AS TO THE ADMISSIBILITY OF

Application No. 24191/94
by Lars-Göran BERGLUND and Others
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 19 October 1995, the following members being present:

MM. G. JÖRUNDSSON, Acting President
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN

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 19 May 1994 by Lars-Göran Berglund and Others against Sweden and registered on 25 May 1994 under file No. 24191/94;

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 26 applicants (see Annex I) are Swedish citizens and reside at Sölvesborg. Before the Commission they are represented by Staffan Michelson, a lawyer practising in Stockholm.

A. The particular circumstances of the case

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

In 1988, the road administrations (vägförvaltningarna) of the Counties of Blekinge and Kristianstad adopted a working-plan (arbetsplan) for the reconstruction of a highway - the E22 - and some other roads outside of Sölvesborg. For several years before the adoption of the plan, the administrations had considered alternative proposals and had taken into account, inter alia, environmental effects, construction costs, traffic safety and accessibility before deciding on the location of the highway. After its adoption, the working-plan was publicised and the public was given an opportunity to comment on the project. Several authorities, organisations and individuals, including some of the applicants, submitted their observations. On 8 June 1989 the respective County Administrative Boards (länsstyrelserna) submitted the working-plan to the National Road Administration (Vägverket) for approval in accordance with Section 18 of the Public Roads Act (Väglagen, 1971:948).

By decision of 2 July 1990, the National Road Administration

approved the working-plan. It considered that the proposed location of the highway was the most appropriate alternative with respect to the effects on land, waters and the environment in general. It further found that the proposed reconstructions achieved the purpose of the roads with the least possible interference and inconvenience and without unreasonable costs, as required by Section 13 of the Public Roads Act.

Several people, among them some of the applicants, appealed to the Government, claiming that the working-plan was unlawful under, inter alia, the Public Roads Act and the Environmental Protection Act (Miljöskyddslagen, 1969:387) and that alternative locations of the highway, including the one advocated by the majority of the appellants, had not been sufficiently investigated.

On 2 May 1991 the Government, agreeing with the findings of the National Road Administration, upheld its decision. The applicants did not apply to the Supreme Administrative Court for a review of the Government's decison under the Act on Judicial Review of Certain Administrative Decisions (Lagen om rättsprövning av vissa förvaltningsbeslut, 1988:205 - "the 1988 Act").

47 inhabitants of Sölvesborg, including all the applicants, later brought an action against the State through the National Road Administration in the Real Estate Court (Fastighetsdomstolen) of Karlskrona, requesting the Court to prohibit further construction work. They contended that the road project was unlawful under Section 4 of the Environmental Protection Act, as, allegedly, it did not meet the requirement of achieving its purpose with the least possible interference and inconvenience and without unreasonable costs. Instead, the plaintiffs suggested an alternative location of the highway which, they claimed, would be more appropriate.

In reply, the National Road Administration claimed that the Government's decision of 2 May 1991 prevented an examination by the Real Estate Court, for which reason the case should be dismissed. On 17 February 1992 the Court rejected this claim. No appeal was made against this decision.

With respect to the merits of the case, the Court delivered its judgment on 18 June 1993. It rejected the plaintiff's action, finding that a comparison between the two remaining road location alternatives showed that the costs were equivalent but that the alternative approved by the National Road Administration caused less interference and inconvenience.

The plaintiffs appealed to the Court of Appeal (Hovrätten) of Skåne and Blekinge. They further requested that the Court, as an interim measure, should prohibit further construction work while the case was pending. On 9 September 1993 the Court rejected this request, as the plaintiffs had not shown probable cause for their appeal to succeed.

After the plaintiffs had appealed against the Court of Appeal's decision, the Supreme Court (Högsta domstolen), on 11 October 1993, granted leave to appeal with respect to the question whether a working-plan approved under the Public Roads Act hindered a court examination of the road project under Section 4 of the Environmental Protection Act. By decision of 30 November 1993, the Supreme Court found that the approved working-plan hindered such an examination. The Court, inter alia, noted that the examination carried out by the National Road Administration and the Government under Section 13 of the Public Roads Act included an assessment of the environmental effects which, to a great extent, corresponded to an examination under the Environmental Protection Act.

As the Supreme Court's decision excluded a further examination

of the plaintiffs' case, it was later withdrawn.

B. Relevant domestic law

Provisions on the construction of public roads are contained in the Public Roads Act. According to Section 15, a working-plan for the road construction shall be drawn up. The plan shall include, inter alia, a description of the environmental effects of the construction (miljökonsekvensbeskrivning). In this respect, Section 13 is of importance. It states the following:

(translation)

> "When constructing a road it shall be ensured that the road is located and designed so as to achieve the purpose of the road with the least possible interference and inconvenience and without unreasonable costs."

