



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

SECOND SECTION

CASE OF HELLBORG v. SWEDEN

(Application no. 47473/99)

JUDGMENT

STRASBOURG

28 February 2006

FINAL

28/05/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Hellborg v. Sweden,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr R. TÜRMEŒ,

Mr K. JUNGWIERT,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 30 November 2004 and on 7 February 2006,

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

PROCEDURE

1. The case originated in an application (no. 47473/99) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Swedish national, Mr Bengt Hellborg (“the applicant”), on 27 February 1999.

2. The applicant was represented by Mr. Bo C. J. Söderquist, a lawyer practising in Lund. The Swedish Government (“the Government”) were represented by Mrs I. Kalmerborn, as Agent, of the Ministry for Foreign Affairs.

3. The applicant alleged that his right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 had been violated as he was not permitted to build a second house on his property. Under Article 6 § 1 of the Convention he complained about the length of the related proceedings before the administrative authorities and courts and also about the refusal of the Supreme Administrative Court to hold an oral hearing on one occasion.

4. The application was allocated to the Fourth 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.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

6. By a decision of 30 November 2004, the Court declared the application partly admissible.

7. 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1940 and lives in Akarp. He is the owner of a property known as "*Humanisten 1*" located in the city of Lund, in the south of Sweden. On the property there is a one-family house, which was built in 1934.

9. The applicant inherited the property from his father, who died in 1991. The area where the property is located was regulated by a city plan (*stadsplan*) which, in accordance with the provisional regulations under the new Planning and Building Act of 1987 (*Plan- och Bygglagen*, - hereinafter "the 1987 Act"), became valid as a detailed development plan (*detaljplan*). In order to facilitate the implementation of the detailed development plan, a more specific "property plan" (*fastighetsplan*) was adopted with respect to *Humanisten 1*.

A. Application for tentative approval of a building permit and then for a building permit

10. The applicant's late father had applied on 13 June 1989 to the Building Committee (*byggnadsnämnden*) of Lund for tentative approval (*förhandsbesked*) of a plan to divide *Humanisten 1* and build a new one-family house. The purpose of such an approval, issued under Chapter 8, section 34 of the 1987 Act, was to give a property owner who was planning a building project for which the grant of a building permit was uncertain the possibility to obtain an advance assessment of whether the planned measures may be permitted at all, thereby avoiding unnecessary project work and costs. In assessing an application for a building permit made within two years after the grant of tentative approval, the Building Committee was bound by the determinations made in that approval.

According to the detailed development plan in force, only one main building was allowed on the existing property plot (the applicant's plot corresponded to his property). The request for tentative approval was motivated by the father's wish to build a house suited to his age, as he had difficulties in walking up and down the stairs of his current home.

11. In February 1990 the Building Committee decided to postpone its reply to the request until a new detailed development plan for the area had acquired legal force, but only until 13 June 1991. Subsequently, on 12 June 1991 the City Building Director (*Stadsbyggnadsdirektören*) adopted a new detailed development plan for *Humanisten 1* by which a division of the property was prohibited. Accordingly, the Building Committee, on 14 August 1991, informed the applicant that he could not expect to be granted a building permit for a new one-family house and therefore did not give tentative approval for the project.

12. As the new owner of the property, the applicant appealed against both decisions to the County Administrative Board (*länsstyrelsen*, - hereinafter “the Board”) of the County of Malmöhus, claiming that the City Building Director had not been competent to adopt a new detailed development plan since the plan was contentious. He claimed that the refusal to grant tentative approval was also based on false assumptions. On 12 March 1992 the Board, which agreed with the applicant, quashed the City Building Director’s decision to adopt the plan and, on 16 March 1992, quashed the Building Committee’s decision and remitted the matter to the Committee for a new examination.

13. On 15 April 1992 the Building Committee granted the applicant a tentative approval, referring to his father’s initial application (of June 1989) for a tentative approval of a plan to divide the plot – *Humanisten 1* – and to build a new one-family house. The decision moreover referred to the County Administrative Board’s decision (of 12 March 1992) to quash the detailed development plan and the earlier refusal of a tentative approval. Without expressing any conditions or reservations, the decision stated that the applicant could expect a building permit for a new one-family house and that this applied provided that an application for a building permit was submitted to the Building Committee within two years from the date of the decision. Finally, it stated that the tentative approval did not imply a right for the applicant to start the construction.

The Building Committee referred the matter to the Land Survey (*lantmäteri*) of Lund to prepare the question of the division of the plot (*tomtdelning*).

14. On 9 October 1992 the applicant applied for a building permit. After the matter had been considered by the relevant road network and energy authorities, the applicant submitted new plans on 16 November 1992. It appears that those proceedings were at a standstill until January 1997 (see section 4 below).

B. Repeal of the property plan and ensuing proceedings brought by neighbours leading to quashing of the repeal

15. At the beginning of March 1993 the Land Survey recommended that the property plan for *Humanisten 1* be repealed in order to facilitate a division of the property enabling the applicant to construct a new house on the resulting new plot. The Land Survey observed that the Building Committee had, with binding effect, made the assessment that the addition of a new one-family house would be consistent with the detailed development plan. A new property plan would not be required; repeal of the existing property plan would be sufficient and the division of the property would be consistent with the detailed development plan and be suitable for its purpose.

Several of the applicant's neighbours opposed the measure with reference to the special character of the neighbourhood.

On 17 March 1993 the Building Committee followed the Land Survey's suggestion and repealed the property plan for *Humanisten 1*.

16. The owners of two neighbouring properties appealed against the decision to the Board, claiming that the neighbourhood was worthy of preservation due to its special character and that new buildings would spoil the area. The Board visited the area before deciding on 24 September 1993 to reject the appeal.

