SUR LA RECEVABILITÉ

Application No. 16115/90
by Alice DANIELSSON
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 5 April 1995, the following members being present:

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

Mr. K. ROGGE, 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 24 July 1989 by Alice DANIELSSON against Sweden and registered on 1 February 1990 under file No. 16115/90;

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

Having regard to the observations submitted by the respondent Government on 16 February 1993 and the observations in reply submitted by the applicant on 17 December 1993;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a Swedish citizen, born in 1908. At the time of the flooding of her house in 1979 described below, she was living in Borgholm, Sweden. Awaiting the outcome of the ensuing damage proceedings she has since been living with her son in Stockholm. Before the Commission the applicant is represented by Mrs. Siv Westerberg, a lawyer practising in Göteborg.

A. The particular circumstances of the case

On 10 August 1979 the applicant's house in Borgholm was flooded and damaged. The applicant ordered an expert opinion on the origins of the flooding. In his report, dated 25 September 1979, the expert, Mr. H, stated that the flooding was caused by a faulty construction of a neighbouring rain draining pipe of the municipal sewer system as a result of which tree roots had been able to penetrate and block the pipe.

Proceedings before the State Water Board (Statens va-nämnd)

On 28 October 1981 the applicant instituted proceedings before the State Water Board against the Municipality of Borgholm through her first representative. However, due to problems of cooperation she decided to appoint another representative and filed an additional writ on 6 November 1981. She maintained that her house had been flooded as a result of the deficiencies in the municipal sewer system observed by Mr. H. In her submissions to the Water Board the applicant left open the question whether the system's general design might also have been wrong. The flooding had caused damage to the wooden beams of the basement floor and also the basement's wooden walls. She claimed compensation for the repair costs and for the reduced possibility to use the house awaiting repairs.

On 23 December 1981 the Municipality acknowledged in a submission to the Water Board that it was responsible for the damage caused by the flooding. It argued, however, that certain acts on the part of the applicant had worsened the damages.

During January and February 1982 the parties' observations were exchanged following which the applicant, on 11 March 1982, requested a preparatory meeting as soon as possible.

On 11 August 1982 the applicant was informed that the preparatory meeting requested was scheduled for 15 September 1982.

On 2 September 1982 the applicant submitted a new expert opinion, dated 12 August 1982 and signed by A.E. and J.W. (two real estate valuers), which confirmed the damage to the basement floor and walls but which in addition referred to damage to the structure of the house in the form of cracks in the walls. The opinion stated that it was likely that the cracks were a result of the house having been lifted by the rising of the ground water.

On 15 September 1982 the Water Board held the preparatory meeting and the applicant was requested to finalise her claims and to submit her evidence not later than 1 November 1982. Following an extension of this time-limit the applicant submitted certain information on 16 November 1982 and, upon request, further information on 9 December 1982. The Municipality's observations in reply were submitted on 10 February 1983, following which the parties were summoned to a hearing on 14 April 1983.

On 23 March 1983, however, the hearing was cancelled due to the fact that the Municipality's lawyer had fallen ill.

On 6 and 12 July 1983 the applicant was again requested to specify her claims and the evidence invoked. She submitted her reply on 2 August 1983.

As finally defined the applicant's claims were as follows. Repair costs were claimed in the amount of 100,000 SEK. Her own costs for having the repairs done were estimated at 15,000 SEK. The estate's loss of value was to be compensated in the amount of 20,000 SEK. The reduction of her possibilities of using the house was to be compensated as from 10 August 1979 with a yearly sum equivalent to 18% of the estate's market value in undamaged condition, i.e. for 1979 2,400 SEK a month, until 4 months after the Water Board's decision became final. In addition she claimed reimbursement for her legal costs and expenses.

The Municipality accepted to pay 40,000 SEK for repair costs and to reimburse the applicant for the reduction of her use of her property at a rate of 2,000 SEK per year for the period from 10 August until 31 December 1979. It also accepted part of the claims for legal costs and expenses.

