



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

FOURTH SECTION

CASE OF ALLARD v. SWEDEN

(Application no. 35179/97)

FINAL

24/09/2003

JUDGMENT

*(This version was rectified under Rule 81 of the Rules of Court
on 9 September 2003)*

STRASBOURG

24 June 2003

In the case of Allard v. Sweden,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs E. PALM,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr S. PAVLOVSKI,

Mr J. BORRERO BORRERO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 3 June 2003,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 35179/97) against the Kingdom of Sweden lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Swedish national, Ms Inga Allard ("the applicant"), on 27 November 1996.

2. The applicant, who had been granted legal aid, was represented by Mr P. Lindquist, a lawyer practising in Tyresö. The Swedish Government ("the Government") were represented by their Agent, Ms E. Jagander, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the demolition of a house had violated her rights to the peaceful enjoyment of her possessions and to respect for her home under Article 1 of Protocol No. 1 and Article 8 of the Convention respectively.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 22 May 2001, the Chamber declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the

parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was allocated to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1947 and lives in Spånga.

10. In 1935 the applicant's mother and her four siblings jointly inherited two estates – Marum 1:6 and Marum 1:8 – from their father. The ownership of the estates, consisting of several islands in the archipelago of Stockholm, was over the years partly transferred to other members of the family. Disagreements arose between the family members. Some of them wished to divide the property (*klyvning*) and thus dissolve the joint ownership, but the applicant's mother opposed this idea.

11. On the land managed by the applicant's mother – which formed part of Marum 1:8 – the mother owned a number of houses. Two of the houses were used by the applicant's two sisters. A third house situated on the property was considered too small for the applicant's needs and it was therefore decided to enlarge it. The applicant applied for a building permit to the Österåker Building Committee (*byggnadsnämnden*). On 9 September 1987, finding that the enlargement could not be approved as the house in question was situated too close to the shore, the committee nevertheless granted a permit for the building of a new house further away from the shore. The new house was built in 1988.

12. On 4 August 1989 the applicant's mother died, leaving four children, namely the applicant, her brother and her two sisters. However, no distribution of the mother's estate was made before 1991. By a partial division on 29 June 1991, the new house was transferred to the applicant.

13. On 21 December 1989 practically all the other joint owners of the two estates brought proceedings against the applicant in the District Court (*tingsrätten*) of Södra Roslag, requesting that she be ordered to remove the new house on Marum 1:8 as it had been built without their consent, contrary to the requirements of the Joint Ownership Act (*Lagen om samäganderätt*, 1904:48 – “the 1904 Act”). The applicant disputed this and argued, *inter alia*, that it was her mother who had built the house and that accordingly it belonged to her mother's estate. Thus, she was not the proper defendant in the case.

14. By a judgment of 10 May 1990 (“the removal judgment”) the District Court declared that the applicant was to remove the house, or risk having it demolished at her expense. The court stated, *inter alia*, that it was the applicant who owned the house and that she had built it without the necessary consent of all the other joint owners.

15. In 1991 one of the joint owners applied for the sale of Marum 1:6 and Marum 1:8 at a public auction. On 22 May 1992 the District Court decided to stay those proceedings.

16. On 22 February 1994 the District Court’s removal judgment was upheld on appeal by the Svea Court of Appeal (*Svea hovrätt*).

17. The applicant appealed to the Supreme Court (*Högsta domstolen*). She later requested, *inter alia*, that no further action be taken on the case pending the outcome of division proceedings which she had begun in October 1990. In these proceedings, the applicant claimed that the joint ownership of the two estates should be dissolved and individual plots be assigned to the family members. Following several decisions taken by the Real Estate Formation Authority (*Fastighetsbildningsmyndigheten* – “the REFA”) and the courts, the case had to be referred back by the Court of Appeal to the REFA for re-examination as the latter had made procedural errors. Subsequently, by a decision of 1 December 1995, the REFA allowed the creation of four individual plots on Marum 1:8 but rejected the applicant’s request for the creation of an individual plot around the new house on account of the Court of Appeal’s ruling that that house be removed. The applicant appealed against the REFA’s decision to the Real Estate Court (*fastighetsdomstolen*) in Stockholm. As an alternative ground for staying the proceedings before the Supreme Court, the applicant pleaded that, in March 1995, she had requested that the District Court give a declaratory judgment on the question of ownership of the new house.

