as possible because the environment was being damaged and there was already a satisfactory supply of gravel in the region. The other was to allow the exploitation to continue for a couple of years, thereby making it possible to give the area a natural shape.

The memorandum was submitted to the National Environment Protection Board (naturvårdsverket) and to the municipality of Botkyrka. On 18 September 1984 the Board replied that it favoured the first alternative and that it considered that a reasonable exploitation-time had been afforded as the permit had been valid for twenty years. On 1 October the municipality expressed the opinion that a certain closing-down period was preferable as it would facilitate the restoration of the landscape.

21. In a new "partial decision" of 19 December 1984, the County Administrative Board ordered, inter alia, that:

(a) the exploitation of gravel should cease within three years, i.e. by the end of 1987, by which time the area should also be restored;

(b) as from the day of the decision further extraction from certain parts of the pit be prohibited;

(c) before 1 March 1985 the applicants should increase the security to 200,000 kronor, to cover possible restoration costs resulting from the growing activity in the pit; they should also draw up a new work plan, so that the Board could fix the final conditions for the extraction and restoration works.

22. The applicants appealed to the Government, claiming that:

(a) the County Administrative Board's decision was in part based on insufficient scientific material;

(b) it should not have followed the opinion expressed by the municipality of Botkyrka (see paragraph 20 above), in view of that opinion's limited scope;

(c) its decision, and also the opinion of the National Environment Protection Board, should have been based on the views of a geological expert;

(d) it had not given the applicants' interests sufficient consideration and had not granted a reasonable closing-down period;

(e) the order to submit a new extraction plan and to lodge security of 200,000 kronor constituted a financial penalty;

(f) the prohibition on extraction from parts of the pit was unlawful as it amounted to a closing-down of the activities;

(g) pursuant to the 1964 Act, as interpreted in the light of the Environment Protection Act 1969 (miljöskyddslagen 1969:387) and the Water Act 1918 (vattenlagen 1918:533), they had a protected right to exploit gravel for at least ten years from the transfer of the permit on 14 April 1983.

23. On 26 March 1985 the County Administrative Board submitted an opinion on the appeal, stating amongst other things that it had known, from its contacts with the Jehanders (see paragraph 9 above), that no exploitation of gravel was imminent.

24. In a decision of 12 December 1985 the Government (Ministry of Agriculture) dismissed the appeal, stating that they concurred with the County Administrative Board's assessment. They ordered, however, that the validity of the permit should be extended to 1 June 1988 and that the security should be lodged on 1 March 1986 at the latest.

25. On 9 March 1987 the County Administrative Board adopted a restoration plan for the pit.

26. Before the expiry of the permit the applicants twice requested new permits, but to no avail. The last request was rejected by the Board on 18 May 1987. The applicants' appeal to the Government was dismissed on 9 June 1988, although the validity of the permit was extended until 1 December 1988.

27. On 1 December 1988 extraction of gravel from the pit ceased. The applicants had by then almost terminated the first of the three exploitation stages provided for in the plan attached to the permit of 11 December 1963 (see paragraph 10 above).

28. On 9 February 1989 the County Administrative Board requested the public prosecutor to institute criminal proceedings against Mr Fredin for non-compliance with the 1964 Act, in that he had not restored the gravel pit as provided for in the permit. These proceedings are still pending and the restoration work has not yet been carried out.

29. On 14 March 1989 the County Administrative Board rejected a request by the applicants for a special extraction permit in order to enable them to comply with the 1987 restoration plan (see paragraph 25 above). Their appeal to the Government was dismissed on 21 June 1989, and their application for judicial review under the new Act on Judicial Review of Certain Administrative Decisions (lag om rättsprövning av vissa förvaltningsbeslut 1988:205), which entered into force on 1 June 1988, was rejected by the Supreme Administrative Court on 13 December 1990. These proceedings are not the object of the present complaint.

30. As regards the impact of the revocation of the permit on the value of their property and of their wholly-owned licensee, Kagghamra Grus AB, the applicants have referred to three certificates.

