

AS TO THE ADMISSIBILITY OF

Application No. 14083/88
by Knut Alfred ANDERSSON and others
against Sweden

The European Commission of Human Rights sitting in private
on 7 January 1991, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
E. BUSUTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
Sir Basil HALL
Mr. F. MARTINEZ RUIZ
Mrs. J. LIDDY
MM. J.-C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the
Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 1 July 1987
by Knut Alfred ANDERSSON and others against Sweden and registered
on 1 August 1988 under file No. 14083/88;

Having regard to the report provided for in Rule 47 of the
Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case, as submitted by the applicants, may be
summarised as follows.

The applicants, who are Swedish citizens, are set out in the
Annex. Before the Commission, they are represented by Mr. Per
Svensson, a lawyer practising in Sundsvall.

The applicants own a number of agricultural properties in the
area of Dala Järna. Following initiatives from the Agricultural
Committee (lantbruksnämnden) and the County Administrative Board
(länsstyrelsen) the applicants' properties have been the objects of a
redistribution of land under the Property Formation Act
(fastighetsbildningslagen).

On 9 April 1985 the Property Formation Authority (fastighets-
bildningsmyndigheten) in the County of Kopparberg gave permission to a
property reformation of an area covering some 10.000 hectares of
land.

Some of the applicants appealed to the Falu District Court
(tingsrätten) claiming that the permission be quashed or that their
properties be excluded from the future property formation. On
3 December 1985 the District Court rejected the appeal.

Some applicants appealed to the Svea Court of Appeal (Svea hovrätt) which rejected the appeal on 5 May 1986.

The Supreme Court (Högsta domstolen) refused leave to appeal on 10 December 1986.

The property reformation was ordered pursuant to Chapter 5 Sections 4 and 5 of the Property Formation Act. The provisions in the Act can be summarised as follows.

Property reformation involves the transfer of land from one property to another. Land which is being taken away from one property shall be compensated either in the form of other land or monetary compensation. Property reformation may take place on the condition that a more suitable division of properties or otherwise a more suitable usage of the land is obtained and the advantages outweighs the costs and inconveniences involved. The property reformation in the present case could under Chapter 5 Section 5 para. 2 of the Act not take place if the property owners which have a considerable interest in the matter more generally opposed the reformation and the reasons therefor were justified. When examining such an issue regard should in particular be had to the opinion of those who have the greatest interest in the reformation.

COMPLAINTS

The applicants allege a violation of Article 1 of Protocol No. 1 to the Convention on the ground that the permission to reform the properties results in land being taken away from them and given to other private subjects. This results in the big landowner becoming bigger and the small landowner becoming smaller. The applicants submit that the "public interest" in Article 1 cannot justify a compulsory redistribution of land between private individuals.

THE LAW

1. The Commission does not find it necessary to examine whether each of the applicants can claim to be a "victim" of a violation within the meaning of Article 25 (Art. 25) of the Convention and whether each applicant has complied with the condition in Article 26 (Art. 26) of the Convention as to the exhaustion of domestic remedies with regard to the procedure concerning the permission to the land redistribution.

2. The applicants allege a violation of Article 1 of Protocol No. 1 (P1-1) to the Convention which reads:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The applicants submit that land is being taken away from them and given to other private subjects and that Article 1 of Protocol No. 1 (P1-1) does not permit such a transfer of property between private subjects.

The Commission notes that the applicants are entitled to compensation, but that they have not informed the Commission of the

outcome on this point. Nor have they indicated the extent of the area of land of which they have been deprived.

As regards the notion of "public interest" in Article 1 of Protocol No. 1 (P1-1), the Court has stated as follows (cf. Eur. Court H.R., James and Others judgment of 21 February 1986, Series A no. 98, p. 32, para. 46):

"Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is 'in the public interest'. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment both of the existence of a problem of public concern warranting measures of deprivation of property and of the remedial action to be taken (see, *mutatis mutandis*, the Handyside judgment of 7 December 1976, Series A no. 24, p. 22, para. 48). Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation.