17. The neighbours appealed to the Government, invoking the same grounds as before the Board. The applicant also submitted his observations. On 14 November 1996 the Government quashed the Board's decision to repeal the property plan with, *inter alia*, the following reasoning:

“The Government find that the decision to repeal the property plan for *Humanisten 1* ought to be considered in its context, namely to make possible a division of the property with the intention of constructing one more family house.

The Government observe that the entire block has long been occupied by buildings in accordance with the city plan and plot divisions. The block has 10 plots, the sizes of which vary between approximately 750 m² and 1100 m². The Government find that the concentration which will be the result if *Humanisten 1*, today 810 m², were to be divided into two properties and a new building were to be constructed, involves a not inconsiderable change to the complainants' immediate surroundings. Nor can such a change be considered to comply with the shape that the block has been given through the city plan and the plot divisions. The Government thus find that the suitability of the intended change of the property and the development conditions within the block ought to be examined through a new detailed development plan for the area in which the size and situation of the buildings can also be regulated to a sufficient extent. In view of this and everything else which has emerged in the case, the Government find that the decision to repeal the property plan should be quashed.”

18. The applicant applied to the Supreme Administrative Court (*Regeringsrätten*) for judicial review under the 1988 Act on the Judicial Review of Certain Administrative Decisions (*Lagen om rättsprövning av*

vissa förvaltningsbeslut - hereinafter “the 1988 Act”), submitting that, since the Building Committee’s tentative approval was binding on the examination of an application for a building permit, it effectively precluded an examination on the merits in the present case. Moreover, as the Building Committee had previously considered the suitability of dividing the property when it granted the tentative approval, it was not legally correct of the Government to consider the suitability yet again. The Government’s conclusion that the case should be reviewed through a new detailed development plan therefore lacked a legal basis.

The applicant further requested that an oral hearing be held in the case. In a decision of 17 March 1998 the Supreme Administrative Court refused the applicant’s request on the ground that the case could be examined and decided without holding an oral hearing. The applicant was given one month to submit additional written observations.

19. On 4 September 1998 the Supreme Administrative Court, unanimously, found that the Government’s decision was not unlawful and confirmed it. The court held:

“According to section 1 of the [1988 Act] the Supreme Administrative Court must examine if the Government’s decision in the case is contrary to any legal rule in the manner claimed by the applicant or as otherwise clearly appears from the circumstances of the case.

According to Chapter 1, section 6, of the [1987 Act] land may only be used for development if it is, from a public interest point of view, suitable for its purpose. The conditions on which an examination of suitability should be carried out through the adoption of a detailed development plan - and not solely in a matter concerning a building permit or a tentative approval - are specified in Chapter 5, section 1, paragraph 1, of the [1987 Act]. Thus, according to point 2 of the aforementioned provision, a detailed development plan becomes relevant when a new single building is to be constructed, the use of which will have significant influence on its surroundings. The Government’s assessment that the suitability of the intended change of the property and the development conditions within the block *Humanisten* ought to be reviewed through a new detailed development plan for the area, is within the scope of jurisdiction of the authorities in planning matters. Hence, the Supreme Administrative Court finds that the decision to quash the lower instances’ decisions regarding the property plan does not conflict with any legal rule in the manner claimed by the applicant. Nor does the examination show that the decision, in any other manner, is contrary to any legal rule. It should therefore be upheld.”

20. A request by the applicant for re-opening of the case was refused by the Supreme Administrative Court on 10 April 2002.

C. The adoption of a new detailed development plan and related proceedings

21. In the meantime, the Building Committee, in June 1995, adopted an amended detailed development plan which effectively prohibited a division

of the applicant's property, and the construction of another building on it. Upon appeal, the Board quashed the decision on the ground that it should have been decided by the Municipal Council (*kommunfullmäktige*) of Lund. After renewed examination by the Municipal Council, it adopted the detailed development plan on 27 February 1997. The applicant appealed against the decision to the Board, which on 18 January 1999 upheld the Council's decision. It found that the public interest in protecting the cultural heritage of the neighbourhood outweighed the applicant's private interest. The applicant made a further appeal to the Government, which was rejected on 23 June 2004.

D. Further contestation by neighbours of the tentative approval and rejection of the applicant's request for a building permit

1. First administrative rejection of the request for a building permit

22. On 13 February 1997, after the Office of the Town Architects had given its opinion and the applicant had commented, the Building Committee decided to reject his request of 9 October 1992 for a building permit.

On 20 February 1997, the applicant appealed against the above decision to the County Administrative Board. On 10 February 1999, after having granted the applicant several postponements from 15 May 1998 to 25 January 1999, the Board quashed the Committee's rejection and referred the matter back for a new consideration.

2. Resumption of proceedings concerning tentative approval

23. On 23 March 1999 the Office of the Town Architects served the Building Committee's decision of 15 April 1992 to grant the applicant tentative approval on the applicant's neighbours, several of whom brought proceedings in April 1999 to have the measure quashed. They claimed that, although they were affected by the decision, the Committee had failed to hear them in the case or inform them about the decision.

In a decision of 31 March 2000, the Board first found that the neighbours were entitled to appeal against the tentative approval and was satisfied that they had done so within the required time-limit. Although they ought to have been aware of the tentative approval in connection with the property plan issue, the decision had been formally served or notified to them only in March 1999. The Board quashed the Building Committee's 15 April 1992 decision on the grounds that the tentative approval was contrary to the existing property plan and detailed development plan and the neighbours should have been given the opportunity to express their views on the matter before it was decided.

3. *Judicial appeals against the above decisions*

24. On 3 March 1999 the Building Committee appealed against the Board's above-mentioned decision of 10 February 1999 to the County Administrative Court (*länsrätten*) of the County of Skåne. The applicant obtained extensions of time-limits for filing his written submissions in April and May 1999, and in September he asked the court to give priority to the case.

