AS TO THE ADMISSIBILITY OF

Application No. 22759/93
by Ernst GRADIN
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 7 September 1995, the following members being present:

Mrs. G.H. THUNE, Acting President
MM. H. DANELIUS
G. JÖRUNDSSON
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 6 October 1993 by Ernst Gradin against Sweden and registered on 12 October 1995 under file No. 22759/95;

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 1910, resides at Junsele. Before the Commission he is represented by Mr. Per Svensson, a lawyer practising at Njurunda.

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

In 1938 the applicant bought a piece of property (Grundtjärn 2:11) in the municipality of Örnsköldsvik. By way of an easement (servitut) established in 1892, the owner of that property had a right to take firewood and timber on two neighbouring properties (later designated Grundtjärn 2:7 and 3:1) and to use these properties for hunting, fishing and pasturage.

The applicant resided permanently on his property between 1938 and 1946, after which it was let for about 15 years. Since the early 1960's, it has been used by the applicant for recreational purposes. Until 1986 the applicant hunted elk on Grundtjärn 3:1 on payment of an annual charge of 100 SEK to the owner of that property. His son, who also took part in the hunting, had to pay 600 SEK. The difference between the charges were allegedly due to the easement. The applicant has also been hunting hare and game birds on Grundtjärn 3:1. He has, however, not used his right of pasturage since 1946.

In 1987 the owner of Grundtjärn 3:1, a private forestry company, applied to the Real Estate Formation Authority (Fastighetsbildnings-myndigheten - "the Authority") of Örnsköldsvik for a cancellation of the easement save for the fishing rights.

By decision of 30 November 1987, the Authority granted the application. Noting that Grundtjärn 2:11 was not permanently occupied, the Authority stated that the applicant's rights could be cancelled as the right of pasturage had been abandoned and as, due to the changed circumstances which had occurred since 1892, the other rights were no longer necessary. Reference was made to Chapter 7, Section 15, of the Real Estate Formation Act (Fastighetsbildningslagen, 1970:988), which provides that an easement may be cancelled if it hinders the rational use of the property to which it attaches. The easement may also be cancelled if, due to changed circumstances, there is no need for the easement, or the benefit of it is insignificant compared to the burden borne by the property to which it attaches, or if the easement appears to be abandoned. The decision further referred to Section 15 of the Act of Promulgation of the Real Estate Formation Act (Lagen om införande av fastighetsbildningslagen, 1970:989), according to which easements concerning firewood, timber and pasturage may be cancelled even if the requirements of Chapter 7, Section 15, are not met. With regard to firewood, this applies only if the property benefiting from the easement is not permanently occupied.

By the same decision, the Authority fixed the applicant's compensation for the loss of his rights at a rounded-off figure of 10,000 SEK to be paid by the owner of Grundtjärn 3:1. No compensation was granted in respect of the right of pasturage, as it was considered to be abandoned. With regard to the right to take firewood and timber, the Authority fixed the compensation at 9,700 SEK after having made a calculation based on the market price of the wood and an estimated 20-year consumption, having regard to the applicant's limited use of his property. In deciding the value of the hunting right, the Authority took into account the possibility, under Sections 8 and 40 of the 1938 Hunting Act (Lagen om rätt till jakt, 1938:274), to have an old hunting easement declared void by a court fifty years after the entry into force of that Act, i.e. on 1 July 1988. Such a declaration would not entitle the former holder of the hunting right to any compensation. The Authority, thus, considered that the applicant should only be compensated for the hunting that could take place before 1 July 1988. As elk-hunting was not allowed between 30 November 1987 and 1 July 1988 and, thus, only small game hunting could take place during this period, the applicant's compensation was fixed at 200 SEK, corresponding to the cost of the appropriate game-licence.

The applicant appealed first to the Real Estate Court (Fastighetsdomstolen) of Härnösand and later to the Court of Appeal (Hovrätten) for Lower Norrland and the Supreme Court (Högsta domstolen). With respect to the cancelled right to take firewood and timber, he requested to be compensated, in the first place, by being given certain woodland or, in the second place, by being granted the amount of 62,000 SEK. As concerns the hunting right, he requested the courts, in the first place, to quash the decision to cancel his right or, in the second place, to fix the compensation at 114,000 SEK.

On 8 August 1989 the Real Estate Court upheld the Authority's decision. It found, inter alia, that there was no need for the applicant to hunt on other properties, as he used his property only for recreational purposes. The Court further agreed with the Authority's compensation assessments.

On 19 May 1992 the Court of Appeal upheld the decisions of the lower instances with the exception of the amount of compensation for the right to take firewood and timber, which was increased to 12,550 SEK, due to a rise in the market prices of wood. The Court otherwise agreed with the method of assessment employed by the lower instances.