18. By a decision of 4 March 1996 the Supreme Court rejected the applicant’s request to have the removal proceedings stayed and refused her leave to appeal against the Court of Appeal’s ruling.

19. Following the Supreme Court’s decision, several family members requested that the Enforcement Office (*kronofogdemyndigheten* – “the Office”) enforce the removal judgment. On 7 March 1996 the Office ordered the applicant to remove the house before 3 April 1996 or risk having it demolished by the Office at her own expense. By a later decision the time-limit was extended until 19 April 1996.

20. On 14 March 1996, at the Real Estate Court’s request, the Central Office of the National Land Survey (*Lantmäteriverket* – “the Central Office”) gave its opinion in the division proceedings. It considered that the removal judgment did not prevent the creation of an individual plot around the house in issue. On the contrary, this could preserve the house and reduce the risk of adverse consequences for the applicant. Thus, the Central Office recommended that the applicant be assigned an individual plot.

21. However, on 3 April 1996 the Enforcement Office refused the applicant a further postponement of the enforcement of the removal judgment. On 15 May 1996 the District Court upheld the Enforcement Office's decisions and rejected the applicant's request for a stay of the enforcement. Subsequently, the Enforcement Office, on 20 May 1996, decided that the house was to be demolished by a construction firm on 3 June 1996.

22. The applicant appealed to the Court of Appeal, requesting an immediate stay of the demolition order. She submitted that enforcement of the removal judgment should be stayed until the division proceedings or, in the alternative, until the ownership proceedings had been concluded. She also claimed that she had not been given the opportunity to remove the house herself in accordance with the District Court's judgment of 10 May 1990. She stated that she had started to dismantle the house but was not able to complete the work before 3 June 1996. Furthermore, the applicant requested a three-week respite in order to substantiate her appeal.

23. By a decision of 31 May 1996 the Court of Appeal ordered the applicant to complete her appeal by 12 midnight on 5 June 1996. On the same day, that is on 31 May, the Court of Appeal received a letter from the applicant in which she requested an immediate stay of the demolition order. She submitted, *inter alia*, that enforcement of the removal judgment should be stayed until the division proceedings had been concluded or, in the alternative, until the Real Estate Court had decided the question. She also requested a three-week respite to substantiate her appeal.

24. The appellate court's order for the completion of the appeal – which was sent to the applicant's address at the time in Spånga – was allegedly not received by the applicant until the evening of 5 June, as she had been at the site of the house in issue. On the morning of 6 June she sent a fax to the appellate court, asking for a ten-day respite for the completion of her appeal.

25. However, at a session held on 3 June 1996 the Court of Appeal had already examined the case and, by a decision delivered the following day, refused the applicant leave to appeal against the District Court's decision of 15 May 1996. Thus, no further stay of the enforcement proceedings was granted. It appears from the court files that the applicant called the Court of Appeal on 6 June and was told that the case had already been examined and that regard had been had to the contents of her letter of 31 May. On 5 July 1996 the Supreme Court refused leave to appeal against the appellate court's decision.

26. The house in issue was therefore demolished by a construction firm. The applicant had claimed that her appeal against the District Court's decision of 15 May 1996 prevented the enforcement of the removal judgment. However, this claim was rejected by the Enforcement Office on 31 May 1996, referring to Chapter 3, section 21, of the Enforcement Code (*Utsökningsbalken*). The demolition of the house began on 3 June 1996 and

was concluded ten days later. On 25 June 1996 the Enforcement Office declared that the house had been demolished and that accordingly the removal judgment had been duly enforced. However, this decision was appealed against by the other joint owners on the ground that the building material had not been removed from the property. On 13 September 1996 the District Court, finding in favour of the appellants, quashed the Enforcement Office's decision that the enforcement had been finalised and referred the matter back to the Office. Leave to appeal against the District Court's decision was refused by the Court of Appeal and the Supreme Court on 30 September and 25 October 1996 respectively. On 27 September 1996 the Enforcement Office ordered the applicant to remove the building material from the property before 29 October 1996.

27. On 6 August 1996 the Enforcement Office ordered the applicant to pay the enforcement costs of 114,796 kronor. The applicant appealed and applied for legal aid in the matter. By a decision of 9 September 1996 the District Court rejected the applicant's application for legal aid on the ground that she did not have a legitimate interest in having the case heard as the enforcement had been concluded. The applicant's further appeal was rejected by the Court of Appeal on 13 December 1996. On 28 April 1997 the Supreme Court refused leave to appeal.