25. Following the Board's above-mentioned decision of 31 March 2000 on the tentative approval, the applicant appealed against this decision to the County Administrative Court. The latter granted him four extensions between 5 May and 23 August 2000 of the time-limits for specifying his appeal grounds.

26. The County Administrative Court examined both of the above appeals concurrently and on 11 October 2000 it delivered two judgments, one on each appeal.

In the first judgment the County Administrative Court rejected the applicant's appeal and upheld the Board's reasoning.

In the second judgment it held that, since it had confirmed the Board's decision, there no longer existed a tentative approval which was binding on the Building Committee. Consequently, the Committee's appeal against the Board's decision of 10 February 1999 should be granted and the matter referred back to the Board for further consideration.

27. In November 2000 the applicant appealed against both judgments to the Administrative Court of Appeal (*kammarrätten*) in Gothenburg.

In the appeal concerning the tentative approval, the Administrative Court of Appeal granted him seven extensions until 8 May 2001 for the submission of his appeal grounds. As to his appeal concerning the building permit, the applicant was granted two such extensions, also until 8 May 2001.

In two separate decisions of 17 December 2001, the Administrative Court of Appeal refused the applicant leave to appeal in each case.

28. In February and March 2002 the applicant appealed to the Supreme Administrative Court.

The latter granted him numerous extensions until 29 August 2003 of the time-limits for filing written submissions on the appeal concerning the building permit. On 7 January 2004 the Supreme Administrative Court ordered him to complete his submissions.

Concurrently with the above, he was also granted a number of extensions for the filing of his appeal submissions, until 17 December 2003 in the case concerning the tentative approval. On that date the Supreme Administrative Court ordered him to complete his observations.

In respect of both appeals, reminders were served on him in February and March 2004.

On 15 September 2004 the Supreme Administrative Court refused the applicant leave to appeal in both cases.

E. Compensation proceedings brought by the applicant

1. Request for a declaratory judgment establishing liability

29. In separate proceedings in 1997, the applicant requested the District Court (*tingsrätten*) of Lund to declare that the Municipality of Lund was liable to pay him compensation for both actual and potential damage caused by the Municipality's refusal to grant his request for a building permit despite having granted him an unconditional tentative approval which was binding. The Municipality denied responsibility.

30. By judgment of 13 October 1998 the District Court declared that the Municipality was liable to compensate the applicant for both actual and potential damage caused by its refusal to grant the applicant a building permit. The Municipality was further liable to pay his legal costs. The District Court took note of the Municipality's argument that the tentative approval was conditional upon an amendment to the property plan, and that the applicant was aware of the need to modify the property plan and ought to have understood that the positive tentative approval did not mean that he would be able to build without an amendment to the property plan. In the view of the District Court the fact that a claimant was aware that an amendment to the property plan was needed in order to grant a building permit did not dispense the Building Committee from specifically reviewing and justifying its position as to whether the desired measure was authorised by existing plans. What the applicant may have known about existing plans was therefore of no significance in this context. Since the applicable plans did not allow the grant of a building permit and since an amendment to the plan could not be a condition attached to a tentative approval, such approval should not have been granted. Nor was such knowledge significant for the assessment of his application for a building permit, refused on 13 February 1997. On the whole, the refusal was erroneous. The District Court found that the Building Committee had disregarded a clear and unambiguous provision in the 1987 Act, i.e. Chapter 8 section 34, which stated that a tentative approval was binding if an application for a building permit was made within two years from the date on which the tentative approval was granted. Moreover, the District Court found it remarkable that the Building Committee had taken almost four and a half years to reject the request for a building permit since the average time to process such a request was six to eight weeks, according to testimony given by the city architect. Thus, the court considered that the Building Committee's handling of the case had involved such fault and neglect in its exercise of public authority that the Municipality was liable to pay compensation.

31. The Municipality appealed to the Court of Appeal (*hovrätten*) of Skåne and Blekinge, which on 25 October 2000 upheld the lower court's judgment in full. As no further appeal was lodged, the Court of Appeal's judgment acquired legal force on 23 November 2000.

2. Request for compensation

32. In 2001 the applicant, invoking the above declaratory judgment, instituted civil proceedings against the Municipality requesting compensation in an amount of SEK 3,000,000 for the damage he had suffered due to the refusal to grant him the building permit. He claimed that this damage corresponded to the market value of the part of his property upon which he would have built the house. The Municipality contested the request.

33. In a judgment of 4 March 2003, the District Court of Lund noted that the proceedings relating to the building permit were still pending and that it was improbable that he would be granted such a permit. However, even if he were to be granted a permit, the decision would most likely be quashed on appeal. Thus, it rejected the applicant's claim on the ground that he had not shown that he had suffered any actual damage as a consequence of the Municipality's fault and neglect. The applicant appealed against the judgment to the Court of Appeal.

34. By a judgment of 19 December 2003, the Court of Appeal upheld the District Court's judgment of 4 March 2003, sharing the latter's view that the applicant had failed to show that a building permit granted by the Municipality would have stood after the review by higher instances. The Municipality could reasonably argue that the question of damage could not therefore be assessed only on the basis of the fact that the Municipality was formally obliged to grant the applicant a building permit. It found that the applicant had not been able to demonstrate that the consideration of his application for a tentative approval by the Municipality of Lund, while blameworthy, had led to his being denied a definite right to divide and build a new house on his property. Nor had he demonstrated that the Municipality's handling of his case had caused the damage for which he had claimed compensation.

35. The applicant appealed against the judgment to the Supreme Court, which on 23 May 2005 refused the applicant leave to appeal.

II. RELEVANT DOMESTIC LAW

A. Provisions of the 1987 Act

36. The 1987 Act entered into force on 1 July 1987 and contains provisions about the planning of land and water areas as well as buildings. Their purpose is to promote the development of a society characterised by equal and good living conditions for people today and for future generations, whilst having due regard to the freedom of the individual (Chapter 1, section 1).

