AS TO THE ADMISSIBILITY OF

Application No. 11855/85
by Gösta HÅKANSSON and Sune STURESSON
against Sweden

The European Commission of Human Rights sitting in private on 15 July 1987, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
Mr. C. L. ROZAKIS
Mrs. J. LIDDY

Mr. H.C. KRÜGER Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 3 April 1984 by Gösta HÅKANSSON and Sune STURESSON against Sweden and registered on 15 November 1985 under file N° 11855/85;

Having regard to

- the first report provided for in Rule 40 of the Rules of Procedure of the Commission;

- the Government's written observations of 21 August 1986 and the applicants' observations in reply of 2 October 1986;

- the second report provided for in Rule 40 of the Rules of Procedure of the Commission;

- the submissions of the parties at the hearing on 15 July 1987;

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case may be summarised as follows:

The particular facts of the case

The applicants are Mr. Gösta Håkansson born in 1926, resident at Höör and a police officer by profession, and Mr. Sune Sturesson, born in 1931, resident at Skånes Fagerhult and a farmer by profession. Both applicants are Swedish citizens. They are represented before the Commission by Mr. Göran Ravnsborg, a lecturer of law at the University of Lund.

On 4 December 1979 the applicants bought an agricultural real

estate called Risböke 1:3 in the municipality of Markaryd at a public auction (exekutiv auktion) for 240,000 SEK. According to a valuation made before the auction, the value of the property had been estimated at 140,000 SEK. The auction acquired legal force.

On 7 January 1980 the County Administrative Board (länsstyrelsen) of the county of Kronoberg issued a letter of purchase (köpebrev). In this letter the applicants were reminded that according to Section 16 para. 1 of the Land Acquisition Act (jordförvärvslagen) a property which has been acquired at a public auction in such circumstances that a permit to acquire the land would have been necessary if the land had been acquired by a voluntary purchase must be sold within two years from the date on which the auction acquired legal force unless the buyer has obtained a permit to retain the property, and if the property is not sold within the said period, the County Administrative Board shall, at the request of the County Agricultural Board (lantbruksnämnden), order that the property be sold at a public auction in accordance with Section 17 of the said Act.

On 7 January 1980 the applicants submitted a request to the County Agricultural Board of the county of Kronoberg that they be granted a permit to retain the real estate Risböke 1:3 under the Land Acquisition Act.

Following an enquiry of the County Agricultural Board the applicants were informed by a letter of 5 February 1980 that the real estate must, in view of its size, situation and nature, be considered as a "rationalisation" unit which ought to be used for the purpose of strengthening real estates in the area which can be further developed. The Board indicated that neighbours were interested and a refusal of the request for the permit could therefore be envisaged under Section 4, para. 1 sub-section 3 of the Land Acquisition Act. Moreover, the Board indicated that there were reasons to believe that the Board would find that the price for the real estate was too high for redemption (inlösen). The applicants were given the opportunity to comment upon the letter of the Board.

On 15 February 1980 the County Agricultural Board decided to reject the applicants' request for a permit to retain the property since the real estate was considered to be of importance for rationalisation and ought to be used for the purpose of strengthening real estates in the area which could be further developed.

The applicants appealed to the National Board of Agriculture (lantbruksstyrelsen) which in a decision of 5 September 1980 rejected the appeal, stating inter alia as follows:

> "The National Board of Agriculture finds, as did the County Agricultural Board, that the real estate at issue lacks the prerequisites for remaining as a commercial unit of its own. Moreover, the National Board considers that a new establishment on the real estate would be likely to make it more difficult for the active farmer in the area to develop his business."

From the decision of the National Board of Agriculture it appears that the property at issue has no buildings. It has an area of 41 hectares of which 18 hectares are forest and eight hectares are pasture. It furthermore appears that Mr. Sturesson owns and runs a real estate of an area of 10 hectares of pasture and 63 hectares of forest. This property is situated approximately 25 kilometres from the property bought by the applicants. It furthermore appears from the decision of the National Board that the applicants' intention when acquiring the property was to build up units which at present create opportunities of employment and which subsequently can become financially sound real estates for the applicants' children. It moreover appears that the property at issue is situated in an area

where in the opinion of the County Agricultural Board there is only room for one active farmer and that the neighbouring property is at present rented by Mr. MB who also rents his parents' estate which comprises five hectares of pasture and 42 hectares of forest. Mr. MB had shown great interest in the property at issue.

The applicants appealed to the Government (Ministry of Agriculture) which in a decision of 26 February 1981 rejected the appeal.

Following a new request dated 4 January 1982, the County Agricultural Board of the county of Kronoberg rejected an application from the applicants for a permit to retain the real estate Risböke 1:3. In the decision, which is dated 25 January 1982, the County Agricultural Board stated that the real estate at issue was considered to be a unit suitable for rationalisation purposes which ought to be used for the strengthening of properties within the area which could be further developed. It furthermore stated that the Board was not prepared to redeem the real estate at the price of 240,000 SEK.

The applicants appealed against this decision to the National Board of Agriculture which, after having inspected the property, rejected the appeal on 15 November 1982.

The applicants submitted a further appeal to the Government which on 27 October 1983 rejected the appeal.

In a letter of 11 January 1985 the applicants requested the Government to reconsider their decision of 27 October 1983. In a decision of 14 March 1985 the Government decided not to take any measures in respect of the applicants' request. In their decision, the Government recalled that the appeal case had been finally decided by the Government on 27 October 1983.

The applicants then brought proceedings before the Real Estate Court (fastighetsdomstolen) of the District Court (tingsrätten) of Växjö requesting that the state redeem the real estate in accordance with Section 14 of the Land Acquisition Act. In a judgment of 11 December 1982 the Court rejected the applicants' claim. They appealed to the Göta Court of Appeal (Göta hovrätt) which on 1 July 1982 confirmed the judgment of the District Court. On 14 July 1983 the Supreme Court (högsta domstolen) refused to grant leave to appeal.