On 13 April 1993 the Supreme Court refused the applicant leave to appeal.

COMPLAINTS

The applicant complains that the cancellation of the easement constituted an unjustified interference with his property rights. He further maintains that the compensation granted was inadequate. He invokes Article 1 of Protocol No. 1 to the Convention.

THE LAW

The applicant claims that the cancellation of the easement violated his rights under Article 1 of Protocol No. 1 (P1-1) 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 applicant asserts that the cancellation in question was unjustified as there was no public interest involved, the owner of the property to which the easement attached being a private company. He maintains that the above provision does not allow the transfer of property from one person to another. He further asserts that he was not adequately compensated for the loss of his rights. In this respect, he claims that the hunting right, the loss of which he was not compensated for, was of particular importance to him.

The Commission first notes that the applicant did not appeal to the domestic courts against the cancellation of his right of pasturage and that he therefore failed, in this respect, to exhaust, in accordance with Article 26 (Art. 26) of the Convention, the domestic remedies available to him. Thus, in so far as the applicant's complaint includes the loss of the right of pasturage, 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.

As regards the cancellation of the applicant's right to take firewood and timber and to hunt on the neighbouring properties, the Commission considers that this measure constituted a deprivation of his possessions which falls to be considered under the second sentence of the first paragraph of Article 1 (Art. 1-1).

The Commission recalls that the rights in question were cancelled as they were found to be abandoned or, due to changed circumstances, unnecessary for the use of the applicant's property. The relevant decisions referred to Chapter 7, Section 15 of the Real Estate Formation Act, which, inter alia, states that an easement may be cancelled if it hinders the rational use of the property to which it attaches. Having regard to the foregoing and to the margin of appreciation enjoyed by the national authorities under Article 1 of Protocol No. 1 (P1-1) (cf. Eur. Court H.R., Håkansson and Sturesson judgment of 21 February 1990, Series A no. 171-A, p. 18, para. 54), the Commission is satisfied that the decisions pursued a legitimate "public interest", even though they involved a transfer of possessions between private parties (cf. Eur. Court H.R., James and Others judgment of 21 February 1986, Series A no. 98, pp. 30-32, paras. 39-45).

With regard to the lawfulness of the challenged decisions, the Commission is further satisfied that they were in conformity with Swedish law, namely the above-mentioned provisions of the Real Estate Formation Act, its Promulgation Act and the 1938 Hunting Act. The requirement that the deprivation be in accordance with the general principles of international law only applies to foreigners and is, thus, of no relevance to the present application.

A deprivation of possessions must, however, not only in principle pursue a legitimate aim in the public interest, but it must also demonstrate a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The requisite proportionality will not be found if the person concerned has had to bear "an individual and excessive burden". Compensation terms are material to the assessment of whether a fair balance has been struck between the various interests at stake and whether or not a disproportionate burden has been imposed on the person who has been deprived of his possessions. Although Article 1 of Protocol No. 1 (P1-1) does not give a right to any particular amount of compensation, the taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference which could not be considered justifiable (cf. Eur. Court H.R., Lithgow and Others judgment of 8 July 1986, Series A no. 102, p. 50-51, paras. 120-121).

In the present case, the Commission observes that the applicant was granted 12,550 SEK as compensation for the loss of his right to take firewood and timber. The Court of Appeal arrived at this amount after having estimated the applicant's future consumption and the existing market price of the wood. With respect to the hunting right, the national authorities found that the value of this right was limited as, according to the law, it could be declared void on 1 July 1988 without compensation. As only small game hunting was allowed until that date, the applicant's compensation was fixed at 200 SEK, corresponding to the cost of the appropriate game-licence.

The Commission finds no reason to call into question the method used for calculating the compensation for the loss of the right to take firewood and timber. As regards the hunting right, it was limited in time by the provisions of the 1938 Hunting Act, which entered into force on 1 July 1938. In so far as the applicant complains of the limitation imposed by these provisions, the complaint relates to a point of time prior to the entry into force of Protocol No. 1, and it is therefore outside the competence ratione temporis of the Commission. In so far as the applicant complains of the compensation awarded by the national authorities, the Commission finds no support for the allegation that it was inadequate, taking into account that the hunting right could not, under the circumstances, be expected to be valid after 1 July 1988.

In the above circumstances and having regard to the national authorities' margin of appreciation, the Commission cannot find that the compensation awarded for the cancellation of the applicant's rights was not proportionate and reasonably related to their value. It cannot, therefore, be said that the applicant had to bear an excessive burden in the matter.

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 Acting President

to the Second Chamber	of the Second Chamber
(M.-T. SCHOEPFER)	(G. H. THUNE)