The provisions of the 1987 Act which are relevant to the present case read as follows:

“Chapter 1 - Introductory provisions

Section 5

When issues are examined in accordance with this Act, consideration shall be given to both public and private interests unless otherwise provided.

Section 6

Land shall only be used for development if it is suitable for this purpose from the public interest point of view. The examination of suitability is carried out in connection with a planning procedure or during the examination of an application for a building permit or tentative approval....

Chapter 5 - Detailed development plans and area regulations

Section 1

The examination of the suitability of the site for development and the regulation of the manner of design of the area of construction are to be carried out in accordance with a detailed development plan, which applies to

1. new continuous developments;

2. new individual buildings, the use of which will have significant impact on the surroundings or which are to be located in an area where there is considerable demand for building sites, or where the examination of the proposed building cannot be carried out in connection with the review of the application for a building permit or tentative approval....

Chapter 8 - Building permit, demolition permit and land permit

Section 34

Upon application, the Building Committee shall give tentative approval for a particular measure, requiring a building permit, to be permitted on a designated site.

When a tentative approval is granted, it shall contain the necessary conditions. The tentative approval is binding if an application for a building permit is made within two years from the date when the tentative approval was granted.

If an application for a building permit is not made within the time specified in the second paragraph, the tentative approval will cease to be valid. ...”

B. Provisions on the 1988 Act

37. The 1988 Act was introduced as a result of the European Court of Human Rights’ findings in several cases, notably against Sweden, that lack of judicial review of certain administrative decisions infringed Article 6 § 1 of the Convention. It was enacted as a temporary law to remain in force until 1991; its validity has subsequently been extended, as from 1 July 1996 without any limitation in time.

Pursuant to section 1 of this Act, a person who has been a party to administrative proceedings before the Government or any other public authority may, in the absence of any other remedy, apply to the Supreme Administrative Court, as the first and only court, for review of any decisions in the case which involve the exercise of public authority *vis-à-vis* a private individual. The kinds of administrative decisions covered by the Act are further defined in Chapter 8, sections 2 and 3 of the Instrument of Government (*regeringsformen*), to which section 1 of the 1988 Act refers. Section 2 of the Act specifies several types of decisions falling outside its scope, none of which is relevant in the instant case.

In proceedings brought under the 1988 Act, the Supreme Administrative Court examines whether the contested decision “conflicts with any legal rule” (section 1 of the 1988 Act). According to the preparatory work to the Act, as reproduced in Government Bill 1987/88:69 (pp.23-24), its review of the merits of the cases concerns essentially questions of law but may, in so far as relevant for the application of the law, extend also to factual issues; it must also consider whether there are any procedural errors which may have affected the outcome of the case.

If the Supreme Administrative Court finds that the impugned decision is unlawful, it must quash it and, where necessary, refer the case back to the relevant administrative authority.

The procedure before the Supreme Administrative Court is governed by the Administrative Procedure Act 1971 (*förvaltningsprocesslagen*). It is in principle a written procedure, but the Supreme Administrative Court could decide to hold an oral hearing on specific matters if this was likely to assist it in its examination of the case or to expedite the proceedings (section 9). As from 1 July 1996 (1996:420), section 3a of the 1988 Act provides:

“The [Supreme Administrative] Court shall hold an oral hearing if this has been requested by the person seeking judicial review and it is not manifestly unnecessary.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

38. Article 1 of Protocol No. 1 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.”

A. Arguments of the parties

1. The applicant's submissions

39. The applicant emphasised that under the relevant Swedish law, an advance building permit, even if it had been granted in conflict with provisions laid down in a detailed development plan or a property regulation plan, took precedence over the conflicting provisions. In this connection, he referred to the County Administrative Board's decision of 10 February 1999 in his case. The applicant submitted that by virtue of the advance tentative approval he had an affirmed right to construct a building on the land in question. The Government and the Supreme Administrative Court had wrongly denied the existence of any affirmed right for the applicant to erect an additional building on his property but had, nonetheless, admitted in the various decisions aimed at securing a prohibition of construction that it would otherwise have been possible for him to construct the building.

40. The applicant further submitted that the Government and the Supreme Administrative Court had overstepped their jurisdiction when applying the detailed-plan-requisite upon an area already covered by a detailed development plan and when requiring a re-examination of the suitability issue that had already been determined when the Building Committee issued the advance tentative approval. Moreover, by declaring the tentative approval null and void, the Government and the Supreme Administrative Court had violated established national case-law. They had further failed to strike a fair balance between general interests pertaining to the suitability issue and the applicant's interests derived from his advance tentative approval. As a result of the Government's decision, upheld by the

Supreme Administrative Court, to quash the repeal of the property plan and to impose a building prohibition, the applicant had been deprived of a capital asset, namely the increase in the market value of the property generated by the advance tentative approval. In the alternative, he argued that it amounted to a deprivation of his right to use his property in accordance with a valid permit.

2. The Government's submissions

41. The Government maintained that the matter at issue in this case did not give rise to a violation of Article 1 of Protocol No. 1. In their view, no deprivation of property had occurred; the interference at issue could only be considered as a control of the use of the applicant's property.

42. The Government submitted that, since the neighbours had not been given an opportunity to express their views on the matter before the tentative approval was granted, the County Administrative Board had acted in accordance with the law when it decided to quash the Building Committee's decision to issue tentative approval. Given that the tentative approval had been set aside, the applicant could not rely on any right to be granted a building permit in accordance with the provision laid down in Chapter 8, section 34 of the Planning and Building Act. Moreover, there was no doubt that the Government's decision to quash the Building Committee's decision of 17 March 1993 to repeal the property plan for *Humanisten I* was in accordance with the law. Finally, there was nothing to suggest that the decision of the Municipal Council of 27 February 1997 to amend the detailed development plan, upheld on appeal by the County Administrative Board, was not lawful.