According to the first, issued by Mr Lars Carlsson, a consultant, on 17 March 1987, it appears from the accounts of the applicants' company that it would become insolvent without the income from the pit.

The second certificate, drawn up on 1 September 1988 by Mr Nils Olof Rydstern, an economist, states that the applicants' company would have had an estimated market value of 14-18,000,000 kronor in 1988, had the applicants been able to extract gravel from 1980 onwards without any interference by the authorities. Mr Rydstern points out that this is not the company's liquidation value.

In the third certificate, dated 14 September 1988, Mr Hans Lagerqvist, a land-surveyor at the Senior Land-Surveying Authority (överlantmäterimyndigheten), notes that, as a result of the revocation of the permit, the gravel pit was considered in 1988 to be worth less than 1,000 kronor for general property-taxation purposes. Mr Lagerqvist's own assessment, made on the assumption, *inter alia*, that the extraction of gravel would have continued according to the 1963 permit, concludes that the estate's market value decreased by 15,500,000 kronor as a consequence of the revocation. Taking into account Mr Rydstern's valuation, the total loss suffered by the applicants is estimated at approximately 28-31,000,000 kronor.

31. The applicants have also submitted a report by Mr Dick Karlsson, a consultant, according to which, in a large number of revocation cases concerning businesses that had been carried on for several years, the County Administrative Board had not ordered the restoration of the gravel pits at issue. The Board was also said to have given the holders of the permits in question the opportunity of obtaining new ones, should the supply of gravel on the market decrease. Mr Karlsson noted that in these cases the permits had been held by two companies, including one of the Jehanders (see paragraph 9 above). He concluded that the Board's decision concerning the applicants' permit was exceptional, in that it terminated an ongoing profitable business.

II. RELEVANT DOMESTIC LAW

32. The basic regulations on the protection of nature are laid down in the 1964 Act.

33. According to section 1 of the Act, everyone must show respect and circumspection in his or her dealings with nature. In addition, all necessary measures have to be taken to limit or counteract any damage to nature which is bound to result from any works undertaken or otherwise.

34. Section 3 provides that, in decisions on questions relating to nature conservation, other public and private interests must be duly considered.

35. Section 18 of the Act prohibits, *inter alia*, extraction of gravel for purposes other than the domestic needs of the landowner without a permit from the County Administrative Board. The section also specifies that:

"The County Administrative Board may require a party applying for an exploitation permit to submit, on pain of the application being rejected, material showing the need for the extraction and a sufficiently detailed plan for the activities. The permit shall be made subject to such conditions as are necessary to limit or counteract the harmful effects of the enterprise on the natural environment. In the absence of special reasons to the contrary, a permit shall be valid only if sufficient financial security is lodged to ensure that the conditions prescribed are actually fulfilled. If the security given proves to be inadequate, the County Administrative Board may order that the permit shall not become effective until additional security has been lodged.

If a prescribed measure is to be taken by someone other than the landowner, the latter must allow it to be carried out.

If ten years have elapsed since an exploitation permit acquired legal force, the County Administrative Board may revoke the permit completely or in part or may make its renewal subject to revised conditions. If it becomes apparent that the conditions laid down do not sufficiently limit or counteract the damaging effects that the activities may have on the natural environment, the County Administrative Board may, before the expiry of the stated period, make the permit subject to such additional conditions as may be necessary."

The last sub-paragraph was added on 1 July 1973. Previously an exploitation permit could not be revoked without compensation being paid to the landowner if the prescribed conditions had been complied with. According to the transitional provisions, the ten-year period was, as regards permits valid on 1 July 1973, to be calculated as from that date. The amendment also repealed certain provisions whereby a landowner could be granted compensation if he was refused a permit.