28. On 22 November 1996 the Real Estate Court gave judgment in the division proceedings. It decided that Marum 1:8 should be divided into six individual plots and one common plot. The applicant was assigned a plot where the now demolished house had been situated. In this respect, the Real Estate Court thus agreed with the opinion given by the Central Office of the National Land Survey on 14 March 1996. The Real Estate Court's judgment was upheld on appeal by the Court of Appeal on 2 November 1998. On 14 April 2000 the Supreme Court refused leave to appeal.

29. By a judgment of 26 November 1996 the District Court decided another removal case which had been brought by the applicant and her sister in 1994. Apparently in response to the removal proceedings brought against the applicant, they had claimed that several other joint owners of Marum 1:6 and 1:8 should remove buildings they had erected on the estates. However, the District Court rejected the claims, finding that the buildings had been erected before 1991 – when the applicant and her sister, through the partial division of their mother's estate, had become joint owners of the two properties – and that the other joint owners at the time had expressly or impliedly consented to the various building projects. Furthermore, considering that the claimants did not have a legitimate interest in having their cases heard, the court also decided that further litigation in this respect should not be paid for through public legal aid. Thus, with effect from the date of the judgment, the legal aid previously awarded was withdrawn. The applicant and her sister appealed against the judgment, submitting, *inter alia*, that the District Court's decision on legal aid should be quashed.

However, on 3 October 1997 the Court of Appeal upheld the legal-aid decision. On 16 January 1998 the Supreme Court refused leave to appeal. Stating that they were unable to plead their case properly without legal aid, the applicant and her sister, by a letter to the Court of Appeal of 1 November 1999, withdrew most of their claims in the removal case.

30. By a declaratory judgment of 10 July 1997 in proceedings concerning the ownership of the house in issue, the District Court agreed with the applicant's argument, submitted to the court in March 1995, that the house had been erected on her mother's behalf and thus formed part of the latter's estate. Accordingly, at the time of the District Court's removal judgment of 10 May 1990, the house had not belonged to the applicant. Thus, in this respect, the court came to a different conclusion from the one reached in the removal judgment. Following an appeal, the declaratory judgment was upheld by the Court of Appeal on 26 February 1998. No further appeal was lodged and the appellate court's judgment consequently acquired legal force.

31. By decisions of 4 February 1997 and 29 February 2000, the Building Committee granted the applicant building permits for the reconstruction of the demolished house and the construction of two smaller outbuildings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

32. Domestic provisions of relevance in the present case are found in the Joint Ownership Act ("the 1904 Act"), the Administration of Certain Jointly Owned Agricultural Property Act (*Lagen om förvaltning av vissa samägda jordbruksfastigheter*, 1989:31 – "the 1989 Act"), the Real Estate Formation Act (*Fastighetsbildningslagen*, 1970:988 – "the 1970 Act"), the Enforcement Code and the Code of Judicial Procedure (*Rättegångsbalken*).

A. Joint ownership

33. At the time of the building of the house in issue, the ownership of Marum 1:6 and 1:8 was governed by the 1904 Act. Section 2 provided that a joint owner wishing to dispose of real estate must have the consent of all the other joint owners. According to the Supreme Court case-law, a joint owner who was of the opinion that another joint owner had acted in a way which conflicted with section 2 – that is had not had the necessary consent – could challenge the action in court (*Nytt juridiskt arkiv* ("NJA") 1990, p. 184; the same right to bring proceedings is afforded to a joint owner under the 1989 Act – see NJA 1992, p. 769). Under section 3, a joint owner who disagreed with the administration or use of real estate could request the court to appoint an administrator. Further, under section 6, a joint owner had the right to apply for a sale of real estate at public auction. The only way for another joint owner to prevent such a sale was to request division

proceedings in accordance with section 7. If such proceedings had been started, the court could not decide on the question of a sale until the division proceedings had been concluded.

34. As the real estate in the present case is assessed, for tax purposes, as agricultural property, the provisions of the 1989 Act are applicable as from 1 July 1989. The relevant provisions of that Act are essentially the same as in the 1904 Act. Thus, section 5(2) of the 1989 Act contains a rule that corresponds to section 2 of the 1904 Act.

