CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 64712/01
by Ulf ANDERSSON and Lena ANDERSSON
against Sweden

The European Court of Human Rights (Fourth Section), sitting on 16 March 2004 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 4 December 2000,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Ulf Andersson and Mrs Lena Andersson, are Swedish nationals, who were born in 1947 and 1952 respectively and live in Jönköping. They are represented before the Court by Mr B. Rosén, a lawyer practising in Götene.

A. The circumstances of the case

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

In 1990 the applicants purchased a property in Vara for the purpose of pig breeding. The costs for the purchase and reconstruction amounted to 2.1 million Swedish *kronor* (SEK).

In order to devote their time to the pig breeding, the applicants entered an agreement, under the Ordinance on Income, Transformation and Construction Aid to Farmers (*Förordning om inkomst-, omställnings- och anläggningsstöd till jordbrukare m.m.*, 1990:941; hereinafter "the Ordinance"), on the transformation of their cultivable land. The applicants were accordingly bound to take certain measures and were not allowed to cultivate the land for the coming five years. In return, they received compensation, a so-called transformation aid (*omställningsstöd*), amounting to SEK 463,220 from the Swedish State.

In 1991 the applicants' business encountered problems as the pigs had caught a contagious disease. By the end of the year they established that, due to the economic hardship, the property had to be sold.

Simultaneously, in the summer of 1991, the Swedish State decided to apply for membership of the European Union.

On 22 February 1993 the property was sold for SEK 1.6 million. However, the new owner did not refrain from cultivating the land in accordance with the agreement the applicants had previously concluded with the State.

In view of the fact that the applicants had not kept their part of the agreement – not to cultivate the land for five years – the Ordinance provided that the entire transformation aid granted should be returned to the State. The applicant refunded 3/5 of the aid but refused to refund the aid for the first two years during which incontestably no cultivation had taken place. The Swedish Board of Agriculture (*Statens Jordbruksverk*, hereinafter "the Board") did not accept the proposed accord and summoned the applicants before the District Court (*tingsrätten*) of Jönköping in order to get the entire aid refunded.

On 13 November 1994, parallel to these proceedings, the Swedish people voted in favour of membership of the European Union.

Before the District Court, the Board explained that the agreement concluded between the Board and the applicants was the result of a political wish to reduce the production of certain crops which were subjected to price regulation. Certain farmers had therefore been offered the opportunity to transform their land in return for compensation by way of transformation aid. The plan was that, by 30 June 1996, the land should be definitely transformed for new purposes. The aid was granted as a loan which was gradually written off. According to the Ordinance, transformation aid should be refunded entirely if land was transferred to a new owner unless the new owner took over the transformation agreement.

The applicants argued that, when they entered the agreement, its terms appeared economically equivalent to continuing with the cultivation of the land. Since they wished to focus on pig breeding, it appeared advantageous to enter the agreement. However, their animals became ill and, despite their efforts to save their business, they were forced to sell the property. They were not able to find a buyer who would accept to take over the conditions of the agreement and were thus forced to sell without this condition.

Furthermore, the applicants maintained that the situation had changed when Sweden applied for membership with the European Union. The application implied that Sweden would adhere to the agricultural policies of the European Union which disturbed the equivalence between land subject to a transformation agreement and land which was not so subject. The condition under the Ordinance that the entire aid should be refunded was therefore unreasonable.

On 19 December 1994 the District Court found in favour of the Board and thus ordered the applicants to pay the remaining parts of the transformation aid plus interest.

The District Court stated that only if it was clear that the applicants' difficulties to sell their property was caused by the change of agricultural policies could the condition to refund the entire aid be adjusted. According to witnesses, it had been difficult to sell property subject to a transformation agreement ever since the transformation programme had been implemented. The District Court concluded that a clear causality between the changes in agricultural policy and the difficulties in selling the property had not been shown.

The applicants appealed against the District Court's judgment. After re-hearing one of the witnesses, the Göta Court of Appeal (*Göta hovrätt*), on 19 February 1996, upheld the District Court's judgment. It shared the first instance's assessment that it had not been shown that the difficulties in selling the property were a consequence of the changed agricultural policy.

On 15 March 1996 the applicants appealed to the Supreme Court (*Högsta domstolen*). They maintained and developed their previous arguments. They also argued that the Court of Appeal had misunderstood their claims since its judgment stated that the applicants had agreed to refund 40% of the aid

corresponding to the amounts granted for the two first years. The correct circumstances were that the applicants agreed to pay 60% of the aid, corresponding to the three years when the agreement had not been complied with. This amount was not disputed and had already been refunded.

The applicants further argued that, according to the new rules, farmers wishing to withdraw from the agreement could do so in the fourth or fifth year of the agreement. In that case, they only had to refund aid for the remaining period. Thus, the only persons caught in between and suffering from the changes were those who for some reason were obliged to sell their property shortly after the Swedish application to the European Union. The applicants had tried, by using two different real-estate agents, to sell their property with the transformation condition. Only after a considerable time had elapsed, had they managed to sell it and then without the transformation agreement being respected. There could be no doubt that the Swedish application to the European Union was the reason for their difficulties to sell the property.