At the request of the County Agricultural Board, the County Administrative Board, on 10 November 1983, ordered that the real estate Risböke 1:3 should be sold at a public auction. In a decision of 19 April 1984 the Enforcement Office (kronofogdemyndigheten) indicated that the real estate had a value of 125,000 SEK. The applicants appealed against this decision to the Göta Court of Appeal which in a decision of 4 June 1984 dismissed the appeal stating that it was not possible to appeal against the decision of the Enforcement Office as it was only a preparatory stage for a subsequent decision on the sale of the real estate. The applicants appealed against this decision to the Supreme Court which on 23 August 1984 refused to grant leave to appeal.

According to subsequent valuations by experts, the property was considered to have a value of 172,000 SEK.

The public auction took place on 18 June 1985. It was noted that the real estate had been assessed at a value of 172,000 SEK and that the taxable value was 107,000. The lowest bid which could be accepted would be 172,000 SEK. At the public auction, only one offer of 172,000 SEK was submitted. The offer was made by the County Agricultural Board. The offer was accepted by the Enforcement Office.

The applicants appealed against the public auction to the Göta Court of Appeal which in a decision of 3 July 1985 rejected the appeal.

The applicants submitted a further appeal to the Supreme Court which on 20 August 1985 refused to grant leave to appeal.

Relevant Swedish law

The acquisition of real estate, which is assessed for tax purposes as an agricultural holding, is subject to the regulations of the 1979 Land Acquisition Act. The Act was enacted in 1979 - replacing an Act of 1965 on the same issue - in order to implement the new agricultural guidelines adopted by the Riksdag in 1977 and also to meet the policy goals of forestry and regional planning. Among the aims particularly to be furthered by the Act are the creation and preservation of effective family holdings so as to strengthen the connection between cultivation and ownership, and also the promotion of a continuous structural rationalisation of agriculture and forestry.

Under Section 1 of the Act, a permit is required for the purchase of real estate assessed for tax purposes as an agricultural holding. Section 2 enumerates a number of exceptions, none of which is relevant to the applicants' case.

When deciding on an application for a permit, it shall be taken into account that the starting and developing of rational holdings in agriculture, forestry and horticulture (farm holdings) should be promoted (Section 3). Furthermore according to Section 4, an application for a permit shall be rejected inter alia if the property is needed for the rationalisation of agriculture or forestry.

Property acquired at a compulsory auction under circumstances which, in case of an ordinary purchase, would have required a permit, shall, according to Section 16, para. 1 of the Act, be re-sold within two years unless the said circumstances have ceased or the purchaser has obtained a permission from the County Agricultural Board to retain the property. In case of an application for such a permission, the above mentioned provisions of Sections 3 and 4 shall apply where appropriate.

A decision by the County Agricultural Board not to grant permission to retain property acquired at a compulsory auction may be appealed to the National Board of Agriculture and ultimately to the Government.

In case a purchase of property becomes invalid as a result of a denial of permission to acquire the property on the ground that it is needed for the rationalisation of agriculture and forestry, the State is, according to Section 14 of the Act, obliged to redeem the property at the purchase price agreed upon if the seller requests it. However, under the same Section, no such obligation exists in case the purchase price considerably exceeds the value of the property in view of its yield and other circumstances, or if the terms are unreasonable in other respects.

In respect of property acquired at a compulsory auction there is, unlike the situation in case of an ordinary purchase, no obligation for the State to redeem the property.

According to Section 14, para. 2 of the Act, an action for redemption by the State of property shall be brought before a Real Estate Court, whose decision may be appealed to a Court of Appeal and ultimately to the Supreme Court.

In case the property has not, when required under the

provisions outlined above, been sold within the prescribed time limit, the County Administrative Board shall, according to Section 16, para. 1, order that the property be sold by the Enforcement Office at a public auction.

The basic provisions to be observed in case of such an auction appear in Section 17 of the Act and, by reference in this Section, in Chapter 12 of the 1981 Code of Enforcement (utsökningsbalken). No sale may be effected unless the purchase price offered amounts at least to the estimated value set on the property prior to the auction (Section 17 of the Land Acquisition Act and Chapter 12, Section 3 of the Code of Enforcement). This estimated value is to be fixed by the Enforcement Office or, in case of a timely request by the owner of the property for a special evaluation, by valuers appointed by the County Administrative Board (Section 17 of the Land Acquisition Act).

Decisions by the Enforcement Office in respect of a public auction may, according to Chapter 18, Section 1 of the Code of Enforcement, be brought before a Court of Appeal and, ultimately, the Supreme Court. However, according to Section 6, para. 2 of the same Chapter, an appeal against a decision merely constituting a preparation for a future determination may, in general, be made only in connection with an appeal against that determination.

As regards the procedure in case an appeal is made, the rules of the 1942 Code of Judicial Procedure (rättegångsbalken) are, as far as is relevant to the present case, applicable by virtue of a reference in Chapter 18, Section 1 of the Code of Enforcement. Under Chapter 52, Section 10 of the Code of Judicial Procedure a party or any other person may, when this is deemed necessary, be orally heard before the Court of Appeal. The same provision applies in respect of proceedings before the Supreme Court (Chapter 56, Section 12).

Under Capter 54, Section 10 of the Code of Judicial Procedure, the Supreme Court may only grant leave to appeal

> "1. if it is of importance for the guidance of the application of the law that the case should be examined by the Supreme Court; or
>
> 2. if there are extraordinary reasons for such an examination, such reasons being, for instance, that there are grounds for re-opening the procedure (resning) or that there have been procedural mistakes (domvilla) or that the outcome in the Court of Appeal obviously is due to a gross mistake or gross negligence."

