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

COURT (PLENARY)

CASE OF SPORRONG AND LÖNNROTH v. SWEDEN

(Application no. 7151/75; 7152/75)

JUDGMENT

STRASBOURG

23 September 1982

In the case of Sporrong and Lönnroth,

The European Court of Human Rights, taking its decision in plenary session in application of Rule 48 of the Rules of Court and composed of the following judges:

Mr. G. WIARDA, *President*,
Mr. M. ZEKIA,
Mr. J. CREMONA,
Mr. THÓR VILHJÁLMSSON,
Mr. W. GANSHOF VAN DER MEERSCH,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. G. LAGERGREN,
Mr. L. LIESCH,
Mr. F. GÖLCÜKLÜ,
Mr. F. MATSCHER,
Mr. J. PINHEIRO FARINHA,
Mr. E. GARCÍA DE ENTERRÍA,
Mr. L.-E. PETTITI,
Mr. B. WALSH,
Sir Vincent EVANS,
Mr. R. MACDONALD,
Mr. C. RUSSO,
Mr. R. BERNHARDT,
Mr. J. GERSING,

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

Having deliberated in private on 24 and 25 February and then on 28 and 29 June 1982,

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

PROCEDURE

1. The case of Sporrong and Lönnroth was referred to the Court by the Government of the Kingdom of Sweden ("the Government") and the European Commission of Human Rights ("the Commission").

The case originated in two applications (nos. 7151/75 and 7152/75) against Sweden lodged with the Commission in 1975 under Article 25 (art. 25) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the Estate of the late Mr. E. Sporrong and by Mrs. I. M. Lönnroth, both of Swedish nationality. The Commission ordered the joinder of the applications on 12 October 1977.

2. The Government's application and the Commission's request were filed with the registry of the Court within the period of three months laid down by Articles 32 par. 1 and 47 (art. 32-1, art. 47) - the former on 10 March and the latter on 16 March 1981. The Government sought a ruling from the Court on the interpretation and application of Article 13 (art. 13) in relation to the facts of the case. The purpose of the Commission's request, which referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration made by the Kingdom of Sweden recognising the compulsory jurisdiction of the Court (Article 46) (art. 46), was to obtain a decision as to whether or not there had been a breach by the respondent State of its obligations under Articles 6 par. 1, 13, 14, 17 and 18 (art. 6-1, art. 13, art. 14, art. 17, art. 18) of the Convention and Article 1 of Protocol No. 1 (P1-1).

3. The Chamber of seven judges to be constituted included, as ex officio members, Mr. G. Lagergren, the elected judge of Swedish nationality (Article 43 of the Convention) (art. 43), and Mr. G. Wiarda, the President of the Court (Rule 21 par. 3 (b) of the Rules of Court). On 25 April 1981, the President drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr. R. Ryssdal, Mr. D. Evrigenis, Mr. F. Matscher, Mr. L.-E. Pettiti and Mr. M. Sørensen (Article 43 in fine of the Convention and Rule 21 par. 4) (art. 43).

4. Mr. Wiarda assumed the office of President of the Chamber (Rule 21 par. 5). He ascertained, through the Registrar, the views of the Agent of the Government and the Delegates of the Commission regarding the procedure to be followed. On 8 May, he decided that the Agent should have until 8 August 1981 to file a memorial and that the Delegates should be entitled to file a memorial in reply within two months from the date of the transmission of the Government's memorial to them by the Registrar.

The Government's memorial was received at the registry on 31 July. On 15 September, the secretary to the Commission advised the Registrar that the Delegates would reply thereto at the hearings and asked for an extension of their time-limit until 31 October in order to allow them to file with the Registrar certain observations by the applicants. The President granted this request on 21 September.

5. As a result of Mr. Sørensen's resignation and Mr. Wiarda's inability to attend, Mr. Pinheiro Farinha and Mr. García de Enterría, who were then the first and second substitute judges, were called upon to sit as members of the Chamber (Rule 22 par. 1) and Mr. Ryssdal assumed the office of President (Rule 21 par. 5). On 24 September, the Chamber decided under Rule 48 to relinquish jurisdiction forthwith in favour of the plenary Court, on the ground that the case raised "serious questions affecting the interpretation of the Convention, in particular under Articles 6 and 13 (art. 6, art. 13)".

6. The observations of the applicant's representative, transmitted to the registry by the Deputy Secretary to the Commission, were received on 28 October 1981.

7. After consulting, through the Registrar, the Agent of the Government and the Delegates of the Commission, the President of the Court directed on 15 January 1982 that the oral proceedings should open on 23 February.

On 18 February, he instructed the Registrar to obtain a document from the Commission; this was filed on 3 March.

8. The hearings were held in public at the Human Rights Building, Strasbourg, on 23 February. The Court had held a preparatory meeting on the previous day.

There appeared before the Court:

- for the Government

Mr H. DANELIUS, Ambassador,
Director of Legal and Consular Affairs, Ministry of Foreign Affairs, *Agent*,
Mr. L. BECKMAN, Head of Division,
Ministry of Justice,
Mr. G. REGNER, Legal Adviser,
Ministry of Justice, *Counsel*;

- for the Commission

Mr. J. FROWEIN,
Mr. T. OPSAHL, *Delegates*,
Mr. M. HERNMARCK and Mr. H. TULLBERG,
the applicants' lawyers before the Commission, assisting the Delegates (Rule 29 par. 1, second sentence, of the Rules of Court).

The Court heard addresses by Mr. Frowein, Mr. Opsahl and Mr. Hernmarck for the Commission and by Mr. Danelius for the Government, as well as their replies to questions put by it and two of its members.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The two applications relate to the effects of long-term expropriation permits and prohibitions on construction on the Estate of the late Mr. Sporrong and on Mrs. Lönnroth, in their capacity as property owners.

A. The sporrong estate

10. The Sporrong Estate, which has legal personality, is composed of Mrs. M. Sporrong, Mr. C.-O. Sporrong and Mrs. B. Atmer, the joint heirs of the late Mr. E. Sporrong; they reside in or near Stockholm. They own a

property, situated in the Lower Norrmalm district in central Stockholm and known as "Riddaren No. 8", on which stands a building dating from the 1860's. In the 1975 tax year the rateable value of the property was 600,000 Swedish crowns.

1. The expropriation permit

11. On 31 July 1956, acting pursuant to Article 44 of the Building Act 1947 (byggnadslagen - "the 1947 Act"), the Government granted the Stockholm City Council a zonal expropriation permit (expropriationstillstånd) covering 164 properties, including that owned by the Sporrong Estate. The City intended to build, over one of the main shopping streets in the centre of the capital, a viaduct leading to a major relief road. One of the viaduct's supports was to stand on the "Riddaren" site, the remainder of which was to be turned into a car park.

Under the Expropriation Act 1917 (expropriationslagen - "the 1917 Act"), the Government set at five years the time-limit within which the expropriation might be effected; before the end of that period the City Council had to summon the owners to appear before the Real Estate Court (fastighetdomstolen) for the fixing of compensation, failing which the permit would lapse.

12. In July 1961, at the request of the City, the Government extended this time-limit to 31 July 1964. Their decision affected 138 properties, including "Riddaren No. 8". At that time, the properties in question were not the subject of any city plan (stadsplan).

13. On 2 April 1964, the Government granted the City Council a further extension of the expropriation permit; this extension was applicable to 120 of the 164 properties originally concerned, including "Riddaren No. 8", and was valid until 31 July 1969. The City had prepared for Lower Norrmalm a general development plan, known as "City 62", which gave priority to street-widening for the benefit of private traffic and pedestrians.

Subsequently, "City 67", a revised general development plan for Lower Norrmalm and Östermalm (another district in the city centre), stressed the need to improve public transport by means of a better network of roads. Some of the sites involved were to be used for street-widening, but any final decision had to await a decision as to the utilisation of the orders. It was estimated that the revised plan, which was of the same type as "City 62", should be implemented before 1985.

14. In July 1969, the City Council requested a third extension of the expropriation permit as regards certain properties, including "Riddaren No. 8", pointing out that the reasons for expropriation given in the "City 62" and "City 67" plans were still valid. On 14 May 1971, the Government set 31 July 1979, that is to say ten years from the date of the request, as the time-limit for the institution of the judicial proceedings for the fixing of compensation.

In May 1975, the City Council put forward revised plans according to which the use of "Riddaren No. 8" was not to be modified and the existing building was not to be altered.

On 3 May 1979, the Government cancelled the expropriation permit at the Council's request (see paragraph 29 below).

15. The Sporrong Estate has never attempted to sell its property.

2. The prohibition on construction

16. On 11 June 1954, the Stockholm County Administrative Board (länsstyrelsen) had imposed a prohibition on construction (byggnadsförbud) on "Riddaren No. 8", on the ground that the proposed viaduct and relief road would affect the use of the property. The prohibition was subsequently extended by the Board to 1 July 1979.

17. In 1970, the Sporrong Estate obtained an exemption from the prohibition in order to widen the front door of the building. It never applied for any other exemptions.

18. The expropriation permit and the prohibition on construction affecting; "Riddaren No. 8" were in force for total periods of twenty-three and twenty-five years respectively.

B. Mrs. Lönnroth

19. Mrs. I. M. Lönnroth lives in Stockholm, where she owns three-quarters of a property situated at "Barnhuset No. 6", in the Lower Norrmalm district; it is occupied by the two buildings erected in 1887-1888, one of which faces the street and the other the rear. In the 1975 tax year the rateable value of the applicant's share of the property was 862,500 Swedish crowns.

1. The expropriation permit

20. On 24 September 1971, the Government authorised the Stockholm City Council to expropriate 115 properties, including "Barnhuset No. 6", and set 31 December 1979, that is to say ten years from the date of the Council request, as the time-limit for the institution of the judicial proceedings for the fixing of compensation. They justified their decision by reference to the "City 67" plan which envisaged that a multi-storey car park would be erected on the site of the applicant's property.