On 31 August 1983 the Water Board held a hearing including an on site investigation of the applicant's property. During the hearing the Board heard three witnesses.

On 7 October 1983 the Water Board rendered its judgment. It awarded 90,000 SEK for repair costs and for the applicant's costs to have the repairs carried out. However, the Water Board did not find it established that the cracks in the walls were caused by the flooding. Accordingly, it rejected the applicant's claims to the extent that these related to the repair of these cracks. It also rejected the applicant's claims for compensation for loss of value as it had not been established that there had been any such loss. On the other hand the Water Board found that although the applicant was in principle under a duty to carry out repairs quickly in order to minimise her losses she had, in the circumstances of the case, been entitled to wait therewith for a certain time, approximated at 14 months. Her losses on this point were estimated at 600 SEK per month. The Water Board rejected both parties' claims for legal costs and expenses.

Proceedings before the Water Court of Appeal (vattenöverdomstolen)

On 3 November 1983 the applicant appealed against the judgment to the Water Court of Appeal requesting full compensation in accordance with her claims before the Water Board.

On 29 November 1983 the applicant submitted that no supplementary observations were needed at that moment. The Municipality was then requested to submit its reply within three weeks. Following a reminder the Municipality replied on 13 January 1984.

In reply to the appeal court's request the applicant declared, on 12 March 1984, that the case could be determined on the basis of the case-file. On 12 April 1984 the Municipality agreed and the applicant was requested to conclude her presentation within three weeks.

However, by 14 May 1984 the applicant had changed her mind and now requested a hearing in so far as the Court would find it necessary in order to prove the cause of some cracks in the walls of her house. The Municipality contested that the cracks were caused by the flooding. Additional submissions concerning this followed in the light of which the applicant, on 23 November 1984, requested that a hearing be held. She furthermore requested the hearing of an expert witness. The applicant was hereafter granted the time until 7 December 1984 to submit the name of her expert.

Hereafter the applicant requested and was granted several extensions. On 10 May 1985 she submitted an expert opinion from a geologist, Mr. L. On 13 May 1985 the applicant requested an additional extension until 24 May in order to submit photos and other documentation.

On 14 May 1985 the applicant's house was flooded again. On 26 June 1985 the applicant notified the Court about the flooding and requested an additional extension of the time-limit as she intended to submit her documentation as promised not later than 12 July 1985.

On 26 August 1985 the applicant was given the opportunity to conclude her presentation within ten days. However, on 3 September 1985 the applicant informed the Court that she had changed counsel and therefore requested an extension of the time-limit. The extension was granted until 18 October 1985 and subsequently until 15 November 1985.

On 11 November 1985 the applicant submitted an amendment to her initial claims as a result of the new flooding of her house on 14 May 1985. Her claims now also included a duty for the Municipality to redeem the house as she now considered that the sewer system was so inappropriate as to make it unreasonable to repair the house. In case

the Court would not accept this new claim, the applicant increased her claims for repair costs to 181,800 SEK and her claim for loss of value to 125,000 SEK. The applicant also increased certain other claims, in particular her claim as to compensation for the loss of possibility to use her house. She furthermore requested the production of certain new written evidence and the hearing of Mr. H as a witness in order to prove, inter alia, that the cracks in the house structure were caused by the flooding as a result of the deficient sewer system. Finally, she asked for an on site investigation to be held in conjunction with the hearing of the case.

On 18 November 1985 the applicant's new claims and observations were communicated to the Municipality which replied on 20 January 1986. The applicant hereafter stated and specified her evidence which was communicated to the Municipality. On 20 March 1986 the Municipality both objected to the changes in the applicant's claims and requested the Court to reject the new evidence proposed.