B. Real estate formation

35. Under Chapter 11, section 1, of the 1970 Act, jointly owned real estate may, on application by a joint owner to the Real Estate Formation Authority (“the REFA”), be divided into individual plots, provided that each plot created is deemed permanently suitable for its purpose in accordance with Chapter 3, section 1. Chapter 11, section 3(4), provides that if a court has ordered real estate to be offered for sale at a public auction, the estate may be divided only if no sale has taken place.

C. Procedure and enforcement

36. The enforcement rules are laid down in the Enforcement Code. According to Chapter 3, sections 1 and 3, a court judgment may be enforced as soon as it has acquired legal force. Section 21 of the same chapter deals with objections against enforcement. Such objections may only be raised in respect of circumstances that have occurred after the delivery of the enforceable judgment, and the Enforcement Office is accordingly not entitled to reconsider the judgment itself. Thus, under section 21(1) enforcement cannot take place if the defendant shows that he or she has fulfilled the obligation set forth in the judgment in question. Furthermore, according to section 21(2), enforcement cannot take place if the defendant claims that there are other circumstances which hinder enforcement, provided that the court finds that the objection cannot be dismissed. This rule concerns substantive objections, for example an objection that property which the defendant is obliged to deliver has been conveyed or encumbered.

37. Under Chapter 16, section 12a, of the Enforcement Code, an application for enforcement becomes void if the applicant in the enforcement proceedings grants the defendant a respite which lasts more than six months from the date of the application. However, there are no rules empowering the Enforcement Office to grant the defendant a respite at his or her own request. A decision by the Office to refuse a stay of the enforcement proceedings is, in accordance with Chapter 18, section 1, of the Code, subject to appeal before a court.

38. When it is of utmost importance for deciding a case that a question subject to other court proceedings be determined first, the court may, under Chapter 32, section 5, of the Code of Judicial Procedure, order a stay of proceedings (*vilandeförklaring*). According to the preparatory documents (NJA II 1943, p. 417), the relationship between the two court cases may be such that the decision in one set of proceedings has a binding effect on the outcome of the other set of proceedings. An action for pecuniary compensation for damage to real property and another action concerning the ownership of the property is given as an example. The outcome of one set of proceedings may also have evidential significance in another set of proceedings. In these situations the relevant court has to decide whether it is in the interests of all parties concerned to stay the proceedings or not.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

39. The applicant complained that the demolition of the house on Marum 1:8 had violated her right to the peaceful enjoyment of her possessions. She relied on Article 1 of Protocol No. 1, which provides:

“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.”

A. Submissions of the parties

1. *The applicant*

40. The applicant submitted that the above-mentioned 1904 and 1989 Acts provided for two alternatives – sale at public auction or division of the estate – in case of disagreement between joint owners. However, the law had not provided for the situation where one owner had taken certain measures which were not acceptable to the other owners. She therefore claimed that the demolition of the house had not been subject to “conditions provided for by law”. Moreover, the courts had refused to stay the removal proceedings despite the fact that there were ongoing proceedings regarding

the alternative courses of action allowed by law. She stated that enforcement of the demolition order should have been postponed until the division proceedings had been concluded or, in the alternative, until the ownership of the house had been determined in the court proceedings she had brought for that purpose.

41. Referring to the District Court's declaratory judgment of 10 July 1997, the applicant argued that she had not been the owner of the house when the removal proceedings had been initiated and was thus not the proper defendant in those proceedings. She claimed that she had not been given an opportunity to present all the evidence regarding the ownership question until she had sought a declaratory judgment on the issue. She argued that the ownership question was of relevance to the determination of whether her rights had been violated at the time of the demolition of the house.

42. The applicant further submitted that the house in issue had been situated on land which had been managed and exclusively occupied by her mother, herself and her sisters, which land had subsequently been assigned to the applicant. The house had not even been visible from the parts of the estate occupied by the other joint owners. Thus, they could not have had any interest in having the house demolished. Their only aim had been to harm the applicant, as she had refused to sell her part of the estate and the house to them. Moreover, the Building Committee had examined the case and granted a permit to build the house in issue and had therefore found that it did not contravene any "public interest". Thus, the deprivation of her possessions had been neither in the interests of the other joint owners nor in the "public interest".