36. Section 40 (2) of the Act provides that an appeal lies to the Government against a decision taken by the County Administrative Board. At the time of the final decision regarding the revocation question (12 December 1985, see paragraph 24 above), the Government's decisions were not subject to any judicial review. However, since the entry into force, on 1 June 1988, of the Act on Judicial Review of Certain Administrative Decisions, the lawfulness of some decisions by the Government may be challenged before the Supreme Administrative Court.

PROCEEDINGS BEFORE THE COMMISSION

37. Mr and Mrs Fredin applied to the Commission on 5 March 1986. They alleged, firstly, that the revocation of the exploitation permit amounted to a deprivation of property contrary to Article 1 of Protocol No. 1 (P1-1); secondly, that they had not had access to a court to challenge certain of the

Government's decisions, as required by Article 6 (art. 6) of the Convention; and, thirdly, that the County Administrative Board had, in contravention of Article 14 of the Convention taken together with the above-mentioned Article 1 (art. 14+P1-1), discriminated against them because they were the sole independent operators in the area.

38. By decision of 14 December 1987, the Commission declared the application (no. 12033/86) admissible. In its report adopted on 6 November 1989 (Article 31 of the Convention) (art. 31), the Commission expressed the unanimous opinion that there had been a violation of Article 6 § 1 (art. 6-1), but not of Article 1 of Protocol No. 1 (P1-1) taken either alone or in conjunction with Article 14 (art. 14+P1-1) of the Convention. The full text of the Commission's opinion is reproduced as an annex to this judgment*.

AS TO THE LAW

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

39. According to the applicants the revocation of their permit to exploit gravel on their 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."

Neither the Government nor the Commission agreed with this claim.

40. The Court finds - and this point was not contested before it - that the revocation of the permit interfered with the applicants' right to the peaceful enjoyment of their possessions, including the economic interests connected with the exploitation of the gravel pit (see, *mutatis mutandis*, the *Tre Traktörer AB* judgment of 7 July 1989, Series A no. 159, p. 21, § 53).

* Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 192 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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

41. Article 1 (P1-1) guarantees in substance the right of property. It comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that 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, the 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. They must therefore be construed in the light of the general principle laid down in the first rule (see, *inter alia*, the *Mellacher and Others* judgment of 19 December 1989, Series A no. 169, pp. 24-25, § 42).

42. There was no formal expropriation of the applicants' property. However, for the purposes of Article 1 of Protocol No. 1 (P1-1) the concept of "deprivation" covers not only formal expropriation but also measures which amount to a *de facto* expropriation (see, *inter alia*, the *Sporrong and Lönnroth* judgment of 23 September 1982, Series A no. 52, p. 24, § 63).

The applicants contended that they had been the victims of such a *de facto* deprivation of property, whereas the Government and the Commission considered the revocation of the permit to be a measure for the control of use of property.

43. The Court notes that the impugned measure was basically designed to control the applicants' use of their possessions and left unaffected their powers to take formal decisions, within the normal boundaries of the law, concerning the fate of their property Ström 1:3 and of their company, Kagghamra Grus AB. Indeed, this was common ground. It remains however to be ascertained whether the consequences of the revocation of the permit were so serious as to amount to a *de facto* deprivation of property.

44. The applicants have stressed that the revocation, taken together with other existing regulatory measures, left no meaningful alternative use for Ström 1:3. They have also maintained that the revocation deprived their property of all its value.

45. As to the first point, the Court shares the opinion of the Delegate of the Commission that the applicants' possibilities of using their possessions cannot be assessed by looking at Ström 1:3 in isolation. The material before the Court indicates that this parcel was created by the applicants from parts of their existing properties for the sole purpose of serving as a base for the gravel pit business; in fact, its separation from the other parcels seems to have been simply a formality. In order to take into account the realities of

the situation, the effects of the revocation thus have to be ascertained in the light also of the situation obtaining on the applicants' surrounding properties. Nothing indicates, however, that the revocation directly affected these other properties (see paragraphs 8 and 9 above).

Viewing the question from this perspective, the Court does not find it established that the revocation took away all meaningful use of the properties in question.