COMPLAINTS

1. The applicants submit that the the refusal to grant them a permit to retain the real estate was a determination of the applicants' civil rights and that they were therefore entitled to the guarantees of Article 6 of the Convention. The applicants allege that since there was no court review available to them, there has been a breach of Article 6 of the Convention.

2. The applicants also complain about the decisions to attach to the real estate a certain market price at different stages of the proceedings. This market price varied between 100,000 SEK and 172,000 SEK. The applicants submit that these artificial market prices are serious interferences with the applicants' rights under Article 1 of Protocol No. 1 and Articles 6 and 13 of the Convention.

The applicants submit that the fact that the State at the initial public auction sold the real estate to the applicants at the price of 240,000 SEK in December 1979 and the fact that the State repurchased the property in June 1985 at the price of 172,000 SEK, must be

regarded as a confiscation of property which cannot be justified under the terms of Article 1 of Protocol No. 1. The applicants also complain about the fact that the State was not ordered by decisions of the competent courts to redeem the real estate as the applicants had claimed.

3. The applicants further allege that the fact that the appeals against the public auction in June 1985 were examined by the Court of Appeal and the Supreme Court without any oral hearing is an interference both with Article 1 of Protocol No. 1 and with Article 6 of the Convention. The applicants also submit that the appeals to these courts in these matters show that there existed no effective remedy as required by Article 13 of the Convention.

4. The applicants also allege a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 in view of the fact that the applicants' request for a permit to retain the real estate was rejected simply because the applicants were not residents in the area in which the real estate was situated.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 3 April 1984 and registered on 15 November 1985.

On 12 May 1986 the Commission decided to invite the Government to submit written observations on the admissibility and merits of the application limited to the complaints under Article 6 of the Convention and Article 1 of Protocol No. 1.

The Government's observations were received by a letter dated 21 August 1986 and the applicants' observations in reply were dated 9 October 1986.

On 12 December 1986 the Commission decided to grant legal aid to the applicants.

On 4 March 1987 the Commission decided to invite the parties to a hearing on the admissibility and merits of the application.

At the hearing which was held on 15 July 1987 the parties were represented as follows:

The Government

Mr. Hans CORELL Under Secretary for Legal and Consular Affairs Ambassador, Ministry for Foreign Affairs, Agent

Mr. Rolf STRÖMBERG Permanent Under-Secretary and Chief Legal Officer, Ministry of Environment and Energy, Adviser

Mr. Håkan BERGLIN Legal Adviser, Ministry for Foreign Affairs, Adviser

The applicants

Mr. Göran RAVNSBORG University Lecturer

SUBMISSIONS OF THE PARTIES

A. The Government

1. The admissibility

The Government have no objection to make under the domestic remedies' rule in Article 26 of the Convention.

However, the Government submit that the complaint concerning

the decision not to grant the applicants permission to retain the property should be declared inadmissible for failure to comply with the six months' rule . They further submit that any complaint relating to the redemption procedure is inadmissible for failure to comply with the six months' rule. Moreover, the complaint concerning the public sale of the property is inadmissible for being manifestly ill-founded.

The complaint turns on three different sets of proceedings, namely those concerning the question whether to grant the applicants permission to retain the property, those concerning redemption by the State of the property and those concerning the public auction at which the property was ultimately acquired by the County Agricultural Board. The final decisions in respect of the three proceedings were taken on 26 February 1981, 14 July 1983 and 20 August 1985 respectively. The application was lodged with the Commission on 3 April 1984. The question therefore arises whether the applicants, in respect of those parts of the complaint that relate to issues dealt with in the two first mentioned proceedings, have complied with the six months' rule of Article 26. In the Government's opinion the question has to be answered in the negative.

The three sets of proceedings raised different issues which were to be resolved on the basis of different sets of facts and by applying different rules of law. The outcome resulting from the second and third sets of proceedings did not affect, and could not have affected, any of the previous determinations. The proceedings were conducted under different rules and the two first sets of proceedings were initiated by the applicants whereas the third one was, and could only have been, initiated by the State. Under these circumstances the Government submit that the three sets of proceedings must be considered separately when applying the six months' rule in Article 26 of the Convention.

The Commission has in its case-law consistently called attention to the close relationship between this rule and the domestic remedy rule contained in the same Article and construed the term "final decision" so as to refer exclusively to the final decision required to be obtained for the purpose of complying with the domestic remedy rule. The Commission has consistently refused to take into account, for the purpose of calculating the six months' period, decisions taken in the course of attempts to exhaust domestic remedies which need not be exhausted.

In the present case it is clear that the third set of proceedings, i.e. those resulting in the final decision of 20 August 1985, could not be a remedy in respect of the decisions of 26 February 1981 and 14 July 1983 that needed to be exhausted before a complaint relating to those decisions could have been admitted by the Commission. It may suffice to observe that no possible violation of the Convention relating to those decisions could in any manner have been redressed in the course of the proceedings resulting in the decision of 20 August 1985 and that, in fact, the applicants lacked the legal capacity of instituting those proceedings. Consequently, when applying the six months' rule in respect of the decisions of 26 February 1981 and 14 July 1983, the decision of 20 August 1985 should not be taken into account. Accordingly, as regards the two first decisions, the Government submit that the applicants have failed to comply with the six months' rule.

