AS TO THE ADMISSIBILITY OF

Application No. 37588/97
by Anna-Lisa ASPLUND
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 9 September 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
D. ŠVÁBY
P. LORENZEN
E. BIELIŪNAS
E.A. ALKEMA
A. ARABADJIEV

Ms M.-T. SCHOEPFER, Secretary to the Chamber

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

Having regard to the application introduced on 22 July 1996 by Anna-Lisa ASPLUND against Sweden and registered on 1 September 1997 under file No. 37588/97;

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 applicant, a Swedish citizen born in 1921, is residing in Stockholm.

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

The applicant rents a four-room flat with a living space of 113 m□. On 23 November 1994, the landlord - in accordance with Chapter 12, Section 54 a of the Real Estate Code (Jordabalken) - gave the applicant notice of his intention to raise her rent with 5 per cent as from 1 February 1995. The increase was later reduced to 2.5 per cent. The applicant opposed the new rent and, in order to assess whether the requested rent could be considered reasonable or not, she asked for some comparative information concerning three other flats in the same building, i.e. the flats belonging to A (179 m□), Z (133 m□) and L (72 m□). The requested information concerned, inter alia, the size of the flats and the rent for 1991 and 1993. The landlord, however, refused to provide the requested information to the applicant. As the applicant and the landlord failed to agree on the new rent, the landlord subsequently brought the dispute before the Rent Review Board (Hyresnämnden) of Stockholm, claiming that the requested rent be confirmed by the Board. Before the Rent Review Board the applicant maintained that the Board should acquire the comparative information which she had been denied by the landlord. She also demanded an inspection of Z:s flat.

On 4 October 1995 the Rent Review Board rejected the applicant's claims regarding comparative information and an inspection of Z:s flat and decided in favour of the landlord. The Board stated, inter alia, the following:

(Translation)

"In the event of a dispute between the landlord and the tenant concerning the size of the rent, Chapter 12, Section 55 of the Real Estate Code provides that the rent shall be fixed at a reasonable amount. In this respect, the rent cannot be considered reasonable if it is obviously higher than that of flats which in view of the utility value [bruksvärdet] can be considered equivalent.

...

The Rent Review Board finds it obvious that the information requested by [the applicant] is of no importance in determining the utility value of her flat. Therefore, her request shall be rejected. Furthermore, the Rent Review Board finds it obvious that an inspection of the other flats in the building is unnecessary in the matter. Thus, [the applicant's] request for an inspection shall be rejected. ...

Neither of the parties has adduced any further comparative information or requested an inspection of the applicant's flat. Thus, having regard to its general knowledge of the rental situation in the relevant area, the Rent Review Board has to base its decision on a general and reasonable assessment.

In view of the particular circumstances in the case, the Rent Review Board finds that the rent requested by the landlord is reasonable and shall be accepted. The Rent

Review Board further considers that the new rent shall apply from 1 February 1995, as requested by the landlord ..."

The applicant appealed against the Rent Review Board's decision to the Svea Court of Appeal (Svea Hovrätt). She maintained her claims for comparative information and an inspection of Z:s apartment. Furthermore, she questioned the Board's decision to apply the new rent from 1 February 1995. Moreover, she demanded an account concerning her negotiation compensation (förhandlingsersättning) which - according to Chapter 12, Section 55, Subsection 4 of the Real Estate Code - should be subtracted from her rent. Finally, the applicant requested that the landlord's and the Board's application of relevant law be examined by the appellate court.

On 23 January 1996 the Court of Appeal dismissed the applicant's claims concerning the negotiation compensation and an examination of the landlord's and the Board's application of relevant law. Furthermore, the court rejected the remainder of the appeal. The court stated the following reasons:

(Translation)

"When determining the utility value of [the applicant's] flat, the rent shall be compared with the rent of equivalent flats of similar size. [Z:s] flat is too big in relation to [the applicant's] flat for a comparison. Thus, her request for an inspection shall be rejected.

It is only the rents at the relevant time which are of relevance for a determination of the utility value. Therefore, the comparative information that [the applicant] has requested is of no importance. Hence, her request to be given this information shall be rejected.

The Court of Appeal concurs with the Rent Review Board's opinion that the requested rent is reasonable and that there are reasons to let the new rent apply as from 1 February 1995. Thus, this part of the appeal shall be rejected."

No appeal lay against the Court of Appeal's decision.

Later, the applicant has opposed rent increases for 1996 and 1997. Consequently, the fixing of the rent regarding these years has also been brought before the Rent Review Board and the Court of Appeal. As regards the rent increase for 1996 the proceedings have been substantially identical to the proceedings mentioned above, i.e. the applicant's claims for comparative information regarding three flats and an inspection of Z:s flat have been dismissed and the rent increase requested by the landlord has been confirmed. As regards the following year (1997), the applicant's claims are identical to those of the preceding years. However, these proceedings are still pending before the Court of Appeal.