46. With regard to the second argument, the Court first notes that the applicants are still the owners of the gravel resources on Ström 1:3. It recognises nevertheless that the revocation of the 1963 permit did have serious adverse effects, as compared with the situation which would have obtained if they had been able to continue to exploit gravel in accordance with that permit, on the income derivable from the possessions involved in this case and also on their value. One has, however, to bear in mind that, over the years, the exploitation of gravel had become more and more regulated and, in fact, restricted (see paragraphs 10 and 32-35 above). Thus, the amendment introduced on 1 July 1973 to the 1964 Act (see paragraph 35 above) empowered the authorities to revoke, without compensation, old permits, such as the applicants', after ten years had passed, that is after 1 July 1983. As a consequence, the applicants' possibilities of continuing their gravel exploitation business after this date became uncertain.

47. In the light of the above considerations, the revocation of the applicants' permit to exploit gravel cannot be regarded as amounting to a deprivation of possessions within the meaning of the first paragraph of Article 1 of Protocol No. 1 (P1-1-1). It must be considered as a control of use of property falling within the scope of the second paragraph of the Article (P1-1-2).

B. Compliance with the conditions laid down in the second paragraph of Article 1 (P1-1-2)

1. Lawfulness and purpose of the interference

48. The applicants did not contest the legitimacy of the aim of the 1964 Act, that is the protection of nature. The Court recognises for its part that in today's society the protection of the environment is an increasingly important consideration.

49. The applicants maintained, however, that the legal provisions underlying the impugned measure were not sufficiently foreseeable as to their effects and certain for the purposes of the Convention. In addition, they alleged, with reference to the AGOSI judgment (24 October 1986, Series A no. 108), that, as a result of the absence of any judicial review, the Swedish system did not contain adequate safeguards against abuse to meet the

procedural requirements embodied in Article 1 of Protocol No. 1 (P1-1) and that, in their case, the decision had in fact been unlawful and arbitrary.

50. The Court does not share these views.

As regards first of all the application of the law in Mr and Mrs Fredin's case, the Court's power to review compliance with domestic law is limited (see, *inter alia*, the Håkansson and Sturesson judgment of 21 February 1990, Series A no. 171, p. 16, § 47). The evidence available does not show that the revocation decision was contrary to Swedish law: no convincing argument has been made to support the applicants' view that the 10-year period prescribed in the 1973 amendment to section 18 of the 1964 Act should have been calculated by the Board from the day when the permit was transferred to them instead of from 1 July 1973, the date of entry into force of the amendment (see paragraph 35 above); nor has it been shown that the authorities failed to comply with their duty under section 3 of the 1964 Act to take due account also of private and public interests other than nature conservation. Furthermore, there is no indication that the revocation decision sought to achieve some aim other than the one underlying the 1964 Act.

With respect to foreseeability, the Court finds that the relevant provisions of the 1964 Act (see paragraphs 32-35 above) did indicate the scope and manner of exercise of the discretion conferred on the authorities with sufficient precision, having regard to the subject matter, to meet the requirements of the Convention (see, *mutatis mutandis* and *inter alia*, the Lithgow and Others judgment of 8 July 1986, Series A no. 102, p. 47, § 110, and the Eriksson judgment of 22 June 1989, Series A no. 156, p. 24, § 59).

The Convention, however, also requires, as the applicants have pointed out, that there be a measure of legal protection in domestic law against interferences by public authorities with the rights safeguarded by the Convention (see, *mutatis mutandis*, the Malone judgment of 2 August 1984, Series A no. 82, p. 32, § 67). Nevertheless, the Court cannot find that the absence of judicial review amounts, in itself, to a violation of Article 1 of Protocol No.1 (P1-1). This matter falls instead to be considered under Article 6 (art. 6) of the Convention (see paragraphs 62-63 below and, *inter alia*, the Allan Jacobsson judgment of 25 October 1989, Series A no. 163, pp. 17-18, § 58).