The proceedings concerning the question whether to grant the applicants permission to retain the property call for some further comments in view of the fact that this issue subsequent to its final determination on 26 February 1981 was reconsidered at the request of the applicants. In considering this aspect, the Government first observe that the decision of 26 February 1981 was final in the sense that, except for the possibility of extraordinary proceedings, no

domestic remedy was legally provided for by which the decision could have been challenged on any grounds. The six months' rule laid down in Article 26 was clearly intended to require an applicant to decide whether or not to bring his case before the Commission within a period of six months after his position had been finally determined on the domestic level. In view of this the Government submit that, in respect of the proceedings concerning the question whether to grant the applicants permission to retain the property, the decision of 26 February 1981 constitutes the "final decision" for the purposes of Article 26.

Consequently, the decision of 27 October 1983, following the application to have the issue reconsidered, should not in the Government's opinion be taken into account when calculating the six months' period. However, and in particular with regard to the wording of this decision, it still remains to be considered whether the decision as such, and regardless of the decision of 26 February 1981, could be viewed as constituting a new "final decision" for the purposes of Article 26. In the Government's opinion the question has to be answered in the negative. Following the public auction on 4 December 1979 the applicants were under an obligation to sell the property within two years from the date when the auction became legally valid unless they had obtained permission from the County Agricultural Board to retain it. No appeal against the auction having been made, this period of two years was to be calculated from 18 December 1979 and, consequently, expired on 18 December 1981. By that latter time, rather than having obtained a permit to retain the property, the applicants' request for such a permit had been finally rejected by the Government on 26 February 1981. Consequently, the final date for fulfilling the obligation of reselling the property as required by Section 16, para. 1 of the Land Acquisition Act was 18 December 1981. The proceedings now in question were not initiated until 4 January 1982 when the applicants asked the County Agricultural Board to reconsider the case. Under these circumstances the Government submit that the proceedings thus initiated could only be viewed as extraordinary proceedings which may under special circumstances lead to a reopening of a case already finally settled. To take another view would render the six months' rule of Article 26 illusory in respect of any decision which, like that of 26 February 1981, did not have the effect of res judicata.

2. The merits

2.1 The refusal to grant the applicants permission to retain the property

The applicants have alleged that the refusal to grant them permission to retain the property involved the determination of their "civil rights" within the meaning of Article 6 para. 1 of the Convention and that the proceedings resulting in that determination did not satisfy the requirements set forth in the said Article.

The Government contest that the applicants' "civil rights" were determined. They submit that there are particular features of the present case. It has characteristics distinguishing it from the Ringeisen case (Eur. Court H.R., Ringeisen judgment of 16th July 1971, Series A no. 13), the case which would appear to be the one most in line with the present one. In the present case the property was acquired at a public auction and not through an ordinary purchase from a private seller. Furthermore, the legal consequences of the relevant decision were considerably more far-reaching in the Ringeisen case in that it rendered the purchase null and void. In the present case the decision not to grant permission to retain the property entailed an obligation to sell the property. The purchase as such was not affected. In the Government's opinion these characteristics carry considerable weight when considering whether the proceedings should be viewed as involving determination of "civil rights" within the meaning

of Article 6 para. 1.

In case the Commission would find that the present decision did amount to the determination of the applicants' "civil rights" within the meaning of Article 6 para. 1, the Government admit that the applicants were not entitled to take proceedings meeting the requirements of the said Article.

2.2 The decision not to redeem the property

Given that the applicants do not seem to directly assert any separate violation of the Convention or Protocol No. 1 in respect of this decision or the proceedings preceding it, the Government only observe that no requirement could possibly be read into the Convention or Protocol No. 1 to the effect that a State would be under an obligation to redeem property in the way here requested by the applicants. Consequently, to the extent the applicants' allegations on this point could be viewed as a separate complaint, the Government submit that it should be rejected for falling outside the scope of the Convention and Protocol No. 1.

Furthermore, given that the decision in no way affected the applicants' legal or actual position in respect of the property, any complaint under Article 1 of Protocol No. 1 is manifestly ill-founded.

2.3 The public sale of property

2.3.1 Article 1 of Protocol No. 1

According to the applicants, the determination prior to the auction on 18 June 1985 of an estimated value of the property of 172,000 SEK and the public sale of the property at that price constituted a violation of Article 1 of Protocol No. 1, since the applicants had acquired the property at a price of 240,000 SEK. The evaluation of the property was no more than a preparatory step taken in view of the subsequent auction.

The Government admit that the applicants were "deprived of (their) possessions" within the meaning of the second sentence of Article 1 of Protocol No. 1 by virtue of the contested public sale of the property. However, for the following reasons the Government submit that this interference with the applicants' rights was justified under the terms of the said Article.

It follows from the wording of the second sentence of Article 1 that for a deprivation of property not to constitute a violation of this Article, it has to be carried out "in the public interest" and in accordance with "conditions provided for by law and by the general principles of international law". Furthermore, as construed by the European Court of Human Rights in the Case of James and others (Eur. Court H.R., James and others judgment of 21 February 1986, Series A no. 98, p. 29, para. 37), the second sentence is to be viewed in the light of the general principle enunciated in the first sentence of the Article. This latter provision, in turn, in the case of Sporrong and Lönnroth (Eur. Court H.R., Sporrong and Lönnroth judgment of 23 September 1982, Series A no. 52), as well as in the case mentioned above and the case of Lithgow and others (Eur. Court H.R., Lithgow and others judgment of 8 July 1986, Series A no. 102), has been construed by the Court so as to require that, in case of an otherwise justified interference, a fair balance should be struck between the demands of the public interest concerned and the necessity of protecting the individual's fundamental rights.