21. However, work in this district was postponed and new plans were prepared for consideration. Believing her property to be in urgent need of repair, Mrs. Lönnroth requested the Government to withdraw the expropriation permit. The City Council replied that the existing plans did not allow any derogation to be made, and on 20 February 1975 the

Government refused the request on the ground that the permit could not be revoked without the express consent of the City Council.

On 3 May 1979, the Government cancelled the permit at the Council's request (see paragraph 29 below).

22. Mrs. Lönnroth's financial situation obliged her to try to sell her property. She made seven attempts to do so between 1970 and 1975, but the prospective buyers withdrew after they had consulted the city authorities. In addition, she sometimes had difficulty in finding tenants.

2. The prohibition on construction

23. On 29 February 1968, the Stockholm County Administrative Board decided to impose a prohibition on construction on "Barnhuset No. 6", on the ground that the site was to be turned into a car park. The prohibition was subsequently extended by the Board to 1 July 1980.

24. In 1970, Mrs. Lönnroth was granted an exemption in order to make alterations to the third floor of her premises; she never sought any other exemptions.

She failed to obtain a loan when, in the early 1970's, one of the property's major mortgagees demanded that the façade be renovated.

25. To sum up, Mrs. Lönnroth's property was subject to an expropriation permit and a prohibition on construction for eight and twelve years respectively.

C. The town-planning policy of the city of Stockholm

26. For several decades, spectacular changes have been taking place in the centre of Stockholm, comparable to those which have occurred in many cities which were reconstructed after being destroyed or severely damaged during the second world war.

27. Lower Norrmalm is a district where most of the capital's important administrative and commercial activities used to be concentrated. Around 1945, the view was taken that the district should be restructured so that those activities could be carried on satisfactorily. For instance, a proper network of roads was needed.

Furthermore, most of the buildings were decrepit and in a poor state of repair. A large-scale redevelopment scheme was necessary in order to provide suitable premises for offices and shops as well as to create a healthy and hygienic working environment. Zonal expropriation, introduced by an Act of 1953 which amended, inter alia, Article 44 of the 1947 Act, became the key instrument for implementing the City Council's plans. In less than ten years more than one hundred buildings were demolished. Some of the vacant sites thereby created were used to make new roads and others were integrated into larger and more functional complexes.

28. During the 1970's, town-planning policy in Stockholm evolved considerably. Far from being in favour of opening access roads to the centre, the city authorities were now trying to reduce the number of cars in the capital. This new policy was reflected in the "City 77" plan, which was adopted on 19 June 1978. It makes provision for urban renovation based above all on gradual rebuilding that takes account of the present urban fabric and it envisages the preservation and restoration of most of the existing buildings.

29. On 3 May 1979, the Government, granting a request submitted by the City Council in October 1978, cancelled, as regards about seventy properties including those of the applicants, the expropriation permits issued in 1956 and 1971. This was because it was by then considered unlikely that the City would need to acquire these properties in order to implement its new town-planning scheme.

30. Notwithstanding the difficulties occasioned by the existence of zonal expropriation permits, it has proved possible to sell sixty-six properties in Stockholm affected by such permits.

II. THE RELEVANT DOMESTIC LAW

A. Town-planning law

31. The 1947 Act is the main legal instrument of town-planning policy in Sweden. For this purpose, it provides for the drawing up of master plans and city plans.

32. A master plan (generalplan) will be drawn up by the municipality concerned in so far as this may be required in order to establish a framework for more detailed plans. Its adoption is a matter for the municipal council (kommunfullmäktige), which may refer the plan to the County Administrative Board - before 1 January 1973, to the Government - for approval (Article 10).

33. City plans are prepared for those urban areas in which this is deemed necessary (Article 24). A city plan is more detailed than a master plan: it will indicate the purposes for which the various areas may be utilised - housing, roads, squares, parks, etc. - and may also include more specific provisions on their use (Article 25). After adoption by the municipal council, it must be approved by the County Administrative Board. In the course of this procedure, property owners have various opportunities to submit their views to several agencies and they may, in the last resort, challenge the decision adopting the plan.

34. In some cases master plans and city plans will be submitted to the Government for a decision.

35. In conjunction with - or independently of - these plans, the Swedish authorities may resort to expropriations and to prohibitions on construction, measures between which there is not necessarily any legal connection.

1. Expropriations

36. As regards expropriation, the law applicable in the present case was mainly that contained in the 1917 Act, which was replaced with effect from 1 January 1973 by the Expropriation Act 1972 ("the 1972 Act"). Some additional matters were dealt with in the 1947 Act.

37. It is for the Government to decide whether expropriation should be authorised. Their decision takes the form of an expropriation permit and is based on the various conditions laid down in the Act. Issue of the permit does not automatically lead to an expropriation; it simply entitles a given public authority (or, in exceptional cases, a private individual or a company) to effect the expropriation if necessary. It leaves intact the owner's right to sell, let or mortgage his property, and is subject to a time-limit within which the expropriating authority must initiate judicial proceedings for the fixing of compensation, failing which the permit will lapse. The 1917 Act was silent as to the length of this time-limit and as to the extension of the validity of permits.

The official statement of reasons accompanying the Bill in which the 1972 Act originated drew attention to the disadvantages which expropriation permits occasion for property owners - uncertainly, restriction of the possibility of disposing of their property, difficulty in deciding whether to incur expenditure -, disadvantages which become more serious with the passage of time.

For this reason Article 6 par. 1 of Chapter 3 of the 1972 Act provides (translation from the Swedish):

> "Expropriation permits shall set a time-limit for service of a summons to appear for the purposes of judicial proceedings. The time-limit may be extended if there are special reasons. Requests for extension shall be submitted before the time-limit expires. If the owner establishes that the fact that the question of expropriation remains pending has occasioned significantly more serious prejudice, the time-limit may, at his request, be reduced. No decision to reduce the time-limit can be taken until one year has elapsed since the issue of the expropriation permit."

The expropriation is not completed until compensation has been fixed and paid. The Real Estate Court has jurisdiction in the matter; its decisions may be challenged in the Court of Appeal and, in the final instance, the Supreme Court.

38. Before 1 July 1953, expropriation related only to individual properties; each request for an expropriation permit described in detail the use to which the expropriating authority intended to put the premises concerned.

The present applications involve another kind of expropriation, known as zonal expropriation. The relevant provision was introduced in 1953, by means of an amendment to Article 44 of the 1947 Act, and was repealed in 1971 with effect from 1 January 1972. It was as follows (translation from the Swedish):

> "If it is deemed necessary, for the purposes of public transport or town planning, to carry out a complete redevelopment of a densely-populated district and if such redevelopment can be effected only by means of rebuilding the entire district, the King may - where the redevelopment measures involve the adoption or modification of a city plan for the district concerned - grant the municipality the right to buy up the land needed for the redevelopment and also any land which is situated in the same district or in the immediate vicinity and whose value is likely to increase considerably as a result of the implementation of the plan ..."

Between 1 January and 31 December 1972, provisions corresponding to this Article 44 were incorporated in the 1917 Act; they now appear in the 1972 Act (Chapter 2, Article 1).

Zonal expropriations were thus designed as an instrument for major town-planning schemes. The permits which they entail may be issued as soon as a new city plan is under consideration, that is to say even before detailed arrangements for its implementation have been worked out.

39. Under Article 11 of the transitional provisions of the 1972 Act, requests for expropriation permits submitted before this new Act came into force continue to be subject to the old Act.

40. Like the 1917 Act, the 1972 Act does not provide for any possibility of compensation for prejudice resulting from the length of the validity of, or failure to utilise, an expropriation permit. It does, however, contain one exception (Chapter, 5, Article 16): compensation is payable for prejudice occasioned by the issue of an expropriation permit if the authority or person to whom it was granted has instituted, but subsequently abandoned, proceedings for the fixing of compensation.

2. Prohibitions on construction 1

41. The 1947 Act prohibits any new construction that is not in conformity with the city plan (Article 34). It permits, even before, and until, such a plan has been adopted by the municipal authorities and approved by the regional authorities, the prohibition as an interim measure of any construction work (Article 35 combined with Articles 14 and 15 of the 1947 Act). Article 15 of the Act provides as follows (translation from the Swedish):

> "If a question is raised concerning a request for the adoption of a master plan for a certain zone or for the amendment of a master plan that has already been approved, the County Administrative Board may, at the request of the municipality, prohibit all new construction (nybyggnad) in that zone. The prohibition shall remain in force until a decision in the matter has been taken by the municipal council, but not for more than one year. Where necessary, the County Administrative Board may, at the request of

the municipality, extend the validity of the prohibition on contruction by a maximum of two years at a time.

Exemptions form the prohibition on construction referred to in the preceding paragraph may be granted by the County Administrative Board or, in accordance with rules laid down by the Government, by the building Board (byggnadsnämnd)."

The same principle applies where the authorities contemplate adopting a new city plan or amending an existing one (Article 35 of the 1947 Act). The principle concerns only new constructions, but Article 158 of the 1947 Act states that the provisions on new constructions shall extend "to such alterations to existing premises as may be classified as new construction under rules laid down by the Government". A rule to this effect appears in Article 75 of the 1959 Building Ordinance (byggnadsstadgan), which reads as follows (translation from the Swedish):

"The expression 'new construction' shall mean:

(a) the erection of entirely new premises;

(b) the horizontal or vertical extension of existing premises;

(c) any rebuilding of the exterior or interior of premises or any alteration thereto which, on account of its scale, may be equated to rebuilding;

(d) the complete or partial conversion of premises for a use substantially different from their previous one;

(e) such alteration to premises as results in their no longer being in conformity with the adopted master plan, city plan or building plan (byggnadsplan) or the regulations on building activities in zones situated outside the areas covered by city plans or building plans: and

(f) any other alteration to premises which, in their present state, are not in conformity with the above-mentioned plans or regulations, except in the case of residential premises comprising not more than two dwellings or of outbuildings belonging to such premises.