2. Proportionality of the interference

51. It is well-established case-law that the second paragraph of Article 1 of Protocol No. 1 (P1-1-2) must be construed in the light of the principle laid down in the first sentence of the Article (see, as the most recent authority, the above-mentioned Mellacher and Others judgment, Series A no. 169, p. 27, § 48). Consequently, an interference must achieve a "fair balance" between the demands of the general interest of the community and

the requirements of the protection of the individual's fundamental rights (*ibid.*). The search for this balance is reflected in the structure of Article 1 (P1-1) as a whole, and therefore also in the second paragraph thereof: there must be a reasonable relationship of proportionality between the means employed and the aim pursued (*ibid.*). In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see the above-mentioned AGOSI judgment, Series A no. 108, p. 18, § 52).

52. According to the applicants, the circumstances obtaining at the time they made their investments gave them legitimate reason to believe that they would be able to continue the exploitation of the gravel pit for a long time. They claimed that the revocation at short notice of their right to do so did not strike a fair balance between the individual and general interests involved.

The Government, with whom the Commission agreed, maintained that the revocation decision respected this fair balance.

53. The Court notes that the applicants suffered substantial losses having regard to the potential of the gravel pit if it had been exploited in accordance with the 1963 permit (see paragraph 30 above). However, as has been indicated above (see paragraph 46), the Court does not find that reliance can be placed solely on that potential when the effects of the revocation in 1984 come to be assessed; account has to be taken also of the restrictions lawfully imposed on the use of the pit.

54. The applicants initiated their investments seven years after the entry into force of the 1973 amendment to section 18 of the 1964 Act which clearly provided for the potential revocation of existing permits after the expiry of the 10-year period that started to run on 1 July 1973 (see paragraphs 35 and 50 above). They must therefore reasonably have been aware of the possibility that they might lose their permit after 1 July 1983. In addition, it is clear that the authorities did not give them any assurances that they would be allowed to continue to extract gravel after this date. Thus, the decision to grant them a permit to build a quay contained an express statement to the effect that that decision did not imply that "any position [had] been taken as to the possibility of a future reconsideration of the gravel exploitation activities on the property" (see paragraph 16 above).

Accordingly, when embarking on their investments, the applicants could have relied only on the authorities' obligation, when taking decisions relating to nature conservation, to take due account of their interests, as prescribed in section 3 of the 1964 Act (see paragraph 34 above). This obligation cannot, at the time the applicants made their investments,

reasonably have founded any legitimate expectations on their part of being able to continue exploitation for a long period of time.

The Court observes in addition that the applicants were granted a three-year closing-down period and that the authorities showed a certain flexibility as this period was subsequently extended by eleven months at the applicants' request (see paragraphs 21, 24 and 26 above).

55. Having regard to the foregoing and to the legitimate aim pursued by the 1964 Act (see paragraph 48 above), the Court finds that it cannot be said that the revocation decision complained of by the applicants was inappropriate or disproportionate.

3. Conclusion

56. In conclusion, no violation of Article 1 of Protocol No. 1 (P1-1) has been established.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 1 OF PROTOCOL No. 1 (art. 14+P1-1)

57. The applicants also maintained that they were victims of discrimination in the enjoyment of their rights under Article 1 of Protocol No. 1 (P1-1). They invoked Article 14 (art. 14) of the Convention, which provides:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

They claimed that theirs was the only case in Sweden in which the authorities had stopped an ongoing gravel exploitation business and that they had been singled out for special treatment by the County Administrative Board as they were the only independent contractors in the region.

58. In their memorial to the Court, the applicants first recalled the Government's submission before the Commission: whilst admitting that to their knowledge no other ongoing business had been closed by the authorities under the 1973 amendment to the 1964 Act, they had contended that the applicants' case was exceptional in that a considerable time had elapsed between the granting of the permit and the first exploitation of gravel. The applicants pointed out that the authorities had, however, been well aware of the special reasons for the delay and that, moreover, such a long lapse of time was by no means uncommon; in the near vicinity alone, there were at least two pits quite similar in this respect, but this had not led the authorities to interfere with the activities there.