The Water Court of Appeal did not accept the applicant's requests for a main hearing and an on site investigation and by judgment of 3 July 1986 the Court furthermore refused to accept the amended claims. The Court also refused to hear Mr. H as it found it clear that the cracks in the house structure were not caused by the flooding and that, accordingly, the evidence proposed was unnecessary. On the merits the Water Court of Appeal found no reason to deviate from the conclusions reached by the Water Board, the decision of which it confirmed. The applicant was ordered to pay the Municipality's costs and expenses in the appeal proceedings.

Proceedings before the Supreme Court (Högsta domstolen)

On 14 July 1986 the applicant applied to the Supreme Court for leave to appeal. She maintained that the Water Court of Appeal had committed grave procedural errors by deciding her case without an oral hearing, by refusing her amended claims and by refusing to call new witnesses and to accept other evidence. As to the merits she reiterated her claims as amended before the Water Court of Appeal.

On 28 July 1986 the applicant requested a further month to file additional observations. On 4 August 1986 the Supreme Court granted her an extension until 29 August for this purpose.

On 25 August 1986 the applicant informed the Supreme Court that she did not at that moment in time wish to submit further observations but wished to be kept informed whether or not the Supreme Court intended to refer her case back to the Water Court of Appeal. She was requested to submit further observations before 5 September 1986.

On 18 May 1987 the Supreme Court requested the Water Court of Appeal to submit information as to its refusal of an oral hearing. The Water Court of Appeal replied on 22 June 1987.

On 19 August 1987 the applicant was granted leave to appeal.

From August to December 1987 the parties submitted their observations and the case-file was completed by 29 December 1987.

On 2 March 1988 the Supreme Court quashed the appeal court's judgment as it found it tainted with grave procedural errors on account of the refusals to hold a public hearing and to hear further witnesses. The case was referred back to the Water Court of Appeal for a new examination.

On 2 July 1988 the applicant's house was flooded again.

Proceedings before the Water Court of Appeal

On 4 July 1988 the Water Court of Appeal summoned the parties to appear before it at an oral hearing to be held on 15 September 1988. They were also requested to submit information with regard to written evidence not later than 8 August 1988.

On 5 July 1988 the applicant's insurance company examined the house concluding that there were big cracks in the walls and that several parts of the house had been damaged by moist which, having regard to the nature of the damage caused, appeared to have been present for a long time. It concluded that the damage was not covered by the applicant's insurance.

On 25 July 1988 the applicant's house was flooded anew.

On 1 August 1988 the applicant's insurance company made a new examination of the house which confirmed that water had again penetrated the basement. On 2 August 1988 the applicant informed the Court that there had been new damage to her property. She requested an extension of the time-limit fixed for the submission of written evidence until 10 August.

On 17 August 1988 the Municipality decided to indemnify all property owners affected by the last flooding to the extent that the damage caused was not covered by insurance. It also requested the Construction Office (byggnadskontoret) to find a final solution to the flooding problems in the area.

On 1 September 1988 the applicant's insurance company informed the applicant that the damage caused by the latest flooding was not covered by her insurance.

On 6 September 1988 the applicant reiterated her claims as amended in the previous proceedings before the Water Court of Appeal with certain minor changes. She also reiterated her submission that the two new floodings of the house on 2 and 25 July 1988 showed that it would be more costly to repair the house after each flooding than to have the house redeemed by the Municipality at market price. In support of these claims she lodged a new expert opinion, dated 4 September 1988 and signed by a geologist, Mr. L, according to which the house had again been lifted by the rising ground water in July 1988 and that this was a result of the insufficient rain draining capacity of the municipal sewer system. The opinion also stated that it would be meaningless to repair the house before the sewer system had been appropriately amended.

On 15 September 1988 the Water Court of Appeal held an oral hearing. The applicant claimed in the first place that the Municipality should be ordered to redeem the house and that she should be compensated for her loss of use of the house in accordance with her previous claims before the Water Court of Appeal. In the alternative she claimed compensation in the amount of 181,800 SEK for repair costs, 487,961 SEK to cover the loss of value and also compensation for loss of use on the same terms as before. She furthermore requested that Mr. H should be heard as a witness in order to prove that the sewer system was in such condition that it would be unreasonable to carry out further repairs. The Municipality objected to any change of the Water Board's judgment of 7 October 1983 and asked the Court to refuse any amendments to the original claims as well as the hearing of Mr. H.