A similar provision is to be found in Section 4 of the Environmental Protection Act. It reads as follows:

(translation)

> "Undertakings which are hazardous to the environment should be located so that its purpose can be achieved with the least possible interference and inconvenience and without unreasonable costs."

Section 1 of the Environmental Protection Act defines which undertakings are considered as hazardous to the environment. Road traffic is covered by that definition.

Under Section 34 of the Environmental Protection Act, an individual may bring a claim in the Real Estate Court that a certain undertaking should be prohibited due to its hazardous nature. The Real Estate Court's decisions and judgments may be appealed to the Court of Appeal and, with leave to appeal, the Supreme Court.

Section 18 of the Public Roads Act provides that a working-plan concerning the construction of a road is approved by the National Road Administration. Its decisions may be appealed to the Government.

Thus, unlike the Environmental Protection Act, the Public Roads Act does not contain any provision providing for the possibility to appeal to a court. However, under the 1988 Act, the Supreme Administrative Court (Regeringsrätten) has jurisdiction in certain administrative cases. Section 1 of this Act provides the following:

(translation)

> "At the request of a private party in such administrative proceedings before the Government or an administrative authority as pertain to any situation envisaged by Chapter 8, Sections 2 and 3, of the Instrument of Government, the Supreme Administrative Court shall review whether the decision in the case is contrary to any legal rule in a manner indicated by the requesting party or otherwise apparent from the circumstances of the case.
>
> Judicial review may pertain only to such decisions as
> - imply exercise of public authority in relation to a private subject,
> - may otherwise be reviewed by a court only following a request for relief for substantive defects, and
> - which could not otherwise be subject to review."

According to the travaux préparatoires to the Act, the Supreme

Administrative Court's examination should concentrate on the lawfulness of the challenged decisions, but the Court also has the power to re-examine the facts upon which the application of the law has been based. Furthermore, the Court should examine whether the challenged decision is compatible with the principles of objectivity, impartiality and equality before the law. In addition, it should examine whether there have been any procedural errors which might have affected the outcome of the case. If the relevant law leaves a certain discretion to the deciding authority to make a choice between different options, all of which must be considered lawful, the Court should examine whether the challenged decision falls within that discretion (cf. Government Bill 1987/88:69, pp. 23-25 and 234). When examining the Government Bill, the Council of Legislation (Lagrådet) stated that the examination of the lawfulness of an administrative decision in some cases must include an assessment of whether the prescribed balance of interests has been appropriately observed.

The Supreme Administrative Court has, under the 1988 Act, reviewed several Government decisions concerning the approval of working-plans for road constructions (cf., e.g., Regeringsrättens årsbok, RÅ 1990 not 176 and RÅ 1993 not 168).

COMPLAINTS

1. The applicants claim that, as a consequence of the Supreme Court's decision, they were denied access to court. They invoke Article 6 para. 1 of the Convention.

2. Further under Article 6 para. 1 the applicants contend that the Supreme Court was not impartial when taking its decision of 30 November 1993, as it promoted the interests of the State.

3. The applicants also claim that the road project at issue violated their right to respect for their private life under Article 8 of the Convention and their property rights under Article 1 of Protocol No. 1 to the Convention.

4. The applicants finally complain, under Article 13 of the Convention, that, as a consequence of the Supreme Court decision, they had no remedy against the judgment of the Real Estate Court.

THE LAW

1. The applicants complain that they were denied access to court. They invoke Article 6 para. 1 (Art. 6-1) 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 ... hearing ... by an independent and impartial tribunal ..."

The Commission recalls that the applicants, in the Real Estate Court, claimed that the road project was unlawful under Section 4 of the Environmental Protection Act. The Commission further recalls that the Supreme Court, when it later dismissed the case, stated that the examination carried out by the National Road Administration and the Government under Section 13 of the Public Roads Act included an assessment of the environmental effects which, to a great extent, corresponded to an examination under the Environmental Protection Act.

The Commission notes that the wordings of the relevant provisions - Section 13 of the Public Roads Act and Section 4 of the Environmental Protection Act - are almost identical. Having regard to this and to the above statement of the Supreme Court, the Commission considers that, in so far as the proceedings involved a determination of the applicants' civil rights, their right of access to court under Article 6 para. 1 (Art. 6-1) of the Convention was sufficiently

guaranteed if they were able to obtain an examination by a court of the Government's decision of 2 May 1991.