However, for the purposes of the present Article, the expression "new construction" shall not include the installation of central heating, water closets or other sanitary amenities in premises which, even if such installation has not been authorised, are expected to remain in their present state for a considerable length of time."

42. In his report of 1967, the Parliamentary Ombudsman (Justitieombudsmannen) referred to the consequences of long-term prohibitions on construction and envisaged certain solutions (translation from the Swedish):

"As for as can be ascertained from the facts, the property owners in the Borås and Östersund cases cannot have expected to reap any advantages from the town-planning scheme. This means that the scheme could not provide them with any compensation for the prejudicial effects that were clearly occasioned by the long-term prohibitions.

If in such cases one does not institute some means of protecting property owners against the prejudicial effect of long-term prohibitions, then - in order to render the implementation of town-planning schemes less expensive for municipalities - one or more property owners will themselves have to bear the prejudicial effects of a prohibition which has been imposed mainly in the interests of the community to settle questions of town planning within a reasonable time. Such a system is irreconcilable with the position that should obtain in a State governed by the rule of law.

What arrangements should be made to protect a property owner against the prejudicial effects of temporary prohibitions on construction that remain in force for a lengthy period can hardly be stated without a thorough study of the problem. However, one possibility would be to set a maximum time-limit for the validity of temporary prohibitions. Nevertheless, such a solution could hardly be regarded as compatible with current requirements, for difficulties over determining what form future development should take mean that long delays cannot always be avoided. A preferable method would be to introduce a right for the property owner to seek compensation from the municipality for any loss he may establish or to require that it purchase the land once the prohibition has been in force for more than a certain period.

There should, however, be a condition that the prohibition has been in force for quite a long time and has occasioned significant prejudicial effects that cannot be compensated by the advantages which the owners could be expected to gain through the town-planning scheme.

In view of the foregoing, my opinion is that there should be a study of the question of introducing protection for private landowners against the prejudicial effects of unreasonably long temporary prohibitions on construction." (Justitieombudsmannens ämbetsberättelse 1967, pp. 478-479).

B. Remedies against the public authorities

1. Appeals against municipal councils' decisions

43. At the time when the applicants referred the matter to the Commission, the Municipal Act 1953 and, in the case of the capital, the City of Stockholm Act 1957 provided for and regulated a right of appeal (kommunalbesvär) against decisions by municipalities. These Acts enabled any local resident - with certain exceptions - to challenge a municipal council's decisions before the County Administrative Board.

Such an appeal could be based on the following grounds only: failure to observe the statutory procedures, infringement of the law, ultra vires conduct, violation of the appellant's own rights or application of powers for an improper purpose. The appeal had to reach the County Administrative Board within three weeks of the date on which approval of the minutes of the decision had been announced on the municipal notice-board; the place where the minutes might be consulted was also indicated on the notice-board.

Unless otherwise provided, the County Administrative Board's decision could, within three weeks from its notification to the appellant, be the subject of an appeal to the Supreme Administrative Court (regeringsrätten).

Almost identical provisions now appear in Chapter 7 of the Municipal Act 1977 (kommunallagen). They were slightly amended in 1980, with effect from 1 January 1981, in that the appeal now has to be made to the Administrative Court of Appeal (kammarrätten) and not to the County Administrative Board.

44. The above-mentioned rules apply to a municipal council's decision to request the Government to issue or extend an expropriation permit.
On the other hand, they do not apply to a decision to request the County Administrative Board to issue or extend a prohibition on construction: such a decision is, in fact, not open to any appeal to an administrative court.

2. Remedies against acts of the administration

(a) Administrative appeals

45. In Sweden, administrative functions devolve largely on administrative authorities whose decision-making machinery is independent of the Government: such authorities do not come under any Ministry, and neither the Government nor the various Ministries may give them orders or instructions on how they should apply the law in this or that case.

46. It is often possible, however, to appeal to the Government against administrative authorities' decisions.

Thus, a decision by the County Administrative Board to issue or extend a prohibition on construction may be challenged by means of an appeal to the Government (Article 150 par. 2 of the 1947 Act).

(b) Judicial appeals

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

48. Judicial review of the administration's acts is, therefore, primarily a matter for administrative courts. These courts, which had their origin within the administration itself, comprise three levels: the County Administrative Court (länsrätterna); the Administrative Courts of Appeal; and the Supreme Administrative Court, which was set up in 1909 on the pattern of certain foreign institutions, such as the French Conseil d'État, but differs therefrom in certain fundamental respects. These courts are composed of independent judges appointed for life and, as a rule, they enjoy wide powers which enable them not only to set aside administrative acts but also to modify or

replace them. In practice, it is very common for the lawfulness of such acts to be challenged.

There is, however, an important exception to this principle, in that no appeal may be made against decisions of the Government.

3. Appeals against acts of the Government

49. Certain administrative cases - those with the most important political or financial implications - are reserved for decision by the Government as the first and last instance. Expropriation permits fall within this category (see paragraph 37 above).

Although the Public Administration Act 1971 (förvaltningslagen) is not formally applicable to proceedings before the Government, they must be conducted in compliance with a number of principles: the right of the person concerned to have access to all the documents in the case; an obligation on the authority to inform him of any document added to the file and to give him an opportunity of stating his opinion thereon; the right of the person concerned to express his views orally if he so wishes.

Before the Government take a decision on a request for an expropriation permit, the request will be submitted to the County Administrative Board which will prepare the file. The Board must, notably, give the property owner an opportunity to present his views on the request; it will also hear such public authorities as may have an interest in the matter. After collecting the necessary data, the Board will transmit them to the Government which will then be in a position to arrive at their decision.

50. Cases examined by the Government give rise to decisions which, as a rule, are not open to appeal. However, in special cases it is possible to lodge an extraordinary appeal, of limited scope, known as an application for re-opening of the proceedings (resningsansökan). Prior to 1 January 1975 such applications - which may also relate to a decision taken by the Government in an appellate capacity - were made to the Supreme Court. Since that date they are made to the Supreme Administrative Court (Chapter 11, Article 11, of the Constitution). The grounds for re-opening proceedings are to be found - although the provision is not formally binding on the Supreme Administrative Court - in Chapter 58, Article 1, of the Code of Judicial Procedure (rättegångsbalken), which reads (translation from the Swedish):

> "Once a judgment in a civil case has acquired the authority of res judicata, the re-opening of the proceedings in the interests of any of the parties may be ordered:
>
> 1. if a member or an official of the court has been guilty of a criminal offence or of misconduct in connection with the litigation or if an offence in connection with the litigation has been committed by a lawyer or legal representative, and if such offence or misconduct can be assumed to have affected the outcome of the case;

2. if a document submitted in evidence was forged or if a party examined on oath, a witness, an expert or an interpreter made false statements, and if such document or statements can be assumed to have affected the outcome of the case;

3. if there have come to light facts or evidence which, had they been put before the court previously, would probably have led to a different outcome; or

4. if the application of the law underlying the judgment is manifestly inconsistent with the law itself.

Re-opening of the proceedings on the ground referred to in paragraph 3 above may not be ordered unless the party concerned establishes that in all probability he was unable to put the facts or evidence before the first instance or a superior court or that he had some other valid reason for not doing so."

If, in a case like the present one, the Supreme Administrative Court accepts that the proceedings should be re-opened, it may either re-examine the whole case itself or refer it back to the Government.

The very numerous decisions taken by the Government each year in fact give rise to very few applications for re-opening of the proceedings.

C. Liability of public authorities

51. In the past, State and municipal bodies incurred no liability in respect of decisions which they took in the exercise of public authority, and no compensation could therefore be awarded for damage resulting from such decisions, although there were some doubts about the scope of this immunity. Swedish law on this subject was derived from case-law, specific statutes and unwritten principles.

52. The same law still applies on many points, but on 1 July 1972 the Civil Liability Act (skadeståndslagen) entered into force. This Act consolidates and develops a branch of the law governing compensation for damage in extra-contractual matters. It provides that the State and the municipalities are not civilly liable for damage caused by their acts. It does, however, make one radical change: the acts of the public authorities may now give rise to an entitlement to compensation in the event of fault or negligence (Chapter 3, Article 2).

However, the legislature imposed an important restriction on this new principle, in that, save where the decisions in question have been set aside or modified, an action for damages "may not lie" in respect of decisions taken by Parliament, the Government, the Supreme Court, the Supreme Administrative Court and the National Social Security Court (Chapter 3, Article 7). According to authoritative commentaries, the court must, of its own motion, declare the action inadmissible in such case.

PROCEEDINGS BEFORE THE COMMISSION

53. The applicants referred the matter to the Commission on 15 August 1975. They complained of unjustifiable interference with their right to peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 (P1-1). They also alleged a violation of Article 6 par. 1 (art. 6-1) of the Convention on the ground that the questions of expropriation and compensation had not been determined within a reasonable time by the Swedish courts, as well as a breach of Article 13 (art. 13) on the ground that they had had no effective remedy before a national authority against the infringements of their rights, which resulted from the expropriation permits and the prohibitions on construction. Lastly, they alleged a violation of Article 14 (art. 14) and relied on Articles 17 and 18 (art. 17, art. 18).

54. The Commission joined the two applications on 12 October 1977 in accordance with Rule 29 of its Rules of Procedure, and declared them admissible on 5 March 1979.

55. In its report of 8 October 1980 (Article 31 of the Convention) (art. 31), the Commission expressed the opinion that there had been a violation of Article 13 (art. 13) of the Convention (ten votes to two, with four abstentions). On the other hand, it concluded that there had been no breach of Article 1 of Protocol No. 1 (P1-1) (ten votes to three), of Article 6 par. 1 (art. 6-1) (eleven votes to five) or of Articles 14, 17 and 18 (art. 14, art. 17, art. 18) (unanimously) of the Convention.