43. With regard to the question of proportionality, the applicant claimed that it was irrelevant that the division proceedings had been started after the house was built, as the building of the house had not affected the courts' decisions in the division proceedings. The applicant argued that she would have been assigned the same plot even if the house in issue had not existed, since she already owned other buildings on that plot. Having regard to this and the fact that the demolition of the house had been neither in the interests of the other joint owners nor in the "public interest", the applicant claimed that the interference with her rights had not been proportionate. In this connection, she contended that the value of the demolished house could be estimated at 700,000 kronor.

2. The Government

44. The Government first submitted that the house had been demolished at a time when it clearly belonged to the applicant. They admitted that the demolition of the house meant that the applicant had been deprived of her possessions within the meaning of the second sentence of Article 1 of

Protocol No. 1. However, they contended that this deprivation had been justified under the terms of that Article for the following reasons.

45. Firstly, the deprivation had been effected “in the public interest”. A necessary requirement of the proper functioning of joint ownership is that all joint owners give their permission to a disposal of the estate, as laid down in the 1904 and 1989 Acts. As the house in issue had been built without the consent of the other joint owners, the deprivation had clearly had a legitimate “public interest”. Moreover, having regard to legal certainty for the parties involved in court proceedings, a court may decide to stay proceedings only when there are very strong reasons for so doing. Rules preventing one party from delaying court proceedings and the enforcement of judgments are essential in order to maintain an efficient court system, which in turn is in the interests of the public.

46. Secondly, the deprivation had been subject to “conditions provided for by law”. Every significant procedural and substantive aspect of the removal case and the subsequent question of enforcement had been governed by written laws readily available to the applicant. It was also obvious that the applicant had been fully aware of the relevant legislation, as she herself had instituted proceedings in 1994 against some of her co-owners, requesting that houses they had built on the estate be removed.

47. Thirdly, with regard to the proportionality of the interference with the applicant’s rights, the Government emphasised that the house in issue had been built in 1988 in breach of the law, that is without the consent of the other joint owners. The fact that a building permit had been granted did not alter the situation, as a building committee is not required to look into questions of ownership of the real estate but must concern itself exclusively with planning conditions. When the house had been transferred to the applicant through the partial division of her mother’s estate in 1991, she had been in the same legal position as her mother previously. In order to comply with the law, permission to build the house should have been sought from the other joint owners before the house was built. If they had refused, there would have been two options: either to apply for a sale of the real estate at public auction or to begin division proceedings. Since the law had not been complied with, the other owners had been entitled to request that the house be removed. The courts had therefore been right not to grant the applicant’s requests for a stay of the proceedings or a stay of enforcement on the basis of the division proceedings brought after the building of the house. A decision granting her requests would have favoured her over the other owners. In balancing the applicant’s right to retain a house built in breach of the law against the other owners’ right to have the real estate restored to its former state by means of efficient court proceedings, it was the Government’s position that the interests of the other owners had to be given priority. Article 1 of Protocol No. 1 should not be used to protect a measure which had been against the law from the outset, as unlawful behaviour as

such does not deserve the protection of the law. By building the house the applicant – or rather her mother – had anticipated events which were likely to occur subsequently, such as the division of the real estate into individual plots.

48. In conclusion, the Government contended that there had been no violation of the applicant's rights under Article 1 of Protocol No. 1.

B. The Court's assessment

49. The Court reiterates that Article 1 of Protocol No. 1 contains three distinct rules. They have been described thus (in *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37; see also, among other authorities, *Belvedere Alberghiera S.r.l. v. Italy*, no. 31524/96, § 51, ECHR 2000-VI):

“... the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated 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 ... The three rules are not, however, ‘distinct’ in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule.”

1. Whether there has been an interference

50. The Court notes that it is common ground that there has been a deprivation of possessions. It reiterates that the house in issue was demolished through the Enforcement Office in June 1996. At that time, the applicant was regarded as the owner of the house, it having been transferred to her by a partial division of her mother's estate on 29 June 1991. The land on which it stood was, however, still jointly owned by her and her relatives because, on 1 December 1995, the REFA had refused to create an individual plot around the house in question. In these circumstances, the Court concludes that the demolition of the house deprived the applicant of her possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1.

2. Purpose and lawfulness of the interference

51. The Court must therefore determine whether this deprivation of a possession pursued a legitimate aim “in the public interest” and was “subject to the conditions provided for by law” within the meaning of the second rule of Article 1 of Protocol No. 1.