"In the public interest"

The Land Acquisition Act, forming the legal basis for the

public sale of the applicants' property, was enacted for the purpose of implementing the policy goals of agriculture, forestry and regional planning. The contested auction was carried out as a means of enforcing provisions of the Act aimed at developing rational and effective farm holdings. In view of this, and considering that the European Court of Human Rights has viewed the notion of "public interest" as a "necessarily extensive" concept and also afforded the national authorities a "margin of appreciation" in assessing the public needs and the appropriate measures to be taken to satisfy them, the Government submit that the interference with the applicants' rights was done "in the public interest" within the meaning of the second sentence of Article 1. The Government also observe that no other opinion on this point appears to have been expressed by the applicants.

"Conditions provided for by law and by the general principles of international law"

The Government firstly observe the absence of any allegation before the Commission to the effect that the auction was not carried out in accordance with relevant provisions of Swedish statute law. However, the European Court of Human Rights has consistently construed the terms "law" and "lawful" in the Convention and Protocol No. 1 as not merely referring to domestic law but also as relating to "the quality of the law, requiring it to be compatible with the rule of law". Although the exact meaning of this requirement may still be open to some doubt, and also vary depending on the circumstances, it may reasonably be deduced from the Court's case-law that in the present context the law, in order to satisfy the requirements of the second sentence, would need to afford a reasonable protection against arbitrary interferences and, in particular, to provide adequate guidance as to the circumstances under which, and the conditions on which, an interference may be carried out.

When considering the facts of the present case in view of these observations, the Government submit that the requirement that the interference be subject to "conditions provided for by law" was also clearly satisfied. Thus, except for the price at which the property was ultimately to be sold, every significant material as well as procedural aspect of the public sale was regulated by written law readily available to the applicants. Furthermore, there is nothing to indicate that they were not also in fact fully informed of these regulations and their potential consequences. Finally, the publicly announced estimated market value of the property at the time the applicants acquired it - 140,000 SEK - provided clear guidance as to the possible price in case of a subsequent public sale in accordance with these regulations.

As regards the reference to "general principles of international law", the Government observe that both applicants are Swedish citizens. Therefore, and in view of the fact that the European Court of Human Rights has found these principles to be applicable only in respect of non-nationals (see the case of James and others judgment, op. cit., pp. 38-40, paras. 58-66), no separate issue arises in respect of this particular requirement.

A fair balance between the public interest and the protection of the individual's right

In the case-law of the European Court of Human Rights this requirement has been construed to mean that any interference, in order to be justified under Article 1, need to be "both appropriate for achieving its aim and not disproportionate thereto" and that, accordingly, the balance required will not be found in case the individual concerned would have to bear "an individual and excessive burden" for the present case. This would appear to call for an examination of, firstly, whether the public sale of the applicants'

property in itself was appropriate in view of the aim sought to be achieved and, secondly, whether the applicants under the circumstances had to suffer undue economic burdens.

The policy goals of agriculture and forestry could scarcely be achieved without imposing appropriate restrictions on the right to acquire and hold land suitable for agriculture and forestry. The framing and administration of such restrictions naturally offer a variety of possible measures to be taken, some of which necessarily involve serious interferences with the individual's right to property, including depriving him of his property.

As regards the choice between such possible measures, the concept "in the public interest" clearly suggests that the discretion afforded to States is considerably wider in scope than under other similar provisions of the Convention, for instance Articles 8-10, where the notion "necessary in a democratic society" is used. In applying Article 1 of Protocol No. 1, the Commission has viewed the former concept as "clearly (encompassing) measures which would be preferable or advisable, and not only essential, in a democratic society" (Handyside v. the United Kingdom, Comm. Report, 30.9.75, para. 167).

In view of the wide discretion thus afforded to a State as regards the particular measures to be taken in order to implement legitimate policy goals, it could not reasonably be held that the measures taken in the present case were not appropriate in relation to the goals sought to be achieved.

As regards the question of whether the applicants had to suffer undue economic burdens, the Government first observe that the property had a fixed value for tax purposes of 107,000 SEK. This value is, as a matter of law, intended to correspond to 75 per cent of the market value. Furthermore, at the time of the public auction of 4 December 1979 at which the applicants acquired the property, the estimated market value was publicly announced to be 140,000 SEK. Finally, prior to the public sale on 18 June 1985 the property was assessed, at the request of the applicants and by independent valuers appointed by the County Administrative Board (see e.g. the applicants' writ to the Supreme Court of 24 July 1985), at a value of 172,000 SEK, at which price it was also ultimately purchased by the County Agricultural Board. In view of this, the Government submit that the applicants were fully compensated in the sense that they were in fact afforded an amount corresponding to the full market value of the property.

However, the applicants acquired the property at a considerably higher price than that at which it was ultimately sold at the public auction of 18 June 1985. In view of this, it could be argued that they were not fully compensated. Based on this line of reasoning, the applicants have asserted that the public sale amounted to a violation of Article 1 of Protocol No. 1. For the following reasons, the Government, even assuming that the price at which the applicants acquired the property would be considered to reflect its market value, are unable to share this view.

At the outset, the Government observe that Article 1 of Protocol No. 1 as it stands does not at all call for any form of compensation in case of deprivation of property in the public interest. Nevertheless, the European Court of Human Rights has consistently held that the taking of property by the State without any form of compensation would normally be inconsistent with the requirements of the said Article (see e.g. James and others judgment, op. cit. p. 36, para. 54, and Lithgow and others judgment, op. cit., pp. 50-51, paras. 121-122). In doing so, however, the Court has explicitly rejected the idea that the State would be obliged under all circumstances to fully compensate the property owner. Rather, all

that is required, according to the Court, would appear to be that the compensation should be "reasonably related to" the market value. In addition, as regards the determination of the compensation the Court has observed the necessity of allowing the State a "wide margin of appreciation".

In view of this, the Government submit that the applicants were adequately compensated as required by Article 1 of Protocol No. 1.