The report contains three separate opinions.

AS TO THE LAW

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

56. The applicants complained of the length of the period during which the expropriation permits, accompanied by prohibitions on construction, affecting their properties had been in force. It amounted, in their view, to an unlawful infringement of their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 (P1-1), which reads as follows:

> "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."

57. In its Marckx judgment of 13 June 1979, the Court described as follows the object of this Article (P1-1):

> "By recognising that everyone has the right to the peaceful enjoyment of his possessions, Article 1 (P1-1) is in substance guaranteeing the right of property. This is the clear impression left by the words 'possessions' and 'use of property' (in French: 'biens', 'propriété', 'usage des biens'); the 'travaux préparatoires', for their part, confirm this unequivocally: the drafters continually spoke of "'right of property' or 'right to property' to describe the subject-matter of the successive drafts which were the forerunners of the present Article 1 (P1-1)." (Series A no. 31, p. 27, par. 63)

It has to be determined whether the applicants can complain of an interference with this right and, if so, whether the interference was justified.

1. The existence of an interference with the applicants' right of property

58. The applicants did not dispute that the expropriation permits and prohibitions on construction in question were lawful in themselves. On the other hand, they complained of the length of the time-limits granted to the City of Stockholm for the institution of the judicial proceedings for the fixing of compensation for expropriation (five years, extended for three, then for five and finally for ten years, in the case of the Sporrong Estate; ten years in the case of Mrs. Lönnroth; see paragraphs 11-14 and 20 above). They also complained of the fact that the expropriation permits and the prohibitions on construction had been maintained in force for a lengthy period (twenty-three and eight years for the permits; twenty-five and twelve years for the prohibitions; see paragraphs 18 and 25 above). They pointed to the adverse effects on their right of property allegedly occasioned by these measures when they were combined in such a way. They contended that they had lost the possibility of selling their properties at normal market prices. They added that they would have run too great a risk had they incurred expenditure on their properties and that if all the same they had had work carried out after obtaining a building permit, they would have been obliged to undertake not to claim - in the event of expropriation - any indemnity for the resultant capital appreciation. They also alleged that they would have encountered difficulties in obtaining mortgages had they sought them. Finally, they recalled that any "new construction" on their own land was prohibited.

Though not claiming that they had been formally and definitively deprived of their possessions, the Sporrong Estate and Mrs. Lönnroth alleged that the permits and prohibitions at issue subjected the enjoyment and power to dispose of their properties to limitations that were excessive

and did not give rise to any compensation. Their right of property had accordingly, so they contended, been deprived of its substance whilst the measures in question were in force.

59. The Government accepted that market forces might render it more difficult to sell or let a property that was subject to an expropriation permit and that the longer the permit remained in force the more serious this problem would become. They also recognised that prohibitions on construction restricted the normal exercise of the right of property. However, they asserted that such permits and prohibitions were an intrinsic feature of town planning and did not impair the right of owners to "the peaceful enjoyment of (their) possessions", within the meaning of Article 1 of Protocol No. 1 (P1-1).

60. The Court is unable to accept this argument.

Although the expropriation permits left intact in law the owners' right to use and dispose of their possessions, they nevertheless in practice significantly reduced the possibility of its exercise. They also affected the very substance of ownership in that they recognised before the event that any expropriation would be lawful and authorised the City of Stockholm to expropriate whenever it found it expedient to do so. The applicants' right of property thus became precarious and defeasible.

The prohibitions on construction, for their part, undoubtedly restricted the applicants' right to use their possessions.

The Court also considers that the permits and prohibitions should in principle be examined together, except to the extent that analysis of the case may require a distinction to be drawn between them. This is because, even though there was not necessarily a legal connection between the measures (see paragraph 35 above) and even though they had different periods of validity, they were complementary and had the single objective of facilitating the development of the city in accordance with the successive plans prepared for this purpose.

There was therefore an interference with the applicants' right of property and, as the Commission rightly pointed out, the consequences of that interference were undoubtedly rendered more serious by the combined use, over a long period of time, of expropriation permits and prohibitions on construction.

2. The justification for the interference with the applicants' right of property

61. It remains to be ascertained whether or not the interference found by the Court violated Article 1 (P1-1).

That Article (P1-1) comprises three distinct rules. The first rule, which is of a general nature, enounces the principle of peaceful enjoyment of property; it is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to certain conditions;

it appears in the second sentence of the same paragraph. The third rule recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose; it is contained in the second paragraph.

The Court must determine, before considering whether the first rule was complied with, whether the last two are applicable.

(a) The applicability of the second sentence of the first paragraph

62. It should be recalled first of all that the Swedish authorities did not proceed to an expropriation of the applicants' properties. The applicants were therefore not formally "deprived of their possessions" at any time: they were entitled to use, sell, devise, donate or mortgage their properties.

63. In the absence of a formal expropriation, that is to say a transfer of ownership, the Court considers that it must look behind the appearances and investigate the realities of the situation complained of (see, mutatis mutandis, the Van Droogenbroeck judgment of 24 June 1982, Series A no. 50, p. 20, par. 38). Since the Convention is intended to guarantee rights that are "practical and effective" (see the Airey judgment of 9 October 1979, Series A no. 32, p. 12, par. 24), it has to be ascertained whether that situation amounted to a de facto expropriation, as was argued by the applicants.

In the Court's opinion, all the effects complained of (see paragraph 58 above) stemmed from the reduction of the possibility of disposing of the properties concerned. Those effects were occasioned by limitations imposed on the right of property, which right had become precarious, and from the consequences of those limitations on the value of the premises. However, although the right in question lost some of its substance, it did not disappear. The effects of the measures involved are not such that they can be assimilated to a deprivation of possessions. The Court observes in this connection that the applicants could continue to utilise their possessions and that, although it became more difficult to sell properties in Stockholm affected by expropriation permits and prohibitions on construction, the possibility of selling subsisted; according to information supplied by the Government, several dozen sales were carried out (see paragraph 30 above).

There was therefore no room for the application of the second sentence of the first paragraph in the present case.

(b) The applicability of the second paragraph

64. The prohibitions on construction clearly amounted to a control of "the use of [the applicants'] property", within the meaning of the second paragraph.

65. On the other hand, the expropriation permits were not intended to limit or control such use. Since they were an initial step in a procedure

leading to deprivation of possessions, they did not fall within the ambit of the second paragraph. They must be examined under the first sentence of the first paragraph.

(c) Compliance with the first sentence of the first paragraph as regards the expropriation permits

66. The applicants' complaints concerned in the first place the length of the time-limits granted to the City of Stockholm, which they regarded as contrary to both Swedish law and the Convention.

67. The 1917 Act did not contain any provisions either on the length of the time-limit during which the expropriating authority had to institute judicial proceedings for the fixing of compensation for expropriation, or on the extension of the validity of permits.

According to the Sporrong Estate and Mrs. Lönnroth, it had been the established practice since the entry into force of the Act for the normal time-limit for service of a summons to appear before the Real Estate Court to be one year. Since the time-limits in the present case were as long as five and ten years respectively, it was alleged that there was no legal basis for the original permits; the same was said to apply to the three extensions of the permit affecting the property of the Sporrong Estate.

The respondent State replied that the issue and the extension of the permits were in conformity with Swedish law: it argued that since the Government were entitled to fix the period of validity of the original permit, they were also empowered, in the absence of any provision to the contrary, to extend it.

68. The Court does not consider that it has to resolve this difference of opinion over the interpretation of Swedish law. Even if the permits complained of were not contrary to that law, their conformity therewith would not establish that they were compatible with the right guaranteed by Article 1 (P1-1).

69. The fact that the permits fell within the ambit neither of the second sentence of the first paragraph nor of the second paragraph does not mean that the interference with the said right violated the rule contained in the first sentence of the first paragraph.

For the purposes of the latter provision, the Court must determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, mutatis mutandis, the judgment of 23 July 1968 in the "Belgian Linguistic" case, Series A no. 6, p. 32, par. 5). The search for this balance is inherent in the whole of the Convention and is also reflected in the structure of Article 1 (P1-1).

The Agent of the Government recognised the need for such a balance. At the hearing on the morning of 23 February 1982, he pointed out that, under the Expropriation Act, an expropriation permit must not be issued if the

public purpose in question can be achieved in a different way; when this is being assessed, full weight must be given both to the interests of the individual and to the public interest.

The Court has not overlooked this concern on the part of the legislature. Moreover, it finds it natural that, in an area as complex and difficult as that of the development of large cities, the Contracting States should enjoy a wide margin of appreciation in order to implement their town-planning policy. Nevertheless, the Court cannot fail to exercise its power of review and must determine whether the requisite balance was maintained in a manner consonant with the applicants' right to "the peaceful enjoyment of [their] possessions", within the meaning of the first sentence of Article 1 (P1-1).

70. A feature of the law in force at the relevant time was its inflexibility. With the exception of the total withdrawal of the expropriation permits, which required the agreement of the municipality, the law provided no means by which the situation of the property owners involved could be modified at a later date. The Court notes in this connection that the permits granted to the City of Stockholm were granted for five years in the case of the Sporrong Estate - with an extension for three, then for five and finally for ten years - and for ten years in the case of Mrs. Lönnroth. In the events that happened, they remained in force for twenty-three years and eight years respectively. During the whole of this period, the applicants were left in complete uncertainty as to the fate of their properties and were not entitled to have any difficulties which they might have encountered taken into account by the Swedish Government. The Commission's report furnishes an example of such difficulties. Mrs. Lönnroth had requested the Government to withdraw the expropriation permit. The City Council replied that the existing plans did not authorise any derogation; the Government, for their part, refused the request on the ground that they could not revoke the permit without the Council's express consent (see paragraph 21 above).