52. The Court reiterates that a deprivation of property effected in pursuance of legitimate social, economic or other policies may be “in the public interest” even if the community at large derives no direct benefit from that deprivation (see *James and Others*, cited above, pp. 31-32, § 45). It finds that the District Court’s judgment of 10 May 1990, ordering the demolition of the applicant’s house, was rendered in pursuance of the rules on joint property ownership under the 1904 and 1989 Acts, notably the principle contained in section 2 of the 1904 Act and section 5(2) of the 1989 Act that a disposal of the property requires the consent of all other joint owners. Agreeing with the Government, the Court considers that such a requirement lies at the heart of the notion of joint ownership and that the ultimate consequence of the application of that principle – the demolition of a building erected without the necessary consent – can reasonably be said to further the legitimate “public interest” of maintaining a functioning system of joint ownership. It is true that the Building Committee had granted a building permit for the house in issue. However, the committee’s decision merely indicates that the building of the house did not contravene any “public interest” which the committee had to consider, such as planning conditions; it does not deprive the District Court’s judgment and its implementation of their legitimacy as furthering another “public interest”.

53. Moreover, the District Court’s decision that the house be removed by the applicant or, in the event of the applicant’s non-compliance, be demolished at her expense, was a consequence of the court’s conclusion that the house had been built in contravention of the applicable legal provisions. The Court, noting that its power to review compliance with domestic law is limited (see, among other authorities, *Allan Jacobsson v. Sweden (no. 1)*, judgment of 25 October 1989, Series A no. 163, p. 17, § 57), is thus satisfied that the measures taken were in accordance with domestic law.

3. *Proportionality of the interference*

54. An interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual’s fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. The requisite balance will not be found if the person concerned has had to bear an individual and excessive burden (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, pp. 26 and 28, §§ 69 and 73). In other words, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see, for instance, *James and Others*, cited above, p. 34, § 50).

55. As to the facts of the present case, the Court notes that the house in issue was built for the applicant’s use in 1988. At that time, her mother was still alive and was one of several joint owners of the two estates, including

the land on which the house was built. The consent of the other owners was not obtained and, as noted by the Government, the building project therefore failed to comply with the legal requirements under the 1904 Act. Moreover there had apparently been disagreements between the joint owners as to the management of the estates. Thus, the applicant and her mother cannot reasonably have been unaware that, by building the house without having secured the required consent of the other owners, they risked certain legal consequences.

56. Nevertheless, the Court further notes that the building of the house in issue was not illegal *per se*; as is shown by the District Court's judgment of 26 November 1996 in the proceedings brought by the applicant and her sister against several other joint owners, an implied approval of the building project by the other joint owners would have sufficed in order to meet the relevant legal requirements. Moreover, as noted above, the Building Committee had granted a building permit for the house on 9 September 1987 and granted a permit for the reconstruction of the demolished house on 4 February 1997, and had thus concluded that the house complied with planning laws. What remains to be examined by the Court, therefore, is whether a fair balance was struck between the interest of maintaining a functioning system of joint ownership, represented by the other joint owners' wish that a house built without their consent be removed, and the applicant's interest in retaining that house.

57. In this respect, the Court observes that the applicant, having appealed against the Court of Appeal's judgment of 22 February 1994, asked the Supreme Court to stay the removal proceedings pending the outcome of parallel proceedings determining her request that the estates be divided among the various joint owners. In the division proceedings the REFA had decided, on 1 December 1995, not to allow the creation of an individual plot around the house in issue for the sole reason that the Court of Appeal, in its judgment, had upheld the order that the house be removed. The REFA's decision had been appealed to the Real Estate Court which had asked the Central Office of the National Land Survey to give its opinion on the matter. On 4 March 1996 the Supreme Court rejected the applicant's request for a stay of the removal proceedings and refused leave to appeal against the Court of Appeal's judgment. The order to remove the house thereby acquired legal force. On 14 March 1996, only ten days later, the Central Office recommended that the applicant be assigned an individual plot around the house, as this would preserve the house and reduce the risk of adverse consequences for the applicant. This view was confirmed in the Real Estate Court's judgment of 22 November 1996.