On the day of the hearing the Water Court of Appeal decided to accept part of the amendments to the applicant's claims for repair costs and to allow the applicant to add her claim that the Municipality should redeem the estate and compensate her for the loss of value. The Court, however, decided to refuse the hearing of Mr. H as his testimony was deemed unnecessary. The Court went on to hear three witnesses. These witnesses were the same as those heard by the Water Board. Thereafter, the Court made an on site investigation of the house.

By judgment of 14 October 1988 the Water Court of Appeal confirmed the Water Board's judgment.Proceedings before the Supreme Court

On 4 November 1988 the applicant applied to the Supreme Court for leave to appeal and requested permission to file her grounds of appeal within a period of two months.

On 23 November 1988 the applicant's representative withdrew from the case and on 19 December the applicant requested, and was granted, an additional extension until 15 March 1989 to file the grounds of appeal. On 9 March 1989 the applicant requested, and was granted, a further extension until 16 May 1989.

On 8 May 1989 the applicant lodged, through her new counsel, her grounds of appeal. These reiterated her submissions before the Water Court of Appeal. In addition, the applicant maintained that the Water Court of Appeal's refusal to hear Mr. H constituted a procedural error of importance for the outcome of the case.

On 10 May 1989 the applicant wrote to the Supreme Court stating that she considered that her case had been severely mismanaged by her counsel, the courts, the defendant party and the insurance companies and that she wished to file additional observations which would be submitted before the 15 June 1989.

On 15 June 1989 she was informed by her counsel that the Supreme Court had indicated that the question of leave to appeal would be decided in the course of the autumn.

On 5 December 1989 the Supreme Court decided to grant leave to appeal in respect of the question of compensation for repair costs. It refused leave to appeal in respect of the question of alleged procedural errors committed by the Water Court of Appeal and in respect of the question of redemption of the estate. It decided to suspend, for the time being, its examination of the questions of compensation for loss of value and for loss of use of the property and the question of reimbursement of costs and expenses.

On 12 February 1990 the applicant asked for an extension of the time-limit for the submission of her observations to the Supreme Court until the case had been subject to "a different legal examination".

On 28 February 1990 the Supreme Court refused to grant any extension of the time-limit for the filing of the applicant's observations. Due to this the applicant submitted, by letters of 16 and 19 March 1990, that she had revoked her counsel's power of attorney and declared that the case before it was terminated as a result of all errors committed in the course of the proceedings.

By letter of 20 March 1990 the Supreme Court requested the applicant to state whether she withdrew her appeal. On 21 March 1990 the applicant replied that she did not withdraw her appeal but she maintained that the examination of the case should be suspended pending the outcome of the examination of the present application by the European Commission of Human Rights.

On 30 August 1990 the Supreme Court requested the applicant to submit, within two weeks, her opinion as to the need for an oral hearing. In her reply of 12 September 1990 the applicant maintained that she considered the examination of the case to be temporarily suspended since leave to appeal had only partially been granted and since several violations of Swedish law and of her human rights had taken place in the course of the proceedings. She stated that she would consider how the case was to be dealt with by the Supreme Court after the European Commission of Human Rights had examined her complaints.

On 19 September 1990 the Supreme Court informed the applicant that it had decided to hold a hearing and requested her to provide a list of the evidence she wished to rely on.

In her reply of 21 September 1990 the applicant reiterated what she had stated in her reply of 12 September 1990.

On 3 October 1990 the Municipality lodged their list of evidence.