43. The annulment of the decision to repeal the property plan and the decision to amend the detailed development plan were the result of the need to take both public and private interests into account. The Government's finding that the suitability of the intended changes to the property and the development conditions in the block should be examined through a new detailed development plan were aimed at the protection of the public interest as well as the interests of those living in the neighbourhood. The proposed changes would involve a concentration of buildings in the area, which would affect a cultural-historical environment of great value. Consequently, it would have an impact on the general interest. A detailed development plan had to be drafted in consultation with those affected by the plan and it ought to be possible for anyone else to comment on such a plan. Due consideration should also be given to the impact on the environment and other buildings in the surrounding area. Taken together, these were clearly considerations that fell within the general interest as envisaged in Article 1 of Protocol No. 1 to the Convention.

44. As to the proportionality of the interference, the Government argued that it was evident that the positive tentative approval issued by the Building

Committee conflicted with both the detailed development plan and the property plan in force and so should not have been issued in the first place.

In order to be able to construct a new building, the applicant needed not only a building permit but also permission to divide the property, the grant of which was not obvious as the proposed building conflicted with both the detailed development plan and the property plan in force. Being a former town architect, the applicant ought to have been aware that the grant of permission was unlikely.

It became obvious that some of the neighbours were opposed to the applicant's plans. It must be borne in mind that while the applicant had an economic interest in developing his property, the neighbours had an interest in preserving the surroundings and the characteristic features of this part of Lund. In addition, since the area was of great cultural-historical value, there were also strong public interests involved. The impugned measures were designed to ensure that the planning regulations, particularly rules on information and consultation with those affected by the proposed development, were correctly applied. They must be regarded as a proper way of achieving a fair balance between the different interests at stake. Although it was true that the handling of the applicant's case had taken an unusually long time, he had not been prevented from disposing of the property and using the existing building on it.

B. The Court's assessment

45. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property. The second rule, contained in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third rule, stated in the second paragraph, recognises that Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not "distinct" in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, for example, *Bruncrona v. Finland*, no. 41673/98, § 65, 16 November 2004) and must comply with the principle of lawfulness and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (see, for example, *Beyeler v. Italy* [GC], no. 33202/96, §§ 108-14, ECHR 2000-I; *J.A. PYE (Oxford) Ltd v. the United Kingdom*, no. 44302/02, § 42, 15 November 2005).

The Court notes that the applicant was the owner of a property – *Humanisten I* – on which there was a one-family house. His grievance under

the Convention related to the legal obstacles imposed by the authorities preventing him from building a second house and dividing the property for this purpose. By virtue of the tentative approval granted to him on 15 April 1992 and his application for a building permit made less than two years thereafter, the Building Committee was under an obligation under section 34 of the Planning and Building Act 1987 to issue a building permit to him. Thus the applicant could assert a right to be granted a building permit. However, he did not have a right to build. In view of this, the Court cannot accept his argument that the impugned measures amounted to a building prohibition depriving the applicant of a capital asset, i.e. the increase in the market value of the property generated by the tentative approval. Nor does the Court find that the refusal to grant him a building permit rendered his right of property precarious or had such grave consequences as to amount to a *de facto* expropriation (see *Fredin v. Sweden (no. 1)*, judgment of 18 February 1991, Series A no. 192, p. 15, §§ 43-47).

Against this background, the omission to issue a building permit to the applicant cannot be regarded as amounting to a deprivation of possessions within the meaning of the first paragraph of Article 1 of Protocol No. 1. The impugned measures in this case must be considered as a control of use of property, to be considered under the third rule, i.e. under the second paragraph of Article 1 of Protocol No. 1 (*ibidem*; see also *Allan Jacobsson v. Sweden (no. 1)*, judgment of 25 October 1989, Series A no. 163, p. 16, § 54).

46. In accordance with the principles established in its case-law (see, *inter alia*, the above cited *Allan Jacobsson v. Sweden (no. 1)*, p. 17, § 55; and the above-cited *J.A. PYE (Oxford) Ltd v. the United Kingdom*, §§ 43-46), the Court will examine whether the measure was lawful and was in accordance with the “general interest” and whether a “fair balance” was struck between the demands of the public or general interest of the community and the requirements of the protection of the individual’s fundamental rights.

47. As to the lawfulness of the refusal to grant the applicant a building permit, the Court observes from the outset that the tentative approval granted to the applicant on 15 April 1992 was a decision referring to his father’s initial application (of June 1989) for a tentative approval of a plan to divide the plot – *Humanisten 1* – and to build a new one-family house. The decision moreover referred to the County Administrative Board’s decision (of 12 March 1992) to quash the detailed development plan and the earlier refusal of a tentative approval. Without expressing any conditions or reservations, the decision stated that the applicant could expect a building permit for a new one-family house and that this applied provided that an application for a building permit was submitted to the Building Committee within two years from the date of the decision. The tentative approval did not imply a right for the applicant to start the construction.

The Court further notes that in its judgment of 13 October 1998, the District Court criticised the Building Committee in three respects. Firstly, since the tentative approval had not been permissible under the existing plans and since amendments to the plans could not be a condition attached to a tentative approval, such an approval should not have been granted. Secondly, the Building Committee had disregarded a clear and unambiguous provision in the 1987 Act stipulating that a tentative approval was binding if an application for a building permit was made within two years from the date on which the tentative approval was granted. Thirdly, the Building Committee had taken almost four and a half years to reject the application for a building permit, which normally was a matter that would be processed within six to eight weeks. On this basis the District Court concluded that the Committee's handling of the case involved such fault and neglect that the Municipality was liable to pay compensation to the applicant.

Although the first and second conclusions above may seem somewhat contradictory, it must be assumed that, notwithstanding the initial incompatibility with the applicable plans, the Building Committee had a statutory obligation to issue a building permit to the applicant and that its omission to do so was unlawful and, accordingly, gave rise to a violation of Article 1 of Protocol No. 1 to the Convention. The Court further notes that, as was undisputed, a tentative approval took precedence over conflicting provisions contained in a detailed development plan, regardless of whether the plan had been adopted before or after the tentative approval.