58. However, following the Supreme Court's decision, enforcement proceedings were initiated by the other joint owners of the estates. In those proceedings, the Court of Appeal, on 31 May 1996, ordered the applicant to complete her appeal against the District Court's decision by 5 June. It

appears that the applicant did not receive this order until the time-limit had expired. As she was not present at the address she had apparently given to the court, this was her own fault. However, the court had already heard her appeal, at a session on 3 June, two days before the expiry of the time-limit, and took the decision, delivered on 4 June, to refuse her leave to appeal. Before this session, the court had received a letter from the applicant on 31 May in which she made submissions in the case, but also requested a respite to substantiate her appeal. Thus, there does not appear to have been any justifiable reason for the Court of Appeal to assume that the applicant had made her final submissions and to proceed to decide her appeal before the expiry of the time-limit set by itself. The Court notes, furthermore, that the Enforcement Office had already started to demolish the house on 3 June, that is before the delivery of the Court of Appeal's decision and the expiry of the time-limit. It is true that the removal judgment was immediately enforceable despite the appeal in the enforcement proceedings. However, the Court finds it remarkable that the demolition of the house was begun before the expiry of a time-limit set by a court of law in proceedings determining whether that measure should be stayed.

59. The Court further observes that when the Supreme Court, on 4 March 1996, rejected the applicant's request for a stay of the removal proceedings and refused her leave to appeal in those proceedings – thus conferring legal force on the Court of Appeal's judgment ordering the removal of her house – there were ongoing proceedings concerning the possible division of the jointly owned property. In those proceedings, the sole reason for the REFA's refusal to create an individual plot around the house in issue was the Court of Appeal's removal judgment. Thus, although the Court acknowledges that the Supreme Court could not be expected to have foreseen the outcome of the division proceedings, the question of the removal of the applicant's house was clearly linked with the division issue. It thus appears that it would have been reasonable for the Supreme Court to await the outcome of the division proceedings, particularly in the light of the irreparable consequences of the demolition of a house and the economic impact of such a measure. In this connection, the Court also has regard to the fact that the division proceedings had been brought by the applicant as early as October 1990, in what appears to have been an attempt to save her house from being removed or demolished, and that those proceedings had been delayed partly due to procedural errors made by the REFA which had caused the case to be referred back to that authority.

60. The Court is also of the opinion that, save for the interest of having all joint owners adhere to the legal rules of joint ownership, the interests of the other joint owners in this particular case in having the applicant's house removed cannot be considered to have been particularly strong. In this connection, the Court notes that it was never disputed that the plot of land on which the house was built was exclusively occupied by the applicant, her

mother and her sisters, and that the house was not visible from the plots occupied by the other joint owners who sought its removal.

61. It is true that the applicant's difficulties in the present case were largely the result of a family conflict, to which the applicant herself appears to have contributed, and which obviously complicated the various legal proceedings in the case. Nevertheless, having regard to what is stated above, the Court cannot but find that the measures taken failed to strike a fair balance between the protection of property and the requirements of the public interest. In other words, in being ordered to remove her house and later having it demolished, the applicant had to bear an individual and excessive burden.

There has accordingly been a breach of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

62. The applicant complained that the demolition of the house in issue had also violated her right to respect for her home under Article 8 of the Convention. This provision reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

63. The Court, noting that the applicant, in the enforcement proceedings, had given the Court of Appeal an address in Spånga where she was apparently living at the time, finds it doubtful whether the house in issue could be considered her “home” within the meaning of Article 8 of the Convention.

64. However, the Court need not resolve this issue. In view of its finding of a breach of the applicant's right to the peaceful enjoyment of her possessions (see paragraph 61 above), it does not consider it necessary to examine the applicant's allegation of a breach of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

66. The applicant submitted that she had sustained pecuniary damage of 5,159,082 kronor (SEK)¹ in respect of costs incurred in the dismantling and demolition of the house in issue, the clearing of the site, the removal and storage of building material and personal possessions, the reconstruction of the house (including a building permit fee), telephone costs, health-care expenses, increased living expenses and fees related to her mother's estate and in respect of losses due to damaged possessions, loss of capital and loss of income between 1990 and 2001 and thereafter until her retirement. She also claimed SEK 278,000 in respect of pecuniary damage related to interest on loans she had already taken out and, apparently, the equivalent of 8.7% interest on a further loan of SEK 100,000 which she allegedly needed to raise.

Moreover, the applicant sought SEK 600,000 by way of compensation for non-pecuniary damage on account of mental pain and suffering, loss of employment, impairment of social life and deterioration of health which the proceedings and measures had allegedly caused her and her family.