Furthermore, the notion of "public interest" is necessarily extensive. In particular, as the Commission noted, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues on which opinions within a democratic society may reasonably differ widely. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is 'in the public interest' unless that judgment be manifestly without reasonable foundation. In other words, although the Court cannot substitute its own assessment for that of the national authorities, it is bound to review the contested measures under Article 1 of Protocol No. 1 (P1-1) and, in so doing, to make an inquiry into the facts with reference to which the national authorities acted."

As regards the issue of whether Article 1 of Protocol No. 1 (P1-1) guarantees a right to compensation and the level of any such compensation, the Court has held as follows (cf. above-mentioned James and Others judgment, p. 36, para. 54):

"The first question that arises is whether the availability and amount of compensation are material considerations under the second sentence of the first paragraph of Article 1 (P1-1), the text of the provision being silent on the point. The Commission, with whom both the Government and the applicants agreed, read Article 1 (Art. 1) as in general impliedly requiring the payment of compensation as a necessary condition for the taking of property of anyone within the jurisdiction of a Contracting State.

Like the Commission, the Court observes that under the legal systems of the Contracting States, the taking of property in the public interest without payment of compensation is treated as justifiable only in exceptional circumstances not relevant for present purposes. As far as Article 1 is concerned, the protection of the right of property it affords would be largely illusory and ineffective in the absence of any equivalent principle. Clearly, compensation terms are material to the assessment whether the contested legislation respects a fair balance between the various interests at stake and, notably, whether it does not impose a disproportionate burden on the applicants (see the above-mentioned Sporrong and Lönnroth judgment, Series A no. 52, pp. 26 and 28, paras. 69 and 73).

The Court further accepts the Commission's conclusion as to the standard of compensation: the taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference which could not be considered justifiable under Article 1 (Art. 1). Article 1 (Art. 1) does not, however, guarantee a right to full compensation in all circumstances. Legitimate objectives of "public interest", such as pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value. Furthermore, the Court's power of review is limited to ascertaining whether the choice of compensation terms falls outside the State's wide margin of appreciation in this domain (see paragraph 46 above)."

It follows from the Court's judgment in the James and Others case that a transfer of property from one private subject to another private subject may as such be compatible with the "public interest". The Commission also refers to the Court's Erkner and Hofauer judgment of 23 April 1987 (Eur. Court H.R., Series A no. 117, p. 78, para. 131) and to its decision on admissibility in the case of H. v. Sweden (No. 11417/85, Dec. 9.10.85, not published) which concerned redistribution of land to other private subjects.

In the present case, the Commission recalls that the redistribution of land was decided in order to obtain a more suitable division of properties or otherwise a more suitable usage of the land.

On the basis of the above considerations and noting that the applicants have not provided any information on the final outcome of the redistribution of land, the Commission finds that the material submitted by the applicants does not disclose any appearance of a violation of Article 1 of Protocol No. 1 (P1-1).

It follows that the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)

ANNEX

1. Knut Alfred Andersson, born in 1913
2. The Estate of Ilbäcks Herman Johansson
3. Hilmer Hermansson
4. Ragnar Hermansson, born in 1920
5. Ingvar Hermansson, born in 1923
6. Henry Hermansson
7. Christina Granberg, born in 1932
8. Märta Olars, born in 1920
9. Hol Ernst Persson, born in 1913
10. The Estates of Börs Erik Eriksson and Börs Katrina Eriksson
11. Ester Eriksson
12. Bernhard Eriksson
13. Britta Eriksson
14. Edvin Eriksson
15. Gunvor Andersson, born in 1939

16. Jöns Axel Nilsson, born in 1907
17. Ingrid Einarsson, born in 1942
18. Berta Larsson, born in 1914
19. The Estate of Börs Johan Mattson
20. Ingvar Johansson, born in 1914
21. Erik Johansson, born in 1919
22. Sven Ingvarsson, born in 1944
23. Kjell Ingvarsson, born in 1961
24. The Estate of Hans Einar Eriksson
25. Rut Lilja, born in 1930
26. Gustav Einarsson, born in 1936
27. Vallner Hultgren, born in 1924
28. Ingrid Hultgren, born in 1932
29. Hildur Jonsson, born in 1926
30. Mats Hultgren, born in 1952
31. The Estate of Mört Greta Andersson
32. Helmer Nilsson
33. Greta Nilsson
34. Märta Klang