59. The Government agreed with the Commission that, as there was nothing to show that the applicants were in a position similar to that of those companies whose permits were not revoked, no issue of discrimination could arise.

60. The Court recalls that Article 14 (art. 14) affords protection against discrimination, that is treating differently, without an objective and reasonable justification, persons in "relevantly" similar situations. For a claim of violation of this Article to succeed, it has therefore to be established, *inter alia*, that the situation of the alleged victim can be considered similar to that of persons who have been better treated.

61. Before the Commission the applicants endeavoured to demonstrate that this condition was satisfied by submitting a report by Mr Karlsson (see paragraph 31 above). After assessing this evidence, the Commission held, however, that there was nothing to show that the applicants were in a similar situation to those companies whose permits were not revoked (paragraph 77 of its report).

In their submissions to the Court the applicants did not try to refute the Commission's assessment, nor did they adduce other evidence. Their main argument was that, since theirs was the only ongoing business to have been stopped (see paragraph 58 above), it was for the Government to explain in what respect their case was dissimilar to those of the other enterprises which had been allowed to continue their activities or to give a plausible reason for their exceptional treatment.

The Court cannot subscribe to this argument. It is true that, in the absence of further information from the Government with regard to the implementation of the 1964 Act and, in particular, the 1973 amendment thereto (see paragraph 35 above), the Court has to presume that the applicants' pit is the only one to have been closed by virtue of that amendment. However, this is not sufficient to support a finding that the applicants' situation can be considered similar to that of other ongoing businesses which have not been closed.

The Court perceives no reason why it should assess the evidence otherwise than did the Commission and accordingly holds that no issue of discrimination contrary to Article 14 (art. 14) arises.

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

62. The applicants also alleged that the absence of any form of judicial review of the decisions to revoke their exploitation permit and to increase the amount of the security to be lodged constituted a violation of Article 6 § 1 (art. 6-1), the relevant part of which provides:

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

63. The Court finds that the applicants' right to develop their property in accordance with the applicable laws and regulations was "civil" within the meaning of Article 6 § 1 (art. 6-1) (see, as the most recent authority, the Skärby judgment of 28 June 1990, Series A no. 180-B, pp. 37-38, § 29). It is furthermore clear that there was a "genuine and serious" dispute (contestation) between them and the authorities regarding the lawfulness of the impugned decisions and that the outcome of this dispute was directly decisive for that right (*ibid.*). Article 6 (art. 6) was accordingly applicable: in fact this point was not in dispute before the Court.

As the dispute in question could, at the relevant time (see paragraph 29 above), be determined only by the Government as the final instance, there has been a violation of Article 6 § 1 (art. 6-1) (see, *inter alia*, the above-mentioned Håkansson and Stureson judgment, Series A no. 171, p. 20, § 63).

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

64. Article 50 (art. 50) of the Convention reads:

"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 applicants sought compensation for damage and reimbursement of their costs and expenses.

A. Pecuniary damage

65. The applicants claimed 28,000,000 Swedish kronor to cover the economic losses which, according to them, resulted from the revocation of the permit (see paragraph 30 above).

The Court agrees with the Commission and the Government that no causal link has been established between the violation of Article 6 § 1 (art. 6-1) of the Convention found in this judgment and any of the alleged prejudice. The revocation of the permit caused the applicants considerable losses, but the Court cannot speculate as to what result they would have achieved had they been able to bring their case before a court (see, *inter alia*, the above-mentioned Håkansson and Stureson judgment, Series A no. 171, p. 22, § 72).

No award can therefore be made under this head.

B. Non-pecuniary damage

66. The applicants also sought 50,000 Swedish kronor as compensation for non-pecuniary damage. The Government and the Commission left the question to the Court, but observed that any award ought not to exceed 10,000 kronor.

The Court finds that, as a result of the absence of an adequate court remedy, the applicants have suffered some non-pecuniary damage which would not be redressed merely by a finding of violation. Deciding on an equitable basis, it awards them 10,000 kronor as just satisfaction under this head.