67. The Government noted generally that the applicant had submitted a large number of documents in support of her claims, but that it was not possible to link these claims to any particular invoice or other document. The Government, thus finding themselves able to make only limited comments on the applicant's claims, submitted that the amount sought for pecuniary damage was very high and appeared to have been overstated by the applicant. Further, several of the financial transactions alleged to have been a result of the demolition of the house were linked to the applicant's sister without there being any evidence that the sister had actually been paid by the applicant. The Government also stated that there appeared to be a lack of causality between the alleged violations and a number of claims, including those concerning loss of capital and loss of income. The only claims where there appeared to be a causal link and which had to some extent been substantiated by documentation were the claims relating to demolition costs (SEK 114,796) and the building permit fee (SEK 9,009). The Government noted however that in respect of these claims also there was no evidence that the amounts had actually been paid by the applicant.

Furthermore, the Government were of the opinion that the finding of a violation would constitute in itself sufficient just satisfaction for non-pecuniary damage.

68. The Court reiterates that it has found a violation of Article 1 of Protocol No. 1 in that the applicant was ordered to remove her house, which was then demolished. The applicant has made extensive claims in respect of

1. SEK 9.10 roughly correspond to 1 euro.

pecuniary damage and submitted a large number of documents in support of those claims. However, as noted by the Government, several claims lack a causal link to the violation found. Furthermore, due to the rather disorderly fashion in which the documents have been presented to the Court, it is not possible to assess with any accuracy the actual pecuniary damage sustained by the applicant as a result of the actions giving rise to the violation. In this connection, the Court notes that several of the invoices submitted by the applicant have been issued by her sister and that there is no evidence that these or most of the other invoices presented have been paid by the applicant.

However, the Court finds it appropriate to award the applicant compensation for reasonable losses and costs which have a direct and causal link to the violation found. The main relevant loss relates to the value of the demolished house. In this respect, the Court notes that the applicant, in her initial letter to the Commission, stated that the value of the demolished house was SEK 700,000, a valuation which has not been challenged by the Government. According to the applicant's claim for just satisfaction the cost of rebuilding the house came to SEK 1,733,900. However, it is not possible to determine whether the new house is of the same size and standard as the demolished house. The Court therefore finds that the amount to be taken into account is the value indicated by the applicant in her initial letter. Furthermore, as noted by the Government, the applicant has substantiated – save for not providing proof of payment – the claims of SEK 114,796 for demolition costs and SEK 9,009 for the building permit fee. From a tender made by the company which demolished the house it appears that the cost of removing the building material amounted to SEK 62,500. The Court finds that the above losses and costs have a direct and causal link to the violation found. Further, although no professional valuation of the demolished house or proof of actual payment of the relevant invoices have been submitted, the losses and costs have been substantiated sufficiently to form the basis of an assessment of the award to be made. Thus, making an overall assessment based on these amounts, the Court finds it appropriate to award the applicant, for pecuniary damage, the sum of 100,000 euros (EUR).

As regards non-pecuniary damage, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction.

B. Costs and expenses

69. The applicant claimed SEK 1,022,544 for costs and expenses incurred during the domestic proceedings. That amount included the applicant's own work and her lawyers' fees, the opposing parties' legal costs which she had been ordered to pay, costs relating to her mother's estate and certain administrative expenses. She also claimed SEK 250,000 in legal fees for the proceedings before the Commission and the Court and SEK 44,000 for her own work in those proceedings.

70. The Government maintained that costs incurred in proceedings not related to the actual demolition of the applicant's house fell outside the scope of compensation, that the applicant – having been represented by legal counsel in the domestic proceedings – could not claim reimbursement for work done by her counsel as well as by herself, that the claim for expenses had not been substantiated and that no itemisation of hours worked or rates applied in the proceedings before the Convention institutions had been submitted. Finding that many items lacked clarity, the Government did not find themselves in a position to take a stand on any of the items under this head.

71. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 120, ECHR 2001-V). Finding that several of the claims for costs and expenses are not directly related to the proceedings which led to the violation found in this case, it further notes that many other claims under this head remain unsubstantiated. Noting that the applicant was granted legal aid in the present proceedings, the Court therefore makes an overall assessment on an equitable basis and awards the applicant for costs and expenses the sum of EUR 25,000, including value-added tax.

C. Default interest

72. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

2. *Holds* that it is not necessary to examine the complaint under Article 8 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 100,000 (one hundred thousand euros) in respect of pecuniary damage;
 - (ii) EUR 25,000 (twenty-five thousand euros) in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 June 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President