AS TO THE ADMISSIBILITY OF

Application No. 28223/95
by Lennart BERNSTRÖM
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 15 January 1997, the following members being present:

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

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 June 1995 by Lennart Bernström against Sweden and registered on 16 August 1995 under file No. 28223/95;

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 1918, resides in Strängnäs. He is a farmer by profession.

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

Between 1963 and 1994, the applicant leased a piece of agricultural land in Strängnäs. In March 1989, the lessor planted some 40 birches with support poles on both sides of a road which crossed the land that the applicant leased and which the lessor was entitled to use. From 1990, the applicant no longer cultivated the land.

The applicant brought an action for damages in the Real Estate Court (fastighetsdomstolen) of Eskilstuna, claiming that the lessor had breached the lease contract and caused economic loss for the applicant. Allegedly, the trees in question had been planted on the leased land. The ploughing and harrowing of the land had taken more time as the applicant had had to turn round the trees. Furthermore, their roots needed a lot of nourishment and the trees had therefore caused bad harvests. The applicant estimated the loss at 8,000 Swedish crowns (SEK).

The Real Estate Court held an oral hearing, during which the

parties were heard. It further inspected the locus in quo and had regard to photographs of the land submitted by the parties.

On 25 October 1993 the Real Estate Court rejected the applicant's claim. It considered that, even assuming that the trees had been planted on the leased land, the applicant had failed to establish any economic loss or other inconvenience which could constitute a right to damages.

The applicant appealed to the Svea Court of Appeal (Svea hovrätt) and requested an oral hearing. As new evidence, he further applied to have three witnesses called. They were supposed to verify the contention that the trees had been planted on the leased land.

On 19 August 1994 the Court of Appeal decided not to hold an oral hearing and, consequently, did not call the witnesses in question. Further, having regard to the evidence brought in the Real Estate Court, the Court of Appeal upheld the appealed judgment on account of the applicant's failure to establish any economic loss.

Upon the applicant's further appeal, in which he complained about the lack of an oral hearing in the Court of Appeal, the Supreme Court (Högsta domstolen) refused leave to appeal on 24 January 1995.

COMPLAINTS

Invoking Article 6 of the Convention, the applicant complains of the Court of Appeal's failure to hold an oral hearing.

THE LAW

The applicant complains of the Court of Appeal's failure to hold an oral hearing. He invokes Article 6 (Art. 6) of the Convention which, in so far as relevant, reads as follows:

> "1. In the determination of his civil rights ..., everyone is entitled to a fair and public hearing ... by [a] ... tribunal ..."

The Commission recalls that the manner of application of Article 6 (Art. 6) to proceedings before courts of appeal depends on the special features of the proceedings involved. Even where the court of appeal has jurisdiction to review the case as to both facts and law, Article 6 (Art. 6) does not always require a right to a public hearing irrespective of the nature of the issue to be decided. Provided a public hearing has been held at first instance, the absence of such hearing before a court of second or third instance may accordingly be justified by the special features of the proceedings at issue (cf., e.g., Eur. Court HR, Helmers v. Sweden judgment of 29 October 1991, Series A no. 212-A, pp. 15-16, paras. 31 and 36, and Jan-Åke Andersson v. Sweden judgment of 29 October 1991, Series A no. 212-B, pp. 43-45, paras. 22 and 27).

In the present case, the Court of Appeal called upon to examine the applicant's appeal exercised jurisdiction as to both facts and law. However, a hearing had already been held by the Real Estate Court which, furthermore, had inspected the land in question. The Court of Appeal had at its disposal the case-file, including the minutes of the Real Estate Court's hearing and the photographs submitted by the parties. It is true that the applicant wished to have witnesses called in the Court of Appeal. They were supposed to verify that the trees in question had been planted on the land leased by the applicant. However, the applicant's claim was rejected as, in any event, he had not been able to establish that the trees had caused him any economic loss. Evidence of such loss could have been adequately submitted in writing.

Thus, having regard to the entirety of the proceedings in the Swedish courts and to the nature of the issues before the Court of Appeal, the Commission finds that the applicant's case did not require that an oral hearing be held in the Court of Appeal.

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.

M.-T. SCHOEPFER Secretary to the Second Chamber	G.H. THUNE President of the Second Chamber