As to the economic losses actually suffered by the applicants, the Government add the following. Legislation aimed at implementing policy goals such as those concerned in the present case would hardly serve its purpose without, at least occasionally, giving rise to situations in which the individual would have to bear what at first sight might be viewed as considerable burdens. In recognising that such burdens cannot always be avoided, the European Court of Human Rights has accepted that, in principle, it is for the national legislator to assess the advantages and disadvantages involved in the legislative measures concerned, provided only that the measures ultimately taken would not be "so unreasonable as to be outside the State's margin of appreciation" (James and others judgment, op. cit., p. 42, para. 69).

When applying this formula to the present case, the Government maintain that, in view of the policy goals pursued, there is nothing in the legislation as such that could reasonably render it unacceptable under Article 1 of Protocol No. 1. In particular, the Government observe that the mechanism provided for in the legislation does not inherently, and in practice all but never, lead to situations like the one in the present case. Furthermore, the grievances suffered by the applicants were to a large extent the result of what in the Government's opinion might fairly be viewed as highly risky undertakings consciously entered into by the applicants themselves. As will be recalled, although well aware of the facts that they might not be granted permission to retain the property and that the property might ultimately be sold at a public auction, they nevertheless chose to acquire it at a price which at the time of the acquisition exceeded the publicly announced, estimated market value by 100,000 SEK, i.e. by more than 70 per cent. Under these circumstances, the Government submit that the present case does not disclose any appearance of a violation of Article 1 of Protocol No. 1 even when considering the economic losses actually suffered by the applicants.

To sum up, while admitting that the public sale constituted an interference with the applicants' right to property, the Government submit that the interference was clearly justified under the conditions laid down in the second sentence of Article 1 of Protocol No. 1. Consequently, the Government maintain that the complaint on this point is manifestly ill-founded.

2.3.2 Article 6 of the Convention

The applicants have also in respect of the public sale alleged violations of Article 6 para. 1 of the Convention on the ground that their appeal was decided upon without an oral hearing.

As regards the applicability of Article 6 para. 1 to the present proceedings, the Government take the same position as in respect of the refused permission to retain the property. In case the Commission would find Article 6 para. 1 applicable, the Government submit that the requirements of that Article were satisfied in the present case.

The Government firstly observe that Article 6 para. 1 as it stands does not seem to necessarily call for a public hearing for the determination of civil rights and obligations. Rather, it merely

provides that everyone is entitled to such a hearing. In the Government's opinion, this clearly indicates that the right to proceedings in public could be waived. The European Court of Human Rights has also adopted this view and, furthermore, recognised that the waiver could be tacit (see e.g. Eur. Court H.R., Deweer judgment of 27 February 1980, Series A No. 35, p. 25, para. 49, and Eur. Court H.R., Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, para. 59).

In the present case, the contested auction as such was carried out in public. Furthermore, every decision related to the public sale could be, and some of the decisions were in fact, brought before courts competent to review every aspect of the matter in respect of questions of law as well as questions of fact. The rules governing such appeal proceedings do comprise provisions according to which parties and witnesses could be orally heard before the Court of Appeal as well as the Supreme Court. However, no request for such a hearing was ever made by the applicants, nor was there any indication that they, nevertheless, did expect a hearing to be held or that in any possible way they could be expected to benefit from a hearing. Under these circumstances the Government submit that the requirements of Article 6 para. 1 were satisfied and that, accordingly, the application on this point is manifestly ill-founded.

In case the Commission does not share this view, the Government question, even in case an oral hearing is requested by the party concerned, whether at all Article 6 of the Convention calls for oral proceedings regardless of the character of the issues involved. The Commission has in numerous decisions dealt with the concept of a "fair and public hearing" in a manner that seems to indicate that all that would be required would be that a party is provided appropriate facilities for presenting and arguing his case and that the opposing party is not put in a more favourable position with regard to the possibilities of presenting his position. It certainly goes without saying that the circumstances in a case might be such as to call for an oral hearing for these requirements to be fulfilled. However, in the Government's opinion it would seem to be equally conceivable that a party under certain circumstances could be given a perfectly fair chance to present his case, even though he were not afforded the possibility of doing this at an oral hearing. Thus, a civil case involving no disputed facts but only pure legal issues would seem to be as appropriately presented and argued in writing as at an oral hearing.

In this context the Government draw the attention to the Commission's decision on the admissibility of Application No. 1169/61 (Dec. 24.9.63, Yearbook 6, p. 520) in which the Commission expressed the opinion that when the character and mode of living of an applicant were not directly relevant to the formation of the Court's opinion, proceedings wholly in writing might meet the requirements of Article 6 para. 1 of the Convention.

In the present case the only issue brought before the courts was a question of law, namely what principles to be applied when assessing the value of the property (see the applicants' appeals to the Göta Court of Appeal and to the Supreme Court). Consequently, there was no dispute as regards the facts of the case and the character and mode of living of the applicants were of no relevance to the formation of the courts' opinions.

The Government also draw attention to the important principle under Swedish law of general access to official documents (offentlighetsprincipen). According to this principle - which is laid down in the Freedom of the Press Act (tryckfrihetsförordningen) forming part of the Swedish Constitution - anybody has the right to have access to the written submissions to Swedish courts (the principle is subject to a limited number of exceptions provided for in the Secrecy Act, none

of which is relevant to the present case). This means that there is full publicity about court proceedings even if there is no oral hearing and, accordingly, that there could be no material before the courts that is not readily available to the parties as well as the public. Clearly, this public nature of the proceedings provides a substantial guarantee against arbitrary decisions by enabling the parties and the public to verify and scrutinise the manner in which the administration of justice is carried on. The Government maintain that this specific feature of the Swedish legal system should be given special regard when considering Swedish court proceedings in view of the requirements of Article 6, para. 1 of the Convention.