Quite a different matter is that, had the Building Committee issued a building permit, this could, like the tentative approval, have been challenged subsequently by the neighbours and be set aside by the administrative courts. Indeed, in this case it turned out that two of the applicant's neighbours successfully opposed the repeal of the property plan, which measure - had it been allowed to stand - would have enabled the requisite division of the applicant's land. The Court is not persuaded by the applicant's argument that the Government's decision of 14 November 1996 to quash the repeal was unlawful and that the Supreme Administrative Court erroneously upheld the decision as being lawful. Moreover, after the Office of the Town Architects had informed the neighbours on 23 March 1999 about the tentative approval of 15 April 1992, they challenged that decision before the County Administrative Board, which on 31 March 2000 quashed the decision, as it was contrary to existing plans and had been taken without prior consultation of the neighbours. Despite the manifest lateness of this decision, the Court finds no reason to call into doubt the lawfulness under domestic law of the Board's decision, upheld by the administrative courts at three levels of jurisdiction. Nor does it find any reason to question the lawfulness of their connected decision to uphold the refusal of the building permit, decided by the Building Committee on 13 February 1997. The Court

reiterates that the interpretation and application of national law is primarily a matter for the national authorities, notably the domestic courts; it is not its task to substitute itself for them in this regard (see, *inter alia*, the *Pérez de Rada Cavanilles v. Spain* judgment of 28 October 1998, *Reports* 1998-VIII, p. 3255, § 43; *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 54, ECHR 1999-I).

48. The Court is moreover satisfied that the impugned decisions, which were consistent with the amended detailed development plan and the property plan as well as the concerns expressed by interested neighbours that those plans be respected, were taken in the general interest.

49. As to the further issue, concerning the proportionality of the interference, the Court cannot but note that the applicant had a statutory entitlement to a building permit after having been granted a tentative approval and could therefore legitimately entertain an expectation to be able to build a new one-family house on the property. However, even if he had been granted a building permit in accordance with the relevant statutory provisions, this would by no means have guaranteed him a protection against the measure being challenged by the neighbours and being ultimately altered or quashed with reference to the applicable plans. This was a reality that he had to face relatively soon after the grant of the tentative approval. Already in 1993 the owners of two neighbouring properties objected to the repeal of the property plan, a measure that had been aimed at facilitating the division of the applicant's property, and the neighbours succeeded in having the measure quashed by the Government on 14 November 1996, a decision upheld by the Supreme Administrative Court on 4 September 1998. Moreover, an amended detailed development plan which effectively prohibited a division of the applicant's property and the construction of another house on it was adopted by the Municipal Council on 27 February 1997. While the competent authorities' handling of the matter indisputably left a lot to be desired, the Court does not find that the applicant's interest in obtaining a building permit for a second house on his property could outweigh the interests of the neighbours and the public interest in preserving the particular character of the area in question. In these circumstances and, having regard to the wide margin of appreciation enjoyed by the Contracting States in such matters, the Court does not find that the refusal to grant the applicant a building permit can be regarded as a disproportionate interference with his right to peaceful enjoyment of his possessions.

50. In sum, the Court finds that there has been a violation of Article 1 of Protocol No. 1 to the Convention in so far as concerns the authorities' failure to comply with their obligation to issue a building permit to the applicant under the relevant statutory two-year rule. However, the Court finds no failure to comply with the requirement of this Article in any other respect.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

51. In so far as is relevant, Article 6 § 1 of the Convention reads:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal...”

52. Under this provision the applicant complained about the refusal of the Supreme Administrative Court to hold an oral hearing, and that the duration of the proceedings had exceeded a reasonable time. The Court will deal with each of the complaints in turn.

A. The complaint about the refusal by the Supreme Administrative Court to hold an oral hearing

53. The applicant submitted that the Supreme Administrative Court was clearly required to hold an oral hearing in the proceedings concerning the repeal of the property plan, as it had reached findings different from those made by the County Administrative Board on the basis of new evidence.

54. The Government disputed that the refusal violated Article 6 § 1 of the Convention. In this regard, they argued that, as it appeared from its decision of 17 March 1998, the Supreme Administrative Court, in accordance with the applicable national law, found that it could examine the application without holding an oral hearing, having regard to the nature of the matter to be determined and the extensive written information that was available in the case. Under the 1988 Act, its examination had primarily been aimed at establishing whether the challenged decision had been contrary to any legal rule, which was what the applicant had argued.

As could be seen from its judgment, the Supreme Administrative Court had not been asked to make any assessment of the facts of the case. Its task was instead to consider whether the Government's decision fell within the scope of discretion afforded to the authorities in planning matters. Having established that this was the case, it concluded that the Government's decision had not been contrary to any legal rule. Therefore, the case did not raise any question that could not be adequately resolved on the basis of the case file without the applicant having an opportunity to present his arguments at an oral hearing. It was clear that his interests were protected without such a hearing.

55. In addition, the applicant did not invoke any witness or other oral evidence. Nor did he state any other reasons for his request that the Supreme Administrative Court should hold an oral hearing. He did not, for example, indicate that he wished to be heard himself. He merely expressed his interest in the court holding an oral hearing in his case. When denied an oral

hearing, he was given an opportunity to submit final observations in writing within a specified period of time – an opportunity of which he availed himself. Particularly in view of the fact that the issue before the court concerned the interpretation of law, which the Swedish courts were expected to know (*jura novit curia*), an oral hearing would not have added anything to the written court proceedings.

