Application No. 20326/92
by Georg GRANDÉR
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 2 September 1994, the following members being present:

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

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 26 May 1992 by Mr. Georg Grandér against Sweden and registered on 20 July 1992 under file No. 20326/92;

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 1932 and residing in Stockholm, is a publishing firm employee. Before the Commission he is represented by Mr. Ulf Holmbäck, a lawyer practising in Stockholm.

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

The applicant is a part-owner of a piece of land (Rönninge 1:154) in the municipality of Salem, south of Stockholm. In 1987 a building plan (byggnadsplan) was adopted, dividing the property into five plots, on each of which one self-contained house might be erected. In 1988 the applicant requested the Building Committee (byggnadsnämnden) of Salem to amend the building plan so as to permit a sixth house on the property. The applicant claimed that the decision to adopt the existing plan was based on incorrect assessments of the nature of the terrain and of possible connections to roads and to the water and sewage systems. He stated that he had indicated this already before the plan was adopted.

On 14 February 1989 the Building Committee rejected the applicant's request, referring to the fact that the conditions of the property had been taken into account when the plan was adopted, and that, in the process of adopting the plan, the applicant's request for a sixth plot had been rejected by a Government decision in May 1987. It was also noted that the Plan and Building Act (Plan- och bygglag, 1987:10) did not allow a division into plots which was not in conformity with an existing plan. Thus, a change in the number of plots would require an amendment to the plan.

Attached to the Building Committee's decision were instructions for appeal. According to these instructions, an appeal should be lodged with the County Administrative Board (länsstyrelsen) within three weeks from the date on which the decision was served on the applicant. The applicant lodged an appeal accordingly. The instructions for appeal were, however, incorrect. The appeal should, according to the relevant provisions of the Plan and Building Act, have been lodged with the Administrative Court of Appeal (kammarrätten) as a municipal appeal (kommunalbesvär) within three weeks from the date on which the minutes of the Building Committee's decision were put up on the municipality's notice-board. The County Administrative Board, therefore, transmitted the appeal to the Administrative Court of Appeal.

On 5 February 1990 the Administrative Court of Appeal dismissed the appeal as it had been lodged out of time, the Building Committee's decision having been made public on 21 February 1989 and the appeal having been lodged with the Court on 18 April 1989.

On 8 October 1990 the Supreme Administrative Court (Regeringsrätten) refused leave to appeal. However, by the same decision, the Court, taking into account that incorrect instructions for appeal had been given by the Building Committee, restored the expired time

for appeal and directed the Administrative Court of Appeal to examine the applicant's appeal as a complaint lodged in time.

Upon request, the Administrative Court of Appeal granted the applicant time to make further written submissions. This was important to the applicant as the scope of review differs between municipal appeal proceedings and ordinary administrative appeal proceedings (förvaltningsbesvär). Thus, in addition to his previous submissions, the applicant, in a letter dated 8 November 1990, submitted further observations by which he challenged the lawfulness of the Building Committee's decision.

On 15 March 1991 the Administrative Court of Appeal rejected the appeal. The Court noted that, according to Chapter 7, Section 1, subsection 3 of the Municipal Act (kommunallagen), the applicant was not allowed to present new facts in support of his appeal after the time for appeal had expired. The Court held that:

(translation)

"What [the applicant] has stated in the letter received after the decision by the Supreme Administrative Court, therefore, cannot be taken into consideration by the Administrative Court of Appeal."

The applicant then appealed to the Supreme Administrative Court, requesting a) that the decision by the Administrative Court of Appeal should be quashed and the case be referred back to that Court for re examination taking into account the applicant's new submissions, or b) that the decision by the Supreme Administrative Court of 8 October 1990 should be quashed and a new time for appeal be set. The applicant maintained that the Administrative Court of Appeal had misinterpreted the Supreme Administrative Court's decision, since this decision did not state when the time for appeal expired. He further maintained that the Supreme Administrative Court had made a grave procedural error when it had failed to set a new time for appeal.

On 20 November 1991 the Supreme Administrative Court refused leave to appeal against the decision by the Administrative Court of Appeal.

On 4 December 1991 the Supreme Administrative Court, noting that it could not quash its own decisions, dealt with the applicant's second request as a request for a re opening of the case. This was, however, refused.

COMPLAINTS

The applicant complains that, in the determination of the dispute between him and the Building Committee, he has, by reason of the incorrect instructions for appeal given to him and the Supreme Administrative Court's failure to set a new time limit for appeal, not been able to put his case exhaustively before the courts and has thus been denied a fair hearing. He invokes Article 6 para. 1 of the Convention.

THE LAW

The applicant alleges that he has been denied a fair hearing in violation of Article 6 para. 1 of the Convention, which, in so far as relevant, reads as follows:

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

The dispute in the present case concerns a proposed amendment to the existing building plan which the applicant tried to obtain by his request to the Building Committee in 1988. In determining whether the applicant's rights under Article 6 para. 1 have been violated in the ensuing court proceedings, the Commission must first consider whether the Committee's decision to reject the request involved a determination of the applicant's civil rights within the meaning of this provision.

The applicability of Article 6 para. 1 depends on whether there was a dispute over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, and, if so, whether this "right" was of a "civil" character within the meaning of Article 6 para. 1. In particular, the dispute must be genuine and serious, it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise and, finally, the results of the proceedings concerning the dispute at issue must be directly decisive for such a right (see Eur. Court H.R., Allan Jacobsson judgment of 25 October 1989, Series A no. 163, p. 19, paras. 66-67).

The Commission recalls that a dispute concerning the lawfulness of building plan amendments which would in effect revoke a land owner's conditional right under the old plan to build a second house on his property has been held to involve a determination of the owner's civil rights (see Eur. Court H.R., Mats Jacobsson judgment of 28 June 1990, Series A no. 180-A, pp. 12-14, paras. 32-34). Also a dispute concerning the lawfulness of a decision rejecting a request for a building permit as an exemption from a building plan has been considered to involve a determination of civil rights, if the applicable national law provides for such an exemption (see Eur. Court H.R., Skärby judgment of 8 June 1990, Series A no. 180 B, pp. 36-38, paras. 28-29).

The Commission, however, further recalls that it has previously held that a decision rejecting a request for amendment of an existing building plan does not involve a determination of civil rights (see No. 11844/45, Dec. 29.2.88, D.R. 55 p. 205). The Commission has also held that a dispute about an owner's use of land for purposes other than those listed in the relevant rules does not determine the owner's civil rights, but concerns the application of public law regulations to the permitted use of the land (see No. 10471/83, Dec. 9.12.85, D.R. 45 p. 113). Finally, in its Report in the Skärby case, the Commission considered the decision to refuse an exemption from the building plan not to be of the same kind as a decision not to amend the building plan (Skärby v. Sweden, Comm. Report 16.3.89, para. 82, Eur. Court H.R., Series A no. 180-B, p. 47).

From the above case-law it follows that civil rights within the meaning of Article 6 of the Convention were involved where the applicants had had, or could arguably be said to have had, rights recognised under domestic law which were revoked or denied by the decisions of the administrative authorities. In the present case, however, the applicant's right to build on his property was, according to the building plan in force, restricted to five houses. The Building Committee's decision to reject his request for an amendment to the plan

did not change this situation. The Commission further notes that the Plan and Building Act does not recognise a right for the individual to have a building plan amended.

The Commission, therefore, considers that the Building Committee's decision did not involve a determination of the applicant's civil rights within the meaning of Article 6 para. 1 of the Convention.

It follows that the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber President of the Second Chamber

(K. ROGGE) (S. TRECHSEL)