In this respect, the Commission notes that the Supreme Administrative Court, under the 1988 Act, has reviewed several Government decisions concerning the approval of working-plans for road constructions. It was thus possible for the applicants to obtain such a review by the Supreme Administrative Court. In assessing whether this review would have fulfilled the requirements of Article 6 para. 1 (Art. 6-1) of the Convention, the Commission notes that the applicants claimed that the road construction was unlawful, as it did not meet the requirement of achieving its purpose with the least possible interference and inconvenience and without unreasonable costs. This claim could have been examined by the Supreme Administrative Court under Section 13 of the Public Roads Act. Thus, confining itself as far as possible to examining the question raised by the case before it, the Commission finds no evidence in this case which would lead to the conclusion that the Supreme Administrative Court, in examining an application by the applicants, would have had to decline jurisdiction (cf. No. 18660/91, Bengtsson v. Sweden, Dec. 7.12.94, D.R. 79-A, p. 11).

In these circumstances the Commission finds that the applicants could have obtained a court determination fulfilling the requirements of Article 6 para. 1 (Art. 6-1) of the Convention.

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

2. Further under Article 6 para. 1 (Art. 6-1) the applicants contend that the Supreme Court was not impartial when taking its decision of 30 November 1993, as it promoted the interests of the State. In this respect, the applicants argue that the Court examined a question which neither party had submitted to it and which had been finally decided by the Real Estate Court on 17 February 1992. Furthermore, the Court allegedly disregarded the wording of the applicable provisions of the Environmental Protection Act and instead based its decision on the travaux préparatoires to the Act.

The Commission, however, finds that the applicants' submissions fail to show any partiality on the part of the Supreme Court.

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

3. The applicants also claim that the road project at issue violated their right to respect for their private life under Article 8 (Art. 8) of the Convention and their property rights under Article 1 of Protocol No. 1 (P1-1) to the Convention.

The Commission is, however, not required to decide whether or not the facts alleged by the applicants disclose any appearance of a violation of the Article invoked as, under Article 26 (Art. 26) of the Convention, it "may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ...". In this respect, the Commission recalls its above conclusion that the applicants could have obtained a court determination of their case by applying to the Supreme Administrative Court for a review, under the 1988 Act, of the Government's decision of 2 May 1991. The applicants, however, failed to lodge such an application. Furthermore, the Commission finds that an examination of the complaint does not disclose the existence of any special circumstance which might have absolved the applicants from exhausting the remedies at their disposal.

It follows that this part of the application must be rejected for non-exhaustion of domestic remedies under Article 27 para. 3 (Art. 27-3) of the Convention.

4. The applicants finally complain that, as a consequence of the Supreme Court decision, they had no remedy against the judgment of the Real Estate Court, which concerned their property rights and their right to respect for their private life. They invoke Article 13 (Art. 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 applicants have not claimed that the Real Estate Court's judgment, as such, violated any of the rights and freedoms guaranteed by the Convention. With regard to possible violations of the applicants' property rights and their right to respect for their private life, the Commission recalls its above conclusion that the applicants could have obtained a court determination of their case. Thus, in this respect, they had an effective remedy under Article 13 (Art. 13). The Commission therefore considers that the applicants' submissions fail to substantiate the present complaint.

It follows that this part of 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 Second Chamber	Acting President of the Second Chamber
(M.-T. SCHOEPFER)	(G. JÖRUNDSSON)

ANNEX

The applicants are:

1. Mr. Lars-Göran Berglund;
2. Ms. Siv Berndsson;
3. Mr. Uno Berntsson;
4. Mr. Helge Bjerstedt;
5. Ms. Ann-Britt Borgström;
6. Ms. Margrethe Brynolf;
7. Mr. Peter Erlandsson;
8. Ms. Acki Erlandsson;
9. Mr. Bengt Fröberg;
10. Ms. Margita Fröberg;
11. Ms. Karin Greek;
12. Mr. Börje Hector;

13. Mr. Bo Johansson;
14. Mr. Bengt-Åke Karlsson;
15. Mr. Bengt-Göran Nilsson;
16. Mr. Niclas Nilsson;
17. Mr. Ingvar Persson;
18. Ms. Kerstin Persson;
19. Mr. Raoul Persson;
20. Ms. Margareta Kulldorf;
21. Mr. Bengt Stensson;
22. Mr. Willy Söderdahl;
23. Ms. Viveka Söderdahl;
24. Ms. Ingela Söderholm;
25. Mr. Peter Peters;
26. Mr. Göran Warnefors.