On 7 July 2000 the Supreme Court refused leave to appeal.

B. Relevant domestic law

The transformation agreement between the applicants and the Board was governed by the Ordinance. It provided that the transformation aid was given as a loan which was written off during the transformation period (section 1). The relevant period was 1 July 1991 to 20 June 1996 (section 2). It appears from section 18 of the Regulation of the Swedish Board of Agriculture (*Statens Jordbruksverks föreskrifter*, SJVFS 1991:5, reprinted in SJVFS 2000:89) that the transformation aid loan was to be written off on a yearly basis (the first year one-fifth of the loan and the second year one-fourth, etc.)

If land for which transformation aid had been granted was transmitted to a new user, the amount granted in aid was to be refunded unless the aiding authority agreed that the new user could take over the responsibility for the transformation. Moreover, if it was considered unreasonable to request a refund of the entire amount, the Board could reduce the amount (section 20 of the Ordinance).

A farmer taking part in the transformation program could withdraw before the termination of the transformation period if he wanted to apply for allowances under regulations from the European Communities. In that case, he would have to pay back the transformation aid corresponding to the remaining period of the transformation programme. Such a withdrawal could be made during the last two years of the transformation period (section 20 a, which entered into force in its current version on 20 September 1995).

COMPLAINTS

1. The applicants complain under Article 1 of Protocol No. 1 to the Convention that shortly after the State, represented by the Swedish Board of Agriculture, entered into the agreement with the applicants, the State unilaterally changed the conditions for cultivating land by applying for membership with the European Union. Since the applicants were bound by the agreement, this had devastating consequences for them. The Board could have remedied this by reducing the refundable amount but chose not to. A few years later, the State assumed its responsibility for its actions and allowed farmers who had entered into the agreement to withdraw from it.

2. The applicants also complain that the Supreme Court did not afford them a fair trial under Article 6 of the Convention. They maintain that the Supreme Court did not grant leave to appeal in spite of the fact that the Court of Appeal's judgment contained factual errors revealing that it had not understood the case. Furthermore, the Supreme Court took more than four years to finally decide that it would not examine the case.

THE LAW

1. The applicants complain that the State has acted contrary to Article 1 of Protocol No. 1 to the Convention, 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."

The Court reiterates that this provision comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. These rules are not "distinct" in the sense of being unconnected: the second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid

down in the first rule (see, for example, *Case of the former King of Greece and others v. Greece* [GC], no. 25701/94, § 50, ECHR 2000-XII).

The means employed in any interference with the protection of property, regardless of whether it falls under the above-mentioned first, second or third rule, must be proportional to the aims sought to be realised. In other words, a fair balance has to be struck between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights. Furthermore, in areas of social, financial and economic policy, national authorities enjoy a certain margin of appreciation in implementation of laws regulating property and contractual relationships (see *Stretch v. the United Kingdom*, no. 44277/98, 24 June 2003, § 25).

It is the Court's understanding that, in the present case, the applicants only complain about the refunding of the aid for the first two years of the agreement. It appears that, by the time of the sale of the property, the first two years of the loan had been written off. It could thus be argued that this part of the aid constituted the applicants' possession within the meaning of Article 1 of Protocol No. 1 and that the requirement to refund amounted to an interference with their right to property. However, the Court does not find it necessary to decide this question since, in any event, the complaint under this provision is manifestly ill-founded for the following reasons.

The Court notes that it is not disputed that the State was entitled to request the refunding of the entire aid granted if the agreement was not complied with. It is furthermore not disputed that the applicants did not in fact comply with the agreement. However, they argue that the reason why they could not comply was the State's change of agricultural policies. The domestic courts did not appear to contest that the State's application for membership with the European Union constituted a change of agricultural policies. However, the domestic courts found that it had not been shown that this change of policies had affected the applicants' situation in the way they claimed.

In this context, the Court observes that the domestic authorities are in principle better placed than an international court to evaluate domestic needs and conditions. When assessing the reasons given by the domestic courts, the Court observes that the proceedings were adversarial and certain witnesses were heard. On the material presented before them, they came to the conclusion that it had not been shown that the Swedish State's application, in 1991, for membership of the European Union had affected the applicants in the way they claimed. The Court sees no reason to depart from this assessment and is satisfied that it did not go beyond the margin of appreciation attributed to the domestic courts. Therefore, the Court does not find that there was a disproportionate interference with the applicants' right to property or that an excessive burden was placed on them.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicants complain under Article 6 of the Convention that the Supreme Court did not grant leave to appeal and that the proceedings before it were excessively lengthy.

Article 6 of the Convention reads in relevant parts as follows.

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

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaint under Article 6 of the Convention;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President