The Courts has not overlooked the interest of the City of Stockholm in having the option of expropriating properties in order to implement its plans. However, it does not see why the Swedish legislation should have excluded the possibility of re-assessing, at reasonable intervals during the lengthy periods for which each of the permits was granted and maintained in force, the interests of the City and the interests of the owners. In the instant case, the absence of such a possibility was all the less satisfactory in that the town-planning schemes underlying the expropriation permits and, at the same time, the intended use prescribed for the applicants' properties were modified on several occasions.

71. As is shown by the official statement of reasons accompanying the Bill in which the 1972 Act originated, the Swedish Government conceded that "in certain respects, the existing system is a source of disadvantages for the property owner":

> "Naturally, the mere issue of an expropriation permit often places him in a state of uncertainty. In practice, his opportunities for disposing of his property by selling it, assigning the use thereof or having premises erected thereon are considerably restricted. He may also have difficulty in deciding whether to incur expenditure on upkeep or modernisation. The disadvantages resulting from an expropriation permit are, of course, increased if the judicial proceedings are not set in motion for a long time." (Kungl. Maj:ts proposition nr. 109, 1972, p. 227)

The 1972 Act takes partial account of these problems. Admittedly, it does not provide for compensation to be granted to property owners who may have been prejudiced by reason of the length of the validity of the permit; however, it does enable them to obtain a reduction of the time-limit for service of the summons to appear before the Real Estate Court if they establish that the fact that the question of expropriation remains pending has caused significantly more serious prejudice (see paragraph 37 above). Since the Act was not applicable in the present case (see paragraph 39 above), it could not have been of assistance to the applicants in overcoming any difficulties which they might have encountered.

72. The Court also finds that the existence throughout this period of prohibitions on construction accentuated even further the prejudicial effects of the length of the validity of the permits. Full enjoyment of the applicants' right of property was impeded for a total period of twenty-five years in the case of the Sporrong Estate and of twelve years in the case of Mrs. Lönnroth. In this connection, the Court notes that in 1967 the Parliamentary Ombudsman considered that the adverse effects on property owners that could result from extended prohibitions were irreconcilable with the position that should obtain in a State governed by the rule of law (see paragraph 42 above).

73. Being combined in this way, the two series of measures created a situation which upset the fair balance which should be struck between the protection of the right of property and the requirements of the general interest: the Sporrong Estate and Mrs. Lönnroth bore an individual and excessive burden which could have been rendered legitimate only if they had had the possibility of seeking a reduction of the time-limits or of claiming compensation. Yet at the relevant time Swedish law excluded these possibilities and it still excludes the second of them.

In the Court's view, it is not appropriate at this stage to determine whether the applicants were in fact prejudiced (see, mutatis mutandis, the above-mentioned Marckx judgment, Series A no. 31, p. 13, par. 27): it was in their legal situation itself that the requisite balance was no longer to be found.

74. The permits in question, whose consequences were aggravated by the prohibitions on construction, therefore violated Article 1 (P1-1), as regards both applicants.

(d) Compliance with Article 1 (P1-1) as regards the prohibitions on construction

75. In view of the foregoing, the Court does not consider it necessary to determine whether the prohibitions on construction, taken alone, also infringed Article 1 (P1-1).

II. THE ALLEGED VIOLATION OF ARTICLES 17 AND 18, OF THE CONVENTION, TAKEN TOGETHER WITH ARTICLE 1 OF PROTOCOL No. 1 (art. 17+P1-1, art. 18+P1-1).

76. The applicants also relied on Articles 17 and 18 (art. 17, art. 18) of the Convention. They claimed that the exercise of their right to the peaceful enjoyment of their possessions was subjected to "restrictions that were more far-reaching than those contemplated" by Article 1 of Protocol No. 1 (P1-1) and had a "purpose" that is not mentioned in that Article.
The Commission concluded unanimously that there had been no violation.

Having found that there was a breach of Article 1 of Protocol No 1. (P1-1), the Court does not consider it necessary also to examine the case under Articles 17 and 18 (art. 17, art. 18) of the Convention.

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

77. The applicants invoked Article 14 of the Convention, taken together with Article 1 of Protocol No. 1 (art. 14+P1-1), and maintained that they had been victims of discrimination as compared with two categories of owners, namely those whose properties were not expropriated of owners, namely those whose properties were expropriated in an manner consistent with Swedish law and the Convention.

The Court does not accept this argument, which is not supported by any evidence in the material before it.

IV. THE ALLEGED VIOLATION OF ARTICLE 6 PAR. 1 (art. 6-1) OF THE CONVENTION

78. According to the applicants, their complaints concerning the expropriation permits affecting their properties were not, and could not have been, heard by the Swedish courts; in this respect they alleged a violation of Article 6 par. 1 (art. 6-1) of the Convention which reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..."

A. The applicability of Article 6 par. 1 (art. 6-1)

79. The applicants' right of property is without doubt a "civil right" and there was in fact no dispute on this point. It remains to be ascertained whether that right was the subject of a "contestation" (dispute) between the applicants and the Swedish authorities.

80. The Commission, whilst recognising that expropriation proceedings concerned a civil right, took the view that the expropriation permits issued under the 1917 Act did not amount to a determination of civil rights and obligations of the owners. It concluded that the administrative proceedings whereby the permits affecting the applicants' properties were issued and subsequently extended did not fall within the ambit of Article 6 par. 1 (art. 6-1).

The Court is unable to share this view. In its Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, it pointed out that Article 6 par. 1 (art. 6-1) "is not applicable solely to proceedings which are already in progress: it may also be relied on by anyone who considers that an interference with the exercise of one of his (civil) rights is unlawful and complains that he has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 par. 1 (art. 6-1)" (Series A no. 43, p. 20, par. 44, with a reference to the Golder judgment of 21 February 1975, Series A no. 18). It is of little consequence that the contestation (dispute) concerned an administrative measure taken by the competent body in the exercise of public authority (see, mutatis mutandis, the Ringeisen judgment of 16 July 1971, Series A no. 13, p. 39, par. 94, and the König judgment of 28 June 1978, Series A no. 27, p. 32, par. 94).

In the present case, the applicants emphasised that they had not had the possibility of applying to a tribunal having jurisdiction to examine the situation created by the issue or extension of the expropriation permits.

81. As regards the actual lawfulness of such issue or extension, the Sporrong Estate and Mrs. Lönnroth cited the practice whereby the time-limit for service of a summons to appear before the Real Estate Court was normally one year (see paragraph 67 above); they maintained that the long time-limits granted in their cases were not in accordance with Swedish law. The Government, for their part, disputed this interpretation. The Court recalls that it does not consider that it has to resolve this difference of opinion (see paragraph 68 above). However, the existence and the serious nature of that difference demonstrate that an issue did arise under Article 6 par. 1 (art. 6-1). Given that the applicants regarded as unlawful the adoption or extension of measures which affected their right of property and had been in force for periods of the kind encountered in their cases, they were entitled to have this question of domestic law determined by a tribunal.

82. The applicants also complained of the fact that they were unable to take legal proceedings to seek redress for the loss occasioned both by the

expropriation permits and by the prohibitions on construction. The Court, having just found that there was a contestation (dispute), does not deem it necessary to examine this argument.

83. To sum up, the expropriation permits affecting the applicants' properties related to a "civil" right and, as regards their period of validity, gave rise to a "contestation" (dispute), within the meaning of Article 6 par. 1 (art. 6-1).

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

84. The Court has to establish Swedish law conferred on the applicants the "right to a court", one aspect of which is the right to access, that is the right to institute proceedings before a court having competence in civil matters (see the above-mentioned Golder judgment, Series A no. 18, p. 18, par. 36). It therefore has to be ascertained whether the Sporrong Estate and Mrs Lönnroth could have instituted legal proceedings to challenge the lawfulness of the decisions of the City Council and of the Government concerning the issue or extension of the long-term expropriation permits.

1. Review of the lawfulness of the City Council's decisions

85. The Government stated it would have been open to the applicants to challenge the lawfulness of the decisions of the City of Stockholm to request the Government to issue or extend the said permits.

It is true that, in so far as those decisions had come to the applicants' knowledge - despite the absence, according to them, of any individual notification -, they could have referred the matter to the County Administrative Board and then, if necessary, to the Supreme Administrative Court (see paragraph 43 above). However, the requests were only preparatory steps which, in themselves, did not at that stage interfere with a civil right. Furthermore, their lawfulness did not necessarily depend on the same criteria as the lawfulness of the final decisions taken by the Government in this respect.

2. Review of the lawfulness of the Government's decisions

86. The Government's decisions on the issue and extension of the permits are not open to appeal before the administrative courts.

Admittedly, owners can challenge the lawfulness of such decisions by requesting the Supreme Administrative Court to re-open the proceedings. However, they must in practice rely on grounds identical or similar to those set out in Chapter 58, Article 1, of the Code of Judicial Procedure (see paragraph 50 above). Furthermore, this is an extraordinary remedy - as the Government admitted - and is exercised but rarely. When considering the admissibility of such an application, the Supreme Administrative Court does

not examine the merits of the case; at that stage, it therefore does not undertake a full review of measures affecting a civil right (see, mutatis mutandis, the above-mentioned Le Compte, Van Leuven and De Meyere judgment, Series A no. 43, pp. 23, 24 and 26, par. 51, 54 and 60). It is only where the Supreme Administrative Court has declared the application admissible that such a review can be effected, either by that court itself or, if it has referred the case back to a court or authority previously dealing with the matter, by the latter court or authority. In short, the said remedy did not meet the requirements of Article 6 par. 1 (art. 6-1).