B. The applicants

1. Introduction

In order to simplify an analysis of the different legal and procedural problems raised in this particular case it may be convenient to distinguish between three different issues:

a. the purely administrative procedure which was initiated by the applicants with a view to obtaining a permit to retain the property, a procedure which terminated in unfavourable decisions by the Government in 1981 and 1983,

b. the proceedings before the courts initiated by the applicants with a view to having the State ordered to redeem the property, proceedings which terminated in an unfavourable decision by the Supreme Court in 1983,

c. the proceedings before the courts initiated by the applicants with a view to having the compulsory sale of the property quashed, proceedings which ended in an unfavourable decision by the Supreme Court on 20 August 1985.

The applicants submit that this distinction of three different issues can only be accepted for the sake of argument. In reality these three legal proceedings must be looked at as a whole, instituted by the applicants with the aim of defending and retaining their property.

2. The six months' rule

The legal actions in which the applicants have been involved must be viewed in their entirety. As regards the Government's decision not to grant the applicants a permit to retain the property the applicants submit that they have complied with the six months' rule of Article 26 of the Convention. In their opinion there exists a close relationship between the different proceedings in this case. Even if the applicants had confined themselves to appealing against the decision of the Supreme Court of 20 August 1985 within the six months' period laid down in Article 26 of the Convention such an application would effectively have included both the Supreme Court's decision of 14 July 1983 and the Government's decision of 26 February 1981 as well as the Government's decision of 27 October 1983. In their submission the Government contradict their own decision of 27 October 1983. In their decision of 14 March 1985 the Government stated: "The appeal was finally rejected by the Government's conclusion on 27 October 1983. The appeal cannot be reviewed again by the Government."

Even if the Commission would not accept an application based on the decision of the Supreme Court of 20 August 1985 as effectively covering the decision of the Supreme Court of 14 July 1983 as well as the Government's decisions on 26 February 1981 and 27 October 1983, the applicants find that the application insofar it refers to the Government's decision of 27 October 1983 fully complies with the six months' rule since it was introduced on 3 April 1984.

3. Article 1 of Protocol No. 1

The applicants consider that the compulsory public auction on 19 June 1986 constitutes a violation of their property right as provided for by Article 1 of Protocol No. 1.

The Government have admitted that the applicants were deprived of their possessions within the meaning of the second sentence of Article 1 of Protocol No. 1 as a result of the sale at the public auction. The applicants are unable to accept the Government's statement that this interference was justified under the terms of Article 1. The applicants find no fair balance between the demands of the alleged public interest concerned and the necessity to protect the applicants' fundamental rights. On the contrary, the public sale was planned by the bureaucracy in order to place an excessive burden on the applicants in a discriminatory manner, both absolutely and in comparison with the previous owner and the subsequent owner. The Government in their submissions use the concept "public sale" and "auction" in a deceitful way when they describe the way in which the property was forcibly sold away from the applicants on 18 June 1985. The price had already been decided upon in an administrative way by the County Agricultural Board of the county of Kronoberg at 172,000 SEK without appeal. Nobody was allowed to make bids except the County Agricultural Board which for security reasons prior to the public sale had refused to grant any of four serious prospective buyers a permit to acquire the real estate in question.

Before the public sale on 18 June 1985 the property had undergone three valuations, one by the National Board of Forestry (skogsvårdsstyrelsen) of the county of Kronoberg of February and March 1984, another by the Senior Land Surveyor (överlantmätaren) of the county of Kronoberg of April 1984 and a third by a specially appointed valuer of October 1984.

The first valuation was made in the absence of the applicants who had the right to attend but were never invited. The value of the estate was decided at 100,000 SEK. In its letter of 15 March 1984 the National Board of Forestry indicated to the Enforcement Office of Växjö that "nothing more can be said except that when the property was sold at a compulsory auction some years ago there appeared some prospective buyers who were ready to bid more than 200,000 SEK. From that time the real estate prices have been on the same level in current value. A certain felling of low producing forest and subsequent forestry has taken place on the property. With this background and despite small felling possibilities it is not unbelievable that one may find prospective buyers who would be prepared to buy for more than the estimated value of 100,000 SEK. However, it is considered less likely that anybody is prepared to pay more than 200,000 SEK."

The next administrative valuation was made by the Senior Land Surveyor in the absence of the applicants who had the right to attend but who were never invited. This time the value of the estate was decided to amount to 125,000 SEK although this valuation referred back to the previous one of February and March 1984. The third and final administrative valuation was made in October 1984 by two specially appointed valuers in the presence of the applicants. This valuation refers to the previous two but nevertheless the value was decided to amount to 172,000 SEK which was the price to be applied at the public auction in June 1985.

The applicants made two general and critical remarks about the three valuations. First, the site quality of the estate is consistently underestimated to only half of the real quality and, secondly, the comprehensive forestry on the property in which the applicants engaged during 1980-1983, including the planting of

roughly 26,000 spruce plants, is completely ignored, although all those plants were on the spot before the valuations were made in 1984. The age of those plants is now four to seven years and they must soon be thinned out. This means that the land owner of the property, within the next three to four years, must take away 15,000 - 16,000 young trees. This can be done without the slightest effort of the landowner. He can sell those young trees as standing forest for at least 20 SEK a piece as Christmas trees to be cut down and taken away by the wholesaler. Such a transaction will in not more than two to three years' time give the landowner a net income of more than 300,000 SEK, depending on the high site quality and the very intensive forestry and the hard work of applicants and their family members for which they received no compensation. Taking into account this extraordinary high net income within only a few years and the fact that after this necessary thinning out the landowner will possess a fertile soil with widespread and strongly grown young trees for timber, it seems shocking that the Government and the Supreme Court forced the applicants to sell for 172,000 SEK in 1985 what they had bought in 1979 for 240,000 SEK. In the follow up of the forced auction on 18 June 1985 the applicants find some other interesting and revealing features of the Government's public interest, namely that the County Agricultural Board in the four cases of rejected applications for a permit to acquire the property at the public sale of June 1985 insists on its unrealistic value of the estate and that after the forced sale in June 1985 the County Agricultural Board sold the property for 125,000 SEK to the two brothers MB and TB who were prepared to buy exactly the same property at the compulsory auction in December 1979 for 230,000 SEK.