On 10 October 1990 the applicant was summoned to appear before the Supreme Court on 21 November 1990. The applicant replied on 14 October 1990 that the Supreme Court was biased in its handling of the case and that she had now left the case with the European Commission of Human Rights. The applicant did not appear at the hearing on 21 November 1990. As the Supreme Court found no valid excuse for her absence it decided on the same day to dismiss the appeal and ordered the applicant to pay the Municipality's costs. It granted the applicant until 5 December 1990 to justify her absence and to request the Court to resume its examination of the case.

No reply having been received from the applicant within the prescribed time-limit, the Supreme Court decided on 18 December 1990 not to grant leave to appeal on the points which had remained pending. As a result the judgment of the Water Court of Appeal became final.

B. Relevant domestic law

The Water Board is a national authority and not a court. Provisions regulating the activities of the Board are found in the State Water Board Act (Lag (1976:839) om statens va-nämnd), the Instruction for the State Water Board (Kungl. Maj:ts Instruktion (1970:350) för statens va-nämnd) and the Act concerning General Water and Sewage Facilities (Lagen (1970:244) om allmänna vatten- och avloppsomläggningar).

Rules concerning the procedure before the Board are found in the State Water Board Act of 1976 ("the 1976 Act"). The Board consists of a chairman and five other members. The chairman shall be a lawyer, who has experience from having served as a judge. The other members shall have technical expertise of various kinds (cf. the 1976 Act Section 2).

Proceedings before the Water Board are instituted by means of an application in writing. If an application is not complete, the applicant shall be requested to submit supplementary information (Section 8). Unless the application is rejected on formal grounds, the Board shall request the defendant to submit observations in writing. There may also be a further exchange of writs (Section 9). There shall be a hearing before the Board unless it is obvious that a hearing is not necessary in order to determine the case (Section 10). The Board is obliged to clarify the issues in dispute; its actions shall aim at a proper investigation of the matter at stake and it shall attempt to secure a friendly settlement (Section 11). The Board may also conduct on site investigations and engage experts on particular topics (Section 12).

The Code of Judicial Procedure (rättegångsbalken) is not generally applicable in matters concerning general water and sewage facilities. The 1976 Act refers to the Code in only a few instances. If a question as to procedure is not regulated anywhere else, the Administrative Procedure Act (förvaltningslagen (1986:223)) is to be applied.

An appeal against the Board's decision on the merits may be lodged with the Svea Court of Appeal and is examined by this Court in its composition as the Water Court of Appeal. A judgment from the Water Court of Appeal may, with leave, be appealed against to the Supreme

Court. The Code of Judicial Procedure is applicable to the proceedings before these courts (Sections 19, 20, 21 and 23 of the 1976 Act).

There is no equivalent in the 1976 Act to the provision in the Code of Judicial Procedure, Chapter 49, Section 6 (now Chapter 49, Section 7). According to the latter provision, a party who is of the opinion that the proceedings have been delayed, without reason, by means of a lower court order may appeal from that order separately through a limited appeal. The 1976 Act, however, does not refer to the Code, Chapter 49, Section 6. The latter provision is furthermore not applicable to decisions made by a court of appeal or the Supreme Court. There are no other provisions to the effect that a party may challenge the length of the proceedings.

COMPLAINTS

Under Article 3 of the Convention the applicant maintains that she has been subjected to inhuman and degrading treatment by all authorities and courts involved.

Under Article 6 para. 1 of the Convention she maintains that her dispute with the Municipality of Borgholm concerning the damage to her house was not determined within a reasonable time. She also maintains that the courts were partial and did not guarantee her a fair hearing. In respect of this the applicant also invokes Article 6 para. 3 (c) and (d) and Article 13 of the Convention.

With reference to Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention the applicant complains that the authorities have made her house uninhabitable and thereby forced her to live elsewhere. She also refers to the authorities' refusal to redeem the house and thereby enable her to purchase a new home.

With reference to the above alleged violations of the Convention the applicant also invokes Article 17 of the Convention.

Finally, in her observations submitted on 17 December 1993 the applicant complains, under Article 13 of the Convention, that she did not have, under domestic law, an effective remedy in respect of the complaint concerning the length of the proceedings.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 24 July 1989 and registered on 1 February 1990.