C. Costs and expenses

67. The applicants sought 343,926 kronor in respect of costs and expenses. Of this amount, 267,338 kronor were referable to the proceedings in Strasbourg; 180,380 kronor represented Mr Axelsson's fees, 36,383 kronor travel expenses for him and the applicants and 50,575 kronor Mr Axelsson's expenses for various expert opinions. The remaining 76,588 kronor related to the applicants' costs in the domestic proceedings.

The greater part of Mr Axelsson's work before the Convention institutions was undoubtedly devoted to questions which were not related to the violation found; the same holds true for most of the expert opinions requested. Considering this and other relevant circumstances, and making an assessment on an equitable basis as is required by Article 50 (art. 50) of the Convention, the Court awards the applicants 75,000 kronor under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that no violation of Article 1 of Protocol No. 1 (P1-1) has been established;
2. Holds that there has been no violation of the above-mentioned Article taken together with Article 14 (art. 14+P1-1) of the Convention;
3. Holds that there has been a violation of Article 6 § 1 (art. 6-1) of the Convention;
4. Holds that Sweden is to pay to the applicants 10,000 (ten thousand) Swedish kronor in respect of non-pecuniary damage and 75,000 (seventy-five thousand) kronor for costs and expenses;

5. Dismisses 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 18 February 1991.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 § 2 (art. 51-2) of the Convention and Rule 53 § 2 of the Rules of Court, the separate opinion by Mr Thór Vilhjálmsson is annexed to the present judgment.

R.R.
M.-A.E.

CONCURRING OPINION OF JUDGE THÓR
VILHJÁLMSSON

I agree with the other members of the Court, but I prefer the following arguments to those set out in paragraph 61 of the judgment, subparagraphs 2 to 4:

It should be noted that the 1964 Act, which formed the basis of the impugned revocation decision, does not in itself amount to discrimination contrary to Article 14 (art. 14) of the Convention. In fact, the applicants have not alleged that the legislation as such is discriminatory. What they challenge is its implementation.

Implementation measures in the field of nature conservation take many forms and will often have to continue for years. By their very nature they may cause inconvenience to certain people since equal treatment of all persons in similar situations may not only be impractical but also impossible. It is for the Government of Sweden and not for our Court to say whether the aim of the nature conservation legislation should be realised by the closing of one or several gravel pits or if no such measures should be taken. The extent and speed of the implementation of conservation measures is guided not only by the desire to protect the environment, but also by other factors and financial and economic considerations may have a heavy impact. It seems to be worthwhile to underline this argument with a reference to the Sunday Times judgment of 26 April 1979 (Series A no. 30). There the applicants argued that the restrictions imposed by the English courts on their right to publish certain material were in violation not only of Article 10 (art. 10) of the Convention, on which point the majority of the Court agreed, but also of Article 14 (art. 14) because other and allegedly similar press publications were not subject to restraints of the kind suffered by the applicants. The Court did not find it necessary to deal with this argument at length. It unanimously stated as follows in paragraph 71 of its judgment (p. 43):

"The fact that no steps were taken against other newspapers, for example the Daily Mail, is not sufficient evidence that the injunction granted against the Times Newspapers Ltd. constituted discrimination contrary to Article 14 (art. 14)."

It seems to me that the above example well illustrates the kind of situations where a certain difference of treatment cannot be avoided.

Accordingly, I am of the opinion that in cases like the present one the Government in question has a wide margin of appreciation. It is, however, at the same time bound by the Convention. Taking into account what has been stated above, and also the well established principles relevant to the application of Article 14 (art. 14), it cannot be said that the alleged difference of treatment lacked an objective and reasonable justification: it had a legitimate aim (see paragraphs 48 and 50 of the judgment) and the

revocation decision itself was not disproportionate to this aim. Accordingly, I find no violation of Article 14 taken in conjunction with Article 1 of the First Protocol (art. 14+P1-1).