COMPLAINTS

1. The applicant complains that the Rent Review Board is not an independent and impartial tribunal. She invokes Article 6 para. 1 of the Convention.

2. Furthermore, also invoking Article 6 para. 1 of the Convention, the applicant complains that she was denied a fair hearing as her request for having certain comparative information added to the case and an inspection of a specific flat were rejected. Moreover, she alleges that the Court of Appeal decided the case in an arbitrary manner as it failed to give reasons for its decisions.

3. Invoking Article 13 of the Convention, the applicant further complains that she did not have access to an effective remedy in regard to the above complaints.

4. The applicant also complains that she has been discriminated against. In this respect she invokes Articles 14 and 17 of the Convention.

THE LAW

1. The applicant alleges that the Rent Review Board is not an independent and impartial tribunal. She invokes Article 6 para. 1 of the Convention which, in relevant parts, reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law."

The Commission recalls that Article 6 para. 1 of the Convention does not oblige a State to submit disputes over civil rights and obligations to a judicial procedure which at each stage conforms with the requirements of that provision. It may be sufficient that administrative or professional bodies determine the dispute at first instance, provided that their decisions are subject to a subsequent review by a judicial procedure which satisfies the conditions of Article 6 (cf. Eur. Court HR, Le Compte, Van Leuven and De Meyere v. Belgium judgment of 23 June 1981, Series A no. 43, p. 22, para. 51, and Özturk v. Germany judgment of 21 February 1984, Series A no. 73, p. 21, para. 56).

The final decision in the applicant's case was taken by the Court of Appeal. There is nothing to suggest, nor has it been alleged, that this court did not meet the requirements of independence and impartiality when it decided the case in question.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The applicant complains, also under Article 6 para. 1 of the Convention, that the proceedings in the case were unfair. In this respect she submits that she was not allowed to adduce certain evidence, i.e. an inspection of a specific flat and some comparative information concerning, inter alia, the rent of three other flats. Moreover, she alleges that the court failed to give reasons for its decisions.

The Commission recalls that, as a general rule, it is for the national courts to assess the evidence before them, as well as the relevance of the evidence a party in a case seeks to adduce (No. 25096/94, Dec. 6.9.95, D.R. 82, p. 117).

The Commission notes that the Court of Appeal, by decision of 23 January 1996, dismissed the applicant's request for further evidence, finding that neither the comparative information nor the requested inspection would have had any relevance to the outcome of the case. In this respect, the Commission recalls that the dispute settled by the appellate court's decision concerned the fixing of the applicant's rent for 1995 while the comparative rent information concerned 1991 and 1993. Moreover, the requested inspection concerned a considerably larger flat than the applicant's.

In these circumstances, the Commission finds no reason to conclude that the court's refusal to take further evidence was incompatible with the requirements of Article 6 of the Convention.

As regards the applicant's complaint that the Court of Appeal failed to give reasons for its decision, the Commission acknowledges that the absence of reasons in a court decision might raise an issue as to the fairness of the proceedings (cf. No. 24949/94, Dec. 3.12.96, D.R. 87-A, p. 68).

The Commission notes that, in the present case, the Court of Appeal has fully examined the claims that were put forward and given its reasons for either dismissing or rejecting them.

In so far as the applicant's complaint covers also the proceedings concerning the rent for 1996 and 1997, the Commission notes that the decisions taken in those proceedings have been substantially identical to the decisions concerning the 1995 rent.

In view of the above, the Commission concludes that the facts submitted do not disclose any appearance of a violation of the applicant's right to a fair hearing under Article 6 para. 1 of the Convention.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

3. The applicant further complains that she did not have an effective remedy. In this respect, she invokes Article 13 of the Convention, which reads as follows:

"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."

The Commission notes that the final decision concerning the applicant's rent has been taken by the Court of Appeal which, as has been noted above, has fully examined the claims made by the applicant.

It follows that this part of the application is also manifestly ill-founded within the meaning of article 27 para. 2 of the Convention.

4. Finally, invoking Articles 14 and 17 of the Convention, the applicant claims that she has been discriminated against.

The Commission finds that this complaint is as a whole unsubstantiated and does not disclose any appearance of a violation of the Articles invoked.

It follows that this part of the application is also manifestly ill-founded within the meaning of article 27 para. 2 of the Convention.

For these reasons the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE

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| M.-T. SCHOEPFER | J.-G. GEUS |
| Secretary | President |
| to the Second Chamber | of the Second Chamber |