87. To sum up, the case (in French: cause) of the Sporrong Estate and Mrs. Lönnroth could not be heard by a tribunal competent to determine all the aspects of the matter. As regards both applicants, there has therefore been a violation of Article 6 par. 1 (art. 6-1).

V. THE ALLEGED VIOLATION OF ARTICLE 13 (art. 13) OF THE CONVENTION

88. The applicants maintained that they were deprived of any effective remedy before a national "authority" in respect of the violations of which they complained; they relied on Article 13 (art. 13) which provides:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

In its report, the Commission expressed the opinion that there had been a breach of this Article (art. 13). The Government contested this opinion, especially in their memorial of 31 July 1981, which was exclusively devoted to this issue.

Having regard to its decision on Article 6 par. 1 (art. 6-1), the Court considers that it is not necessary to examine the case under Article 13 (art. 13); this is because its requirements are less strict than, and are here absorbed by, those of Article 6 par. 1 (art. 6-1) (see the above-mentioned Airey judgment, Series A no. 32, p. 18, par. 35, and, mutatis mutandis, the De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, pl. 46, par. 95, and the above-mentioned Golder judgment Series A no. 18, pp. 15-16, par. 33).

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

89. At the hearings of 23 February 1982, the applicants' counsel stated that should the Court find a violation, his clients would seek under Article 50 (art. 50) just satisfaction for pecuniary loss and for legal and related expenses. He considered that their claims would to a large extent depend on

the tenor of the judgment to be given and therefore suggested that examination of this issue be adjourned.

The Government confined themselves to indicating that they reserved their position on the application of Article 50 (art. 50).

Accordingly, although it was raised under Rule 47 bis of the Rules of Court, this question is not ready for decision. The Court is therefore obliged to reserve it and fix the further procedure, taking due account of the possibility of an agreement between the respondent State and the applicants.

FOR THESE REASONS, THE COURT

1. Holds by ten votes to nine that there has been a violation of Article 1 of Protocol No. 1 (P1-1), as regards both applicants;

2. Holds unanimously that it is not necessary also to examine the case under articles 17 and 18 of the Convention, taken together with Article 1 of Protocol No. 1 (art. 17+P1-1, art. 18+P1-1);

3. Holds unanimously that there has not been a violation of Article 14 of the Convention, taken together with Article 1 of Protocol No. 1 (art. 14+P1-1);

4. Holds by twelve votes to seven that there has been a violation of Article 6 par. 1 (art. 6-1) of the Convention, as regards both applicants;

5. Holds unanimously that it is not necessary also to examine the case under Article 13 (art. 13) of the Convention;

6. Holds unanimously that the question of the application of Article 50 (art. 50) is not ready for decision;

accordingly,

(a) reserves the whole of the said question;

(b) invites the Commission to submit to the Court, within two months from the delivery of the present judgment, the Commission's written observations on the said question and, in particular, to notify the Court of any friendly settlement at which the Government and the applicants may have arrived;

(c) reserves the further procedure and delegates to the President of the Court power to fix the same if need be.

Done in English and in French, the French text being authentic, at the Human Rights Building, Strasbourg, this twenty-third day of September, one thousand nine hundred and eighty-two.

Gérard WIARDA
President

Marc-André EISSEN
Registrar

The separate opinions of the following judges are annexed to the present judgment in accordance with Article 51 par. 2 (art. 51-2) of the Convention and Rule 50 par. 2 of the Rules of Court:

- joint dissenting opinion of Mr. Zekia, Mr. Cremona, Mr. Thór Vilhjálmsson, Mr. Lagergren, Sir Vincent Evans, Mr. Macdonald, Mr. Bernhardt and Mr. Gersing with regard to Article 1 of Protocol No. 1 (P1-1);

- concurring opinion of Mr. Cremona with regard to Article 6 par. 1 (art. 6-1) of the Convention;

- dissenting opinion of Mr. Thór Vilhjálmsson with regard to Article 6 par. 1 (art. 6-1) of the Convention;

- dissenting opinion of Mr. Lagergren concerning Article 6 par. 1 (art. 6-1) of the Convention;

- joint dissenting opinion of Mr. Pinheiro Farinha, Sir Vincent Evans, Mr. Macdonald, Mr. Bernhardt and Mr. Gersing with regard to Article 6 par. 1 (art. 6-1) of the Convention;

- partly dissenting opinion of Mr. Walsh.

G.W.
M.-A. E.

JOINT DISSENTING OPINION OF JUDGES ZEKIA, CREMONA, THÓR VILHJÁLMSSON, LAGERGREN, SIR VINCENT EVANS, MACDONALD, BERNHARDT AND GERSING WITH REGARD TO ARTICLE 1 OF PROTOCOL No. 1 (P1-1)

1. We regret that we do not agree with the conclusion reached by the majority of the Court that there was a violation of Article 1 of Protocol No. 1 (P1-1) to the Convention or with the manner in which they interpret and apply that Article (P1-1) in their judgment.

2. The judgment reaches the conclusion that Article 1 of the Protocol (P1-1) has been violated in a way which does not, in our view, correspond to the underlying intention and the real meaning of that provision.

The majority first find that there was an interference with the applicants' exercise of the right of property within the meaning of the first sentence of Article 1 of the Protocol (P1-1). We agree that the combined effect of the expropriation permits and prohibitions on construction was to intrude on the owners' right "to the peaceful enjoyment of their possessions" ("droit au respect de ses biens").

The judgment then goes on to find that there was no room for the application of the second sentence of the first paragraph in the present case. On this too we agree.

However, the majority also exclude the application of the second paragraph of the Article (P1-1) (see paragraph 65 of the judgment). Their reason for doing so is, in our opinion, hardly convincing. It is simply that the expropriation permits were not intended to limit or control the use of the applicants' property but were an initial step in a procedure leading to deprivation of possessions. This ignores the fact, which appears to be acknowledged elsewhere in the judgment that the expropriation permits have to be considered in combination with the prohibitions on construction. As is rightly observed in paragraph 60 of the judgment, "this is because, even though there was not necessarily a legal connection between the measures ... and even though they had different periods of validity, they were complementary and had the single objective of facilitating the development of the city in accordance with the successive plans prepared for this purpose".

Having eliminated the second sentence of the first paragraph as well as the second paragraph, the majority of the Court feel free, in applying only the first sentence of the Article (P1-1), to "determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights" (paragraph 69 of the judgment). We express no view on this

interpretation of the first sentence of Article 1 (P1-1), since our conclusions rest on the application of the second paragraph.

3. Our understanding of the way in which Article 1 (P1-1) should be interpreted and applied in the present case is different.

The first sentence of the Article (P1-1) contains a guarantee of private property. It is a provision in general terms protecting individuals and also private legal entities against interference with peaceful enjoyment of their possessions. However, modern States are obliged, in the interest of the community, to regulate the use of private property in many respects. There are always social needs and responsibilities relevant to its ownership and use. The ensuing provisions of Article 1 (P1-1) recognise these needs and responsibilities and the corresponding rights of the States. The very essence of city planning is to control the use of property, including private property, in the general interest.

It is obvious that, for the second paragraph to apply restrictions on the use of private possessions must leave the owner at least a certain degree of freedom, otherwise the restrictions amount to deprivation; in this case no "use" is left. But it cannot be decisive against the applicability of the second paragraph that the final outcome of the measures taken may be the expropriation of the properties concerned. Where the use of the properties is still possible although restricted, this provision remains applicable, even if the intention behind the measures is the eventual deprivation of ownership. This is confirmed in the present case by the fact that deprivation in reality never took place. The use of the property by the owner was never terminated by State action. It was temporarily restricted in view of possible expropriations in the future.

In our opinion, therefore, the second paragraph is applicable in regard to the measures complained of in the present case.

The next question is whether the measures complained of were justified under the terms of the second paragraph. This paragraph is in very emphatic terms. It states that the preceding provisions of Article 1 (P1-1) "shall not ... 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". In paragraph 64 of its judgment of 13 June 1979 in the Marckx case (Series A no. 31, p. 28) the Court said that "This paragraph thus sets the Contracting States up as sole judges of the ‘necessity’ for such a law". The "general interest" which gave rise to the Swedish laws relevant in the present case is evident. Legislation to facilitate town planning, particularly in big cities like Stockholm, is normal in States Party to the Convention, including provisions to enable the authorities to control the use and development of properties and for expropriation for redevelopment and other purposes in the general interest.

But of course it is the measures taken by the Swedish authorities in the enforcement of the relevant laws which are in issue in the present case. The words "shall not ... in any way impair the right of a State" were clearly intended to leave to States a wide margin of appreciation. Nevertheless, the Court must satisfy itself not only as to the lawfulness of the measures in question under Swedish law but also that they were not inconsistent with the legitimate aim of controlling the use of property in the general interest.

We share the view of the Commission that there is no good reason to doubt that the measures taken in the present case were lawful (see paragraphs 106 to 109 of the Commission's report).

The applicants claim that there was no general interest to justify the duration of the measures. We do not find that their duration exceeded the periods which could reasonably be deemed by the authorities of the States to be in the general interest.

Modern town planning requires, especially in big urban areas, most difficult considerations and evaluations, and its implementation often needs considerable time. It can also hardly be denied that planning and preparations for further urban development can change in accordance with changing convictions and expectations in the community. This is illustrated in the present case by the changes in the plans for the city of Stockholm. In the course of the years the idea of broad traffic lanes through central parts of the city gave way to new ideas for pedestrian areas, reliance on public transportation, and the preservation and rehabilitation of existing buildings. Similar developments can be found in many other States and cities.