56. The Court considers that the applicant's appeal to the Supreme Administrative Court, the first and only judicial instance which dealt with the subject-matter of the appeal, was capable of raising issues of law and, possibly also, of fact of a certain complexity, in relation to the Government's decision of 14 November 1996. Having regard to its case-law (see *Fredin v. Sweden* (no. 2), judgment of 23 February 1994, Series A no. 283-A, pp. 10-11, § 22; cf. *Allan Jacobsson v. Sweden* (no. 2), judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, pp. 168-169, §§ 47-49; *Miller v. Sweden*, no. 55853/00, § 29, 8 February 2005), the Court discerns no exceptional reasons that could justify dispensing with an oral hearing before the Supreme Administrative Court. Accordingly, the latter's refusal to hold an oral hearing constituted a breach of Article 6 § 1 of the Convention.

B. The complaint about the length of the proceedings

57. The applicant further complained that the proceedings, both those relating to the initial request for a tentative approval, and those concerning his application for a building permit, had exceeded a reasonable time. The applicant submitted that the proceedings had started on 13 June 1989, when his father had made the application for a tentative approval, and had ended on 4 September 1998, when the Supreme Administrative Court had upheld the Government's decision to quash the repeal of the property plan that had been meant to enable the division of his property.

58. The Government invited the Court to consider the matter concerning the tentative approval as two separate proceedings when determining the period to be taken into account. The starting point of the first set had been 14 August 1991, when the Building Committee rejected the applicant's request for a tentative approval and a dispute arose within the meaning of Article 6 § 1. These proceedings had ended on 15 April 1992, when the applicant was granted the requested approval. The second set of proceedings was initiated on 1 April 1999, when one of the applicant's neighbours appealed to the County Administrative Board.

The Government left it to the Court to decide whether or not the length of the proceedings was reasonable. They invited the Court to take into consideration that both the decision on the tentative approval and the decision on the building permit were linked to the proceedings concerning the repeal of the property plan and the amendment of the detailed

development plan. Such proceedings were usually complicated and time-consuming. Swedish planning and building legislation was designed to take into account different interests in society and to enable those concerned to have a say in new plans and the amendment of existing plans. Moreover, it should be stressed that the applicant himself had to some extent contributed to the length of the proceedings. Thus, he had on numerous occasions asked for extensions of the time-limits set by the authorities and the courts for submitting observations, comments, etc. Such extensions had been requested and granted more than twenty times in the proceedings concerning the tentative approval and more than fifteen times in the proceedings concerning the building permit. In the latter proceedings, the applicant also requested the County Administrative Board to stay the proceedings for some time, pending the judgment of the Court of Appeal in the compensation proceedings. In all, the applicant's actions had prolonged each set of proceedings by approximately two years and eleven months.

59. The Court reiterates that, in cases like the one at issue, in which an administrative authority's decision is a necessary preliminary for bringing the case before a tribunal, the relevant period does not start running when the request is lodged but only as soon as a "dispute" arises (see *König v. Germany*, judgment of 28 June 1978, Series A no. 27, pp. 33-34, § 98; *Morscher v. Austria*, no. 54039/00, § 38, 5 February 2004; *Nowicky v. Austria*, no. 34983/02, § 47, 24 February 2005). The Court finds that a dispute arose on 14 August 1991, when the Building Committee first rejected the request for a tentative approval. The proceedings that ensued before the administrative authorities and the administrative courts all concerned the same dispute - between the applicant, on the one hand, and variously the neighbours and the authorities, on the other hand - and ended on 15 September 2004, thirteen years and one month later, when the Supreme Administrative Court upheld the annulment of the tentative approval and the refusal to grant a building permit. However, the Court notes that, as from November 2000, most of the delays could be explained by the numerous extensions requested by the applicant. Moreover, the applicant invited the Court to consider the period until 4 September 1998.

60. Turning to the issue of reasonableness of the duration of the relevant proceedings, the Court considers that it is with respect to the earlier phases that the conduct of the authorities may be open to criticism. Firstly, as pointed out by the District Court in its judgment of 13 October 1998, it was remarkable that it had taken until 13 February 1997, almost four and a half years, for the Building Committee to reject the applicant's application of 9 October 1992 for a building permit, a matter that on average took six to eight weeks to process. Secondly, it appears that almost seven years elapsed from the tentative approval of 15 April 1992 until 23 March 1999 when the applicant's neighbours were formally notified of the decision. As a result, it

was only after that that the neighbours brought proceedings to have the measure quashed.

In light of the above, the Court finds that there were considerable delays in the proceedings that were attributable to the State and which caused their duration to exceed what might be considered a reasonable time for the purposes of Article 6 § 1. There has therefore been a violation of this provision on account of the length of the proceedings in this case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant, relying on three different valuation reports, claimed compensation for pecuniary damage in the form of a diminution of the market value of his property occasioned by the refusal to grant him a building permit. He claimed an amount to be determined by the Court on the basis of the evaluations, which ranged between SEK 1,200,000 and SEK 2,500,000.

63. The applicant further sought compensation for non-pecuniary damage, namely SEK 200,000 in respect of the Supreme Administrative Court’s refusal to grant him an oral hearing and SEK 300,000 in respect of the length of the proceedings.

64. In so far as pecuniary damage was concerned, the Government shared the view of the District Court of Lund and the Court of Appeal of Skåne and Blekinge, which both concluded in their judgments that the applicant had not been able to demonstrate that he had suffered the alleged damage as a consequence of the Municipality’s fault and neglect. Thus, the Government maintained that, even if the Court were to conclude that there has been a breach of Article 1 of Protocol No. 1 to the Convention on account of the Government’s decision concerning the property plan, the applicant’s claim under this head should be rejected in its entirety due to his failure to demonstrate that he had sustained the damage for which he claimed compensation or, in any event, due to his failure to show the necessary causal link between the alleged damage and the alleged violation of the Convention.