On 14 October 1992 the Commission (Second Chamber) decided that notice should be given to the respondent Government and to invite them to submit written observations on the admissibility and merits limited to the complaint concerning the length of the proceedings.

After an extension of the time-limit the Government submitted their observations on 16 February 1993.

On 8 March 1993 the Commission decided to grant legal aid to the applicant.

On 17 December 1993 the applicant submitted her observations in reply to those of the Government.

THE LAW

1. The applicant complains that she has been subjected to inhuman and degrading treatment contrary to Article 3 (Art. 3) of the Convention in the course of the proceedings before the various national authorities and courts. Article 3 (Art. 3) of the Convention reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Commission recalls that according to the interpretation of the concept of inhuman and degrading treatment of both the Commission and the Court, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3). The assessment thereof depends on all the circumstances of a particular case, including the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the person concerned (cf. Eur. Court H.R., Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 162).

In making an assessment in the present case the Commission finds that the facts established do not disclose a treatment of the applicant which according to the above case-law reaches the level of severity required to fall within the scope of Article 3 (Art. 3) 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.

2a. Under Article 6 paras. 1 and 3 (c) and (d) (Art. 6-1, 6-3-c, 6-3-d) as well as Article 13 (Art. 13) of the Convention the applicant complains that she did not have a fair hearing by an impartial tribunal when the dispute concerning the damage to her house due to flooding was determined. The provisions invoked by the applicant read in their relevant parts as follows:

"In the determination of his civil rights ... everyone is entitled to a fair ... hearing within a reasonable time by an ... impartial tribunal ...
...
Everyone charged with a criminal offence has the following minimum rights:
...
c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
..."

The Commission finds that in the present case there is no question of a determination of a "criminal charge" within the meaning of Article 6 (Art. 6) of the Convention. Accordingly, Article 6 para. 3 (c) and (d) (Art. 6-3-c, 6-3-d) are not applicable. However, the Commission has taken the applicant's allegations under these provisions into account when considering the complaint of unfairness and partiality as submitted under Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission recalls that the question whether a hearing conforms with the standard of fairness laid down by Article 6 para. 1 (Art. 6-1) of the Convention must be decided on the basis of the court proceedings as a whole and after they have been concluded. Furthermore, as regards the question of impartiality the Commission recalls that the existence of such impartiality must be determined according to a subjective test, that is on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect.

When considering these elements in the circumstances of the present case, and in the light of the applicant's submissions, the Commission has not found any substantiated allegations which would merit a further examination of these aspects of Article 6 para. 1 or Article 13 (Art. 6-1, 13) of the Convention.

The Commission therefore concludes that the applicant's allegations of unfairness and partiality are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

b. Under Article 6 para. 1 (Art. 6-1) of the Convention the applicant also complains that her case was not determined within a reasonable time. She maintains that the proceedings commenced on 10 August 1979 when her house was flooded for the first time and ended on 18 December 1990 when the Supreme Court refused leave to appeal as regards the remaining issues still pending before it. She considers that in particular having regard to what was at stake and to her advanced age such a period of time cannot be considered to be reasonable.

The Government do not dispute that "civil rights" within the meaning of Article 6 (Art. 6) of the Convention are at issue, nor do they maintain that the applicant has not complied with the requirements of Article 26 (Art. 26) of the Convention. However, they maintain that the applicant's actions before the domestic instances were such that she cannot claim to be a victim within the meaning of Article 25 (Art. 25) of the Convention of the alleged violation of her right to a hearing within a reasonable time.

In the alternative the Government maintain that the reasonable time requirement in Article 6 (Art. 6) of the Convention was not exceeded. In this respect the Government submit, in particular, that the relevant period to be taken into consideration runs from 28 October 1981 when the applicant instituted proceedings before the Water Board until 14 October 1988 when the Water Court of Appeal pronounced its last judgment. Furthermore, the Government contend that the case was of considerable complexity and that the applicant, by her own conduct, prolonged the proceedings.