It is true that the expropriation permits and building restrictions were maintained in force for a number of years and, in the case of the Sporrrong Estate, for more than two decades, which is a long time. But, on the other hand, the Swedish Government have advanced understandable reasons for this. It is also relevant to take into account the legal and factual position of the owners during the period of the restrictions. They remained in ownership and retained the use of the properties in their existing state. They had the right to dispose of their properties, and other owners in a similar situation did so. It was possible for them to apply for permission to reconstruct and improve their properties, at least within the limits inherent in all town planning: both the Sporrong Estate and Mrs. Lönnroth in fact applied in 1970 for permission to make alterations and obtained it. Besides, it should be borne in mind that owners of property in a modern society are affected by many other factors than formal decisions of the kind here in question. Indeed, as soon as the authorities make known their intentions regarding the future use of land and properties within their area, the owners may suffer adverse effects such as the applicants complained of in the present case.

Taking all these aspects together, we cannot conclude that the measures adopted by the Swedish authorities, particularly as regards their duration, went beyond the legitimate aim permitted by the terms of the second paragraph of Article 1 (P1-1), even if their adverse effects for the owners can hardly be denied.

4. For these reasons we are of the opinion that Article 1 of Protocol No. 1 (P1-1) was not violated in the present case.

CONCURRING OPINION OF JUDGE CREMONA WITH REGARD TO ARTICLE 6 § 1 (art. 6-1) OF THE CONVENTION

I have already, in a joint opinion with other brother judges, expressed my disagreement with the majority conclusion that there is in this case a violation of Article 1 of the First Protocol (P1-1). I shall now outline my reasons for finding, with the majority, a violation of Article 6 § 1 (art. 6-1) of the Convention, and I shall endeavour to do so as briefly as possible.

The Court has already had occasion to establish that Article 6 § 1 (art. 6-1) guarantees access to a court or tribunal in cases where the determination of civil rights and obligations is at issue (Golder judgment of 21 February 1975, Series A no. 18, p. 18, § 36). It has also held that that provision may "be relied on by anyone who considers that an interference with the exercise of one of his (civil) rights is unlawful and complains that he has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 § 1 (art. 6-1)" (Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 20, § 44).

This is in fact, as I see it, the position in the present case. Considering that (a) the applicants were disputing the legality of the taking or extension of certain measures (expropriation permits) adopted by the Swedish authorities and affecting their properties, (b) under Swedish law expropriation permits already determine the legality of the eventually ensuing expropriation, which cannot be judicially attacked later (an important point made by Mr. Frowein in his separate opinion appended to the Commission's report, p. 76[*]) and (c) the rights thus affected were property rights and these are certainly civil rights, I come to the conclusion that the applicants were seeking a determination of their civil rights or, in other words, that there was in fact a "contestation" relative to the applicants' civil rights. That being so, under Article 6 § 1 (art. 6-1) they should have been able to take their claim before a tribunal satisfying all the requirements of that provision, but in fact found themselves in the impossibility of doing so.

So long as a claim of the kind aforesaid is not manifestly frivolous or vexatious, any speculation as to its possible or probable outcome (if it had been possible to take it before such a tribunal) can only constitute an idle exercise which in no way alters the position as set out above. Likewise, any opinion of our own as to the lawfulness or unlawfulness of those mesures is not really relevant to the present issue (i.e. that under Article 6 § 1) (art. 6-1). The fact remains that the applicants, directly affected by those measures and disputing their lawfulness, had a right (and should therefore have also had the opportunity, which they had not) to have that lawfulness or

[*] Note by the Registry: Page-numbering of the stencilled version.

unlawfulness ascertained and established by a tribunal in terms of Article 6 § 1 (art. 6-1).

DISSENTING OPINION OF JUDGE THÓR VILHJÁLMSSON WITH REGARD TO ARTICLE 6 § 1 (art. 6-1) OF THE CONVENTION

In this case I do not find that there was a violation of Article 1 of Protocol No. 1 (P1-1). Neither do I find a violation of Article 6 § 1 (art. 6-1) of the Convention. As to the first of these questions, I refer to the joint dissenting opinion of myself and a number of my colleagues. To my regret I have not been able to join other colleagues on the question of Article 6 § 1 (art. 6-1). My views may be briefly stated as follows.

In paragraph 79 of its judgment the majority of the Court states that the applicants' rights which are at issue in this case are without doubt "civil rights". On this I agree. On the other hand, I cannot see that any "determination of civil rights" is at issue.

It is clear that under Swedish law the applicants could not in practice contest before the courts the expropriation permits concerning their properties. On this I refer to paragraphs 48-50 of the judgment. If this is a violation of Article 6 § 1 (art. 6-1), it would mean that the respondent State was under an obligation to grant the applicants a hearing before a court on submissions of theirs that were without basis in law because of Swedish rules of a constitutional Government. It would also mean that Article 6 § 1 (art. 6-1), which deals with the right to trial, indirectly regulated fundamental constitutional rules. I find such an interpretation impossible. Accordingly, there was no contest or disagreement which could be resolved by a Swedish court. Article 6 § 1 (art. 6-1) does not impose on the respondent State any obligation to change that situation.

For this reason I find Article 6 § 1 (art. 6-1) not applicable.

DISSENTING OPINION OF JUDGE LAGERGREN CONCERNING ARTICLE 6 § 1 (art. 6-1) OF THE CONVENTION

As to the application of Article 6 § 1 (art. 6-1) of the Convention in this case, in my opinion no civil right was at stake nor was there any real dispute to be determined by a national tribunal.

The majority of the Commission held (paragraph 147 of the report) that the expropriation permits did not have any legal effects on the applicants' rights as owners of their properties. The applicants retained the legal title to their properties which implied, inter alia, that they were entitled to sell them and to inhabit or let the buildings constructed on the sites. Nevertheless, as holders of the civil right to property, the applicants were faced with a quasi-permanent threat of expropriation. In the Commission's opinion the consequences suffered by the applicants as a result of the expropriation permits were of a mere indirect and factual nature which had no legal effects on the applicants' civil rights and obligations.

In contrast to this, Mr. Frowein in his individual opinion, joined by Mr. Trechsel, Mr. Melchior and Mr. Sampaio, came to the conclusion that Article 6 § 1 (art. 6-1) was violated since the applicants had no possibility to have the legality of the granting or extension of the expropriation permits determined by a court. Mr. Frowein stated that the granting of the permit was only the first step but it determined the legality of the expropriation under Swedish law, which could not be attacked later before the courts. That meant that it was decisive for the determination of the legality.

If the very granting of the permits had been at stake, I would be inclined to agree with the views of the minority just cited that the issuing of the permits was decisive for the property rights of the applicants and that the Swedish legislation did not afford the remedies required by paragraph 1 of Article 6 (art. 6-1).

However, as the Court has stated (paragraph 58 of the judgment), the applicants did not dispute that the expropriation permits affecting them were lawful in themselves. They complained merely of the long duration of the permits and their extension and they maintained that the long time-limits in their cases were not in accordance with the 1917 Act. Thus, the only issue on which the applicants challenged the lawfulness of the measures taken in the present case was with regard to the duration of the expropriation permits. In my opinion, the determination of the procedural or factual matter of duration does not amount to a determination of civil rights; the mere fixing of time-limits for expropriation permits is in no way decisive for such rights. This is enough to exclude the application of Article 6 § 1 (art. 6-1) without going further into the question of the existence of a "contestation" (dispute).

However, I would like to consider that latter question as well. The 1917 Act contained no provisions either on the length of the period during which the expropriating authority or person had to institute judicial proceedings for the fixing of compensation for expropriation, or on the extension of the validity of expropriation permits. The Commission stated (paragraph 107 of the report) that the initial determination of these time-limits was apparently a matter within the discretion of the Government, and that it was a natural interpretation of the said Act that the Government had also the competence to prolong their original decisions regarding such permits. Therefore, the Commission considered as lawful both the time-limits of five and ten years fixed by the Government in their decisions of 31 July 1956 and 24 September 1971, as well as the three prolongations of the expropriation permits in the case of the Sporrong Estate (see also the joint dissenting opinion of certain of my colleagues and myself with regard to Article 1 of Protocol No. 1) (P1-1).

The contentions of the applicants and the Government on this point have been stated as follows by the Court (paragraph 67 of the judgment):

> "According to the Sporrong Estate and Mrs. Lönnroth, it had been the established practice since the entry into force of the Act for the normal time-limit for service of a summons to appear before the Real Estate Court to be one year. Since the time-limits in the present case were as long as five and ten years respectively, it was alleged that there was no legal basis for the original permits; the same was said to apply to the three extensions of the permit affecting the property of the Sporrong Estate.
>
> The respondent State replied that the issue and the extension of the permits were in conformity with Swedish law: it argued that since the Government were entitled to fix the period of validity of the original permit, they were also empowered, in the absence of any provision to the contrary, to extend it."

Under the heading "The applicability of Article 6 § 1 (art. 6-1)" the Court (paragraph 81 of the judgment) states "that it does not consider that it has to resolve this difference of opinion ... However, the existence and the serious nature of that difference demonstrate that an issue did arise under Article 6 § 1 (art. 6-1)". The Court then concludes that the applicants were entitled to have this question of domestic law determined by a tribunal.

I regret that I am unable to concur in this conclusion. Of course, it is a delicate task to decide whether or not a dispute is serious or "veritable" (see the Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 20, § 45), but it must in border-line cases, like this one, be faced. The arguments invoked by the Government concerning the interpretation of the 1917 Act correspond in my opinion to generally accepted norms of interpretation under Swedish law. Nor has the eminent representative of the applicants indicated any authority in support of his thesis that there was no legal basis for the original duration of the permits or for the three extensions. It is true that long-term permits - especially in Stockholm - have been strongly criticised, but no statement holding that

they would be unlawful or contrary to current Swedish legislation is known to me.