With regard to the size of the claim, the Government submitted that the most relevant report was the most recent one (issued in February 2005),

since the point of time to which it referred, i.e. November 1996, was the closest to when the applicant considered that a building permit should have been granted. However, the Government questioned that the market value was actually as high as the estimated SEK 1,200,000. According to the report, the estimation of the market value was relatively uncertain. The taxation value, which corresponded to approximately 75 % of the estimated market value, amounted to SEK 582,000 for the whole undivided plot of 810 m². No vacant plots had been sold between 1990 and 1996 in the relevant area. In November 1996 a plot of about 1,000 m² had been assessed at between SEK 1,300,000 and 1,400,000, but the size of that part of the property, which the applicant would have liked to parcel off in order to build another house, was only 336 m². Therefore, any award made under this head should be substantially lower than SEK 1,200,000 (corresponding approximately to EUR 127,000).

65. The Government disputed the applicant's claims for non-pecuniary damage. As regards the lack of an oral hearing, the Government maintained that the finding of a violation would in itself constitute sufficient just satisfaction for any non-pecuniary damage sustained. In any event EUR 1,000 would constitute adequate compensation.

Should the Court conclude that there had been a breach of Article 6 § 1 in the present case on account of the length of the proceedings, the Government would be prepared to accept the award of some compensation in respect of non-pecuniary damage. Having regard to the Court's case-law, such compensation should not exceed EUR 4,000.

66. The Court notes that, though it cannot be denied that the authorities' negligence and delays in the handling of the building permit matter must have caused the applicant considerable inconvenience, the loss for which he eventually sought compensation concerned the alleged loss in market value of the land caused by the refusal to grant him a building permit. According to the findings of the national courts, the applicant had failed to show that the refusal had caused him financial damage. In reaching this conclusion in its judgment of 25 October 2000, the Court of Appeal seems to have placed particular weight on the consideration that a tentative approval should not have been granted in the first place and on the negative outcome for the applicant after many years' proceedings regarding the tentative approval, the building permit and relevant planning measures. It did not seek to determine the hypothetical question of what his position would have been had the authorities complied with the statutory obligation to issue him a building permit. The Court cannot speculate either as to what the outcome would have been in the absence of the deficiencies that violated Article 1 of Protocol No. 1 and of Article 6 § 1 of the Convention. However, it considers that the applicant must have suffered a loss of real opportunities (*Sporrong and Lönnroth v. Sweden* (Article 50), judgment of 18 December 1984, Series A no. 88, p. 13, § 25) as a result of the Building Committee's

omission to issue within a reasonable time a building permit to him in accordance with section 34 of the 1987 Act and the Supreme Administrative Court's refusal to hear oral argument from him about the repeal of the property plan that would have enabled division of his property. To these factors has to be added the non-pecuniary damage in the form of anguish and suffering occasioned by the violations of the Convention. Deciding on an equitable basis, the Court awards the applicant EUR 25,000 under this head.

B. Costs and expenses

67. The applicant further requested the reimbursement of his legal costs and expenses, totalling SEK 418,399.50, in respect of these items:

(a) SEK 174,399.50 for his costs and expenses incurred before the domestic authorities and the Supreme Administrative Court, which could be summarised as follows:

(i) SEK 2,000 in fees to Wistedt Real Estate Agency for two assessments of the division of the property;

(ii) SEK 5,280 in administrative fees for the refusal of a building permit;

(iii) amounts totalling SEK 54,376 in fees to Mr Eneroth for three evaluations reports;

(iv) various sums totalling SEK 96,963.50 in fees claimed by the applicant for his own work in connection with his applications for a tentative approval and a building permit and the related national proceedings;

(b) SEK 276,000 (corresponding approximately to EUR 29,000) for his lawyer's work (276 hours at SEK 1,000 per hour, exclusive of V.A.T.) in the Strasbourg proceedings.

68. As regards item (a), the Government maintained that they would not be prepared to pay more than EUR 2,000, inclusive of V.A.T. This would only cover a minor part of the claim relating to the work said to have been performed by the applicant himself, which had not been adequately detailed with respect to the number of hours worked or were excessive. They further disputed that costs and expenses relating to the building permit and the tentative approval should be transferable to the Swedish State, given that these parts of the application had been declared inadmissible.

As to item (b), the Government were of the opinion that the sum claimed and the number of hours stated were excessive. In the event that the applicant should succeed in his three complaints, the Government would find EUR 6,000, inclusive of V.A.T., corresponding to about 60 hours of work, acceptable.

69. The Court does not consider that an award can be made with respect to item (a)(iv) (see *Philis v. Greece (no. 1)*, judgment of 27 August 1991,

Series A no. 209, pp. 26-27, §§ 77-78; *Brincat v. Italy*, judgment of 26 November 1992, Series A no. 249-A, p. 13, § 29; *Pétur Thór Sigurðsson v. Iceland*, no. 39731/98 ECHR 2003-IV, § 54). Items (a)(i) and (ii) should be awarded in their entirety, but the Court is not convinced that the full amount in item (a) (iii) was necessarily incurred in order to obtain redress for the violation found of the Convention. The Court considers that an award of EUR 2,200 would constitute adequate just satisfaction under this heading.

As regards item (b) the Court is not convinced that all the costs were necessarily incurred. Deciding on an equitable basis, it awards the applicant EUR 15,000.

C. Default interest

70. 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 to the Convention on account of the authorities' omission to comply with the statutory obligation to issue a building permit;
2. *Holds* that there has been a violation of Article 6 § 1 the Convention on account of the Supreme Administrative Court's refusal to hold an oral hearing before rejecting on 4 September 1998 the applicant's appeal against the Government's decision of 14 November 1996;
3. *Holds* that there has been a violation of 6 § 1 the Convention on account of the length of the proceedings regarding the tentative approval and the building permit;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 25,000 (twenty-five thousand euros) in respect of damage;
 - (ii) EUR 17,200 (seventeen thousand, two hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;

(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 28 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President