As regards Article 25 (Art. 25) of the Convention the Commission has no doubt that the applicant may claim to be a victim, within the meaning of this provision, of the alleged violation at issue. The case concerned the determination of her civil rights within the meaning of Article 6 (Art. 6) of the Convention and required a determination within a reasonable time. Whether her conduct before the various authorities and courts contributed to the length of those proceedings will be considered below but it did not affect her status as a victim within the meaning of Article 25 (Art. 25) of the Convention because she was both affected and aggrieved by the length of the proceedings (cf. mutatis mutandis No. 11394/84, Dec. 5.3.86, D.R. 46 p. 214 at p. 217).

As regards the period to be taken into consideration the Commission recalls that the period to which Article 6 (Art. 6) is applicable in civil cases normally starts to run with the issuing of the writ commencing proceedings before the court to which the plaintiff submits the dispute. However, where such proceedings may only be instituted after a determination of the same dispute by an administrative authority the concept of "reasonable time" must be applied so as to include both the administrative and the court proceedings (cf. Eur. Court H.R., König judgment of 28 June 1978, Series A no. 27, p. 33, para. 98).

In the present case the Commission recalls that the problems arose when the applicant's house was flooded in August 1979. However, the applicant did not bring the dispute before the Water Board until 28 October 1981 and the Commission has not found it established that,

under domestic law, the applicant was prevented in any way from doing so at an earlier date. On the other hand the Commission finds that, although the Water Board is not a court, the applicant could not commence proceedings in court until the Water Board had determined the dispute. Accordingly, the Commission considers that the relevant period under Article 6 (Art. 6) of the Convention started to run on 28 October 1981.

As regards the question of when the period in question came to an end the Government maintain that the applicant's conduct in the proceedings before the Supreme Court was such that it should not be taken into account and that, therefore, the relevant period should be considered as having ended with the pronouncement of judgment of the Water Court of Appeal on 14 October 1988.

The Commission does not agree. It may be that a litigant for different reasons in the course of the dispute withdraws from a case or otherwise decides not to pursue it. This may also be a relevant fact in determining the reasonableness of the length of the proceedings. However, in the present case the proceedings did not come to an end until 18 December 1990 when the Supreme Court decided not to grant leave to appeal in respect of the remaining issues still pending before it. Therefore the Commission concludes that the relevant period lasted from 28 October 1981 until 18 December 1990, i.e. approximately nine years and two months.

The Commission recalls that the reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the parties and the conduct of the authorities dealing with the case (cf. Eur. Court H.R., Vernillo judgment of 20 February 1991, Series A no. 198, p. 12, para. 30).

As regards the complexity of the case the Government submit that the issue in question was of considerable complexity, necessitating several expert opinions and the evaluation of technical evidence. Furthermore, the applicant's claims were numerous and new floodings in the course of the proceedings gave rise to new claims and investigations of an even more complicated character.

The applicant does not dispute that the case was complex. This is evident in view of the fact that special boards and courts deal with these matters. However, she maintains that as these authorities have the appropriate knowledge in this field the complexity of the case is no excuse for the length of the proceedings.

The Commission finds that the case was of a complex nature necessitating inter alia expert advice and on site investigations. The unfortunate recurrences of the flooding of the house also added to the complexity of the case and contributed to prolonging the proceedings.

As regards the conduct of the parties the Government submit that the length of the proceedings was mainly attributable to the applicant, whereas they maintain that the Municipality did not contribute to any delays of significance. The Government have not expressed any views on the conduct of the authorities and courts involved in the determination of the case.

The applicant admits that she asked for certain extensions of time-limits, but she maintains that this was due in particular to her age and the need to change counsel. She maintains that, on the other hand, the authorities and courts deliberately prolonged the case because of her age in order to favour the defendant.