The most authentic presentation of the proposition that no maximum period for the original permits exists and that the Government, under both the 1917 and the 1972 Acts, were empowered to extend such periods, is probably to be found in the travaux préparatoires to the 1972 Act. The Commission ("expropriationsutredningen") which prepared the report forming the basis for the Bill which then became the 1972 Act stated (SOU 1969: 50 p. 141*) that under Article 5, paragraph 4, of the 1917 Act it is the Government that determine the period of time within which a summons to appear before a real estate court must be served. The Commission continued:

> "Normally a one-year period is fixed. There do not however exist any elucidatory statements during the preparatory work on how these periods ought to be determined. The 1908 Committee on Expropriation (1908 års expropriationskommité) only stated (p. 131) that the mere fact that a right to expropriate had been granted with respect to certain real estate caused an uncertainty for its owner which could always involve annoyance and also often lead to economic disadvantage. The Committee therefore was of the opinion that the right of expropriation should not hang over a property during an unlimited (emphasis added) period.

The Government has, in practice, been considered at liberty to prolong fixed time-limits. This has caused the period between the expropriation permit and the date of instituting court proceedings to be considerable in many cases, and it has not always been possible to avoid the inconveniences which the 1908 Committee pointed out."

The Commission further stated at p. 142:

> "In our previous investigation (SOU 1964:32), we proposed inter alia a certain modification of Article 5, paragraph 4 of the 1917 Act, in the main purporting to be a codification (emphasis added) of the competence of the Government to prolong the period within which the question of expropriation must be brought before a court."

The Commission continued at p. 143:

> "It would hardly be possible to prevent the party requesting an expropriation - even if a certain maximum period were prescribed in the law, possibly in combination with a prohibition against the Government prolonging that period in cases other than those where particularly strong reasons motivate a prolongation - from lodging a new request for expropriation at the expiration of the period fixed ... In view of these circumstances, one could hardly effectively protect the interests of the real estate owner on this point to a greater extent than is at present the case in the current legislation."

For these reasons, I do not consider that there was any arguable or real "contestation" (dispute) over "civil rights and obligations", and I am therefore of the opinion that Article 6 § 1 (art. 6-1) was not violated.

---

* Note by the Registry: Statens offentliga utredningar.

JOINT DISSENTING OPINION OF JUDGES PINHEIRO FARINHA, SIR VINCENT EVANS, MACDONALD, BERNHARDT AND GERSING WITH REGARD TO ARTICLE 6 § 1 (art. 6-1) OF THE CONVENTION

We regret that we cannot share the opinion of the majority of the Court that there has been a violation of Article 6 § 1 (art. 6-1) of the Convention in the present case.

Article 6 § 1 (art. 6-1) provides, inter alia, that in the determination of his civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The question is whether the applicants were entitled to have the legality of the decisions of the Swedish authorities in respect of their properties, particularly as regards the duration of the expropriation permits, determined by a tribunal meeting the requirements of this provision.

It is undeniable that the decisions of the Swedish authorities affected the applicants' rights as owners of property. Nevertheless, the question remains whether Article 6 § 1 (art. 6-1) requires that the relevant decisions could be challenged before a court.

The Court has decided that the concept of "civil rights" ("droits de caractère civil") in Article 6 § 1 (art. 6-1) must be given an autonomous meaning in the sense that it cannot be interpreted solely by reference to the domestic law of the respondent State, and has held that Article 6 § 1 (art. 6-1) applies where there is a "contestation" (dispute) the result of which is directly decisive of "civil rights" in a sense of private rights, but that a tenuous connection or remote consequences do not suffice (see, for instance, the judgment of 23 June 1981 in the case of Le Compte, Van Leuven and De Meyere, Series A no. 43, pp. 20-21, §§ 44-47).

We think that the jurisprudence developed by the Court in these respects needs further refinement. If Article 6 § 1 (art. 6-1) of the Convention were applied whenever private rights are affected by decisions taken in the public interest, this provision would contain a virtually unrestricted guarantee of judicial review of governmental and administrative acts. Such an interpretation does not, in our opinion, conform to the intention or the wording of Article 6 § 1 (art. 6-1), and it is incompatible with the legal situation in many States Party to the Convention.

The dividing line between disputes determinative of civil rights in the sense of Article 6 § 1 (art. 6-1) and those relating to acts to which this provision does not apply may sometimes be difficult to draw. We think that at least acts in the field of public or administrative law which are dominated by considerations of public interest and are determined principally by

considerations of policy are outside the intended scope of Article 6 § 1 (art. 6-1). These factors are present in the case here under consideration.

The expropriation permits were wholly governed by public law and considerations of public policy. They concerned the applicants not in their private capacity but as owners of property in a given area in the city of Stockholm. They were not directly determinative of private rights, but of the rights under public law of the city of Stockholm. Judicial review, at least of the lawfulness of the measures taken, might be desirable also in such cases, but it is not required by Article 6 § 1 (art. 6-1) of the Convention.

Similar considerations apply as regards the prohibitions on construction. These restrictions must be seen in the whole context and as part of the planning process and its inherent necessities.

For these reasons we come to the conclusion that Article 6 § 1 (art. 6-1) was not violated.

PARTLY DISSENTING OPINION OF JUDGE WALSH

I regret that I do not find myself fully in agreement with the reasoning or the conclusions of the majority of my colleagues in the judgment of the Court.

1. Article 1 of the First Protocol (P1-1) does not constitute a guarantee against all State activities which may affect the market value of property. Article 1 (P1-1) acknowledges the right to own private property and the right not to be deprived of it. It is clear from the provisions of Article 1 (P1-1) that it does not guarantee the right of private property to be an absolute one.

The provisions envisage (a) a deprivation in the public interest ("pour cause d'utilité publique") and (b) control of the use of property where such control is in "accordance with the general interest" ("conformément à l'intérêt général"). Thus it is clear that the Article (P1-1) does not accept the rights of private property as absolute. On the contrary it contemplates the private interest yielding to the public good to the extent that may prove to be necessary.

2. In the present case the applicants complain of the expropriation permits and also of the restriction on user.

So far as the expropriation permits are concerned the complaint relates to the adverse effect on market values of the intimations of future development. It is not challenged that the contemplated future development is in the public interest. But the purpose is not to deprive the applicants of any of their property rights. If a legitimate objective, namely the planning of the city of Stockholm, necessarily affects the values of some of the properties in that city which are affected by the planning that is but a natural incident of owning property in an area subject to planning. But it is very far removed from anything in the nature of confiscation. If and when the property is acquired compensation will be paid for what is being acquired. Justice does not require that compensation must be paid for profits which might have been gained if there was no development of the area. The "public interest" in the correct sense necessarily implies a just public interest. If the public interest in question is a just and legitimate interest then the necessary diminution of the private interest required to sustain that public interest cannot in itself be unjust.

3. It appears to me that the issue of the expropriation permits has been given a disproportionate importance. The reality of the situation is that once it is apparent that the future planning of the city of Stockholm will take a certain shape the sale value of any property likely to be affected by planning intentions or proposals will be influenced thereby. Therefore the issue of the permit cannot be treated as an act of expropriation or as an act equivalent to expropriation. At the most it is an intimation of possible or even probable future events. It is the possibilities, or probabilities, of such events which

influence the market - not the intimation of them. The Government permit in itself does not create any plan. In many countries local authorities often publish their development plans many years in advance of any step being taken to acquire any property even though it may be quite clear from the development plans that some property or properties will have to be acquired in whole or in part to carry out the proposed plan.

4. In the present case the complaint is based in effect upon the alleged loss of possible prospective profit available in a situation freed from the incidents of normal and legitimate town planning. Until expropriation actually takes place the applicants are free to deal with their property though admittedly in a market inhibited by the prospect of the probable future expropriation. However, this is normal in most areas of prospective planning. There is no evidence to indicate that the ultimate value of the compensation will be any smaller or less valuable relatively than the compensation which would have been payable if the expropriation had taken place soon after the issue of the permit by the Government. Any fall in value attributable to the existence of a city development plan should be the same in either event. It is an element not ordinarily affected by the effluxion of time. Unless the applicants are entitled to compensation for the very existence of a development plan they cannot claim to be victims of a breach of the first paragraph of Article 1 of the Protocol (P1-1). In my view the Article (P1-1) guarantees no such right.

5. While the restriction on user is undoubtedly linked to the proposed development it is a separate matter. It is commonplace for planning authorities to restrict the user of particular properties in the light of the requirements of a development plan. There is no guaranteed right to use property in any way the owner chooses. User may be restricted legitimately in the interests of the general good. The restrictions in the present cases are limited to the exigencies of the planning and there has been no evidence of any arbitrary restrictions. There has been no challenge to the legitimacy of the proposed development plan.

While Article 1 of the Protocol (P1-1) does not necessarily contemplate some compensation in every case of expropriation or of restriction of property rights for the "public" or "general interest" there has been no suggestion in the present cases that just compensation will not be payable in the event of expropriation.

6. In my view both paragraphs of Article 1 of the First Protocol (P1-1) are applicable to the present cases but in my opinion no breach of them has been established.

7. In my opinion there has been no breach of Article 17 and 18 (art. 17, art. 18) of the Convention.

8. I am also of opinion that there was no violation of Article 14 (art. 14). The discrimination envisaged by Article 14 (art. 14) is not confined to the

examples specified in the text of the Article (art. 14) and all forms of discrimination ejusdem generis are also prohibited.

The applicants have alleged that they were discriminated against in the sense that they fared worse than persons whose property was not affected by the proposed development. The choice of the applicants' properties was due to the requirements of the development plan and was not in any way referable to the identity of or to any characteristics of the applicants as envisaged by Article 14 (art. 14).

9. I agree with the judgment of the Court concerning Article 6 § 1 (art. 6-1) of the Convention as set out in paragraphs 78 to 87 inclusive of the Court's judgment.

10. For the reasons given by the Court I also agree that it is not necessary to examine the case under Article 13 (art. 13).

11. I also agree with the Court's decision concerning Article 50 (art. 50) as set out in paragraph 89 of the judgment.