The Commission recalls that the proceedings before the Water Board lasted from 28 October 1981 until 7 October 1983, i.e. approximately two years. The Commission finds that neither the

applicant nor the Municipality contributed to prolonging these proceedings. The Commission has not overlooked that it apparently took the Board from March to September 1982 to arrange the preparatory session and that the hearing of the case had to be re-scheduled due to illness on part of counsel for the defendant. However, the Commission considers that the Water Board otherwise pursued the case by setting time-limits and notifying the parties of the state of proceedings.

The first set of proceedings before the Water Court of Appeal lasted from 3 November 1983 until 3 July 1986, i.e. two years and eight months. The Commission recalls that during this period the applicant asked on ten occasions for an extension of the time-limits fixed and failed to comply with others. In these circumstances the Commission finds that the applicant's conduct prolonged the proceedings in the Water Court of Appeal whereas it has not been established that either the defendant or the Court contributed to delays of any significance.

As regards the first set of proceedings before the Supreme Court the Commission recalls that they lasted from 14 July 1986 until 2 March 1988, i.e. approximately one year and eight months. During this period the Court obtained observations from the applicant and the Water Court of Appeal (until 22 June 1987) on the basis of which leave to appeal was granted on 19 August 1987. Subsequently, observations were obtained from the applicant and the Municipality (until 29 December 1987) following which the Water Court of Appeal's judgment was quashed by the Supreme Court on 2 March 1988.

In the light of these facts the Commission does not consider that this period of time was unreasonable or discloses periods of inactivity of the Supreme Court which in the circumstances are unacceptable.

Following the referral of the case to the Water Court of Appeal it obtained new observations from the parties, held an oral hearing and pronounced judgment all within a period of seven months (until 14 October 1988). This cannot give rise to any criticism either.

The final proceedings before the Supreme Court lasted from 4 November 1988 until 18 December 1990, i.e. two years and one month. Leave to appeal in respect of certain issues was granted on 5 December 1989 before which the applicant requested, and was granted five extensions of the time-limits fixed. Furthermore, during the subsequent proceedings before the Supreme Court the applicant on several occasions refused to comply with the time-limits fixed and maintained her view that the proceedings should be suspended. In these circumstances the Commission finds that any delay during this period is attributable to the conduct of the applicant.

In its overall assessment the Commission recalls that the proceedings lasted approximately nine years and two months which, having regard to the importance of administering justice without delays, as such may appear excessive. Furthermore, the Commission has also noted the fact that a certain delay was caused by the fact that the Supreme Court quashed the first judgment of the Water Court of Appeal due to procedural errors committed by that court. However, delays caused by such incidents must be seen in the light of the necessity of securing to everyone a fair hearing which is one of the fundamental elements in the administration of justice under Article 6 (Art. 6) of the Convention, and in this case it has been established that the Water Court of Appeal expeditiously proceeded with the case.

In these circumstances, and given that the proceedings comprised five instances and that the applicant's conduct caused considerable delay, the Commission finds that the total period of time was not so long as to warrant the conclusion that it was unreasonable. Consequently, this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. As regards the applicant's complaints under Articles 8 and 17 (Art. 8, 17) of the Convention and Article 1 of Protocol No. 1 (P1-1) to the Convention the Commission has examined these issues as submitted by her. However, this examination has not disclosed any appearance of a violation of these provisions.

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.

4. Finally, the applicant complained in her written observations submitted on 17 December 1993 that she did not have, under Swedish law, an effective remedy at her disposal in respect of the complaint concerning the length of the proceedings. She referred in this respect to Article 13 (Art. 13) of the Convention.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken".

In the present case the Commission recalls that the proceedings in question came to an end on 18 December 1990 when the Supreme Court refused to grant leave to appeal and the Commission considers this was the final decision regarding the subject of this particular complaint. The complaint in question, however, was not submitted to the Commission until 17 December 1993, that is, more than six months after the date of this decision. Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber Acting President of the Second Chamber

(K. ROGGE) (G.H. THUNE)