There can only be one reason for the County Agricultural Board to maintain its absurd valuation of the property amounting to 86,000 SEK. If that valuation could be accepted as the starting point it may appear as if the applicants were decently compensated, instead of ruthlessly underpaid in a discriminatory manner, when they were allowed to get 172,000 SEK at the compulsory auction in June 1985, and at the same time it may appear as if the subsequent buyers MB and TB had to purchase the property at a normal market price when as a matter of fact they were considerably subsidised, to a considerable part at the expense of the applicants. The applicants are certain that all this happened in the so-called Swedish public interest. However, the applicants submit that the argument as to the Swedish public interest is a most risky one. The Land Acquisition Act was enacted in order to implement some new agricultural guidelines and to meet policy goals of forestry and regional planning. Soon after the enforcement of this Act the public debate made it the target of heavy criticism concerning not only the policy goals but also the administrative means to reach those goals. The predominating Swedish opinion now finds the policy goals as defined by this Act to a large extent outdated and for that reason among others not worthy of the administrative means which the Act still leaves open for abuse by a powerminded and injudicious Swedish bureaucracy. In view of this it is really a venture into an adapted mine field to vindicate the opinion that what has happened to the property and the applicants as the owners thereof is in itself in the public interest.

To summarise the facts, the compulsory auction in December 1979 where the applicants bought the property at the price of 240,000 SEK left the previous owner with a net profit of about 100,000 SEK. After four years of intensive forestry on the property, including the planting of 26,000 spruce plants which activities should roughly have doubled the market value of the property from the time of the compulsory auction of December 1979 to the middle of 1985, the applicants were forced to sell the property at a price decided by the administration at 172,000 SEK to the County Agricultural Board of Kronoberg which by rejecting all applications for a permit to acquire the property excluded all other buyers, thereby extinguishing all hopes for the applicants to obtain a sale at a market value. Subsequently the County Agricultural

Board sold the property in question to new owners at a highly subsidised price, 125,000 SEK.

The applicants lost more than 300,000 SEK as an immediate and unavoidable result of the public auction. The applicants consider that Article 1 para. 1 of Protocol No. 1 is applicable. The Government's submissions do not justify the actions taken by the administration and by the courts. Those actions involve violations of the applicants' right to peaceful enjoyment of their possessions as guaranteed by Article 1 para. 1 of Protocol No. 1. The Government's references to the public interest do not outweigh the seriousness of the violations alleged.

4. Articles 6, 13 and 14 of the Convention

The issue of the permit to retain the property was a determination of a dispute in regard to the applicants' civil rights. Article 6 para. 1 as applicable and the applicants' right to access to a tribunal have been violated.

As regards the issue of the State's obligation to redeem the property the access to court was in fact no effective remedy for the applicants since the right to claim that the State redeem the property is by law given only to the seller in a deal which is quashed by the administration by means of rejecting the buyer's application for a permit to acquire the real estate in question. For that reason the buyers of real estate at compulsory auctions as a group are by law put in a much more hazardous situation than the sellers. The applicants view this situation as one concerning a civil right and a determination and dispute in that respect. Articles 6 para. 1, 13 and 14 of the Convention are applicable. The applicants conclude that there have been violations of the applicants' rights set forth in those Articles.

The next issue is that of the imposed price of 172,000 SEK. The use of this price at the public auction of 18 June 1985 when the property was forcibly sold placed a most excessive burden upon the applicants in a discrminatory manner both absolutely and in comparison with the local inhabitants. The previous owner could withdraw from the compulsory auction in December 1979 with a net profit of 100,000 SEK and the successive owners obtained the property for a most profitable and highly subsidised price where the greater part of the subsidy was in fact paid by the applicants.

The Court's refusal to quash the public auction sale of 18 June 1985 leaves the applicants without access either to an effective domestic remedy or to a fair and public hearing by an independent and impartial tribunal.

THE LAW

1. The applicants complain of a breach of Article 1 of Protocol No. 1 (P1-1), in particular because at the public auction in December 1979 the State sold the property to the applicants at a price of 240,000 SEK, then refused them a permit to retain the property, and finally bought it in June 1985 at a new public auction at a price of 172,000 SEK.

The Government submit that the complaint concerning the decision not to grant the applicants a permit to retain the property as well as any complaint relating to the redemption procedure should be rejected for failure to comply with the six months' rule in Article 26 (Art. 26) of the Convention. In the alternative, they submit that the complaint relating to the redemption procedure is incompatible ratione materiae with the provisions of the Convention. In all circumstances, they submit that the complaint under Article 1 of Protocol No. 1 (P1-1) is manifestly ill-founded.

Article 1 of Protocol No. 1 reads (P1-1):

"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 Commission considers that the applicants' complaint under Article 1 of Protocol No. 1 (P1-1) that they have been deprived of their property forms a whole which relates to several facts and sets of proceedings. The public sale of the applicants' property, which became final when the Supreme Court refused to grant leave to appeal on 20 August 1985, must be taken as the starting point when calculating the six months' period. The application was introduced with the Commission on 3 April 1984 and registered on 15 November 1985.

Accordingly this aspect of the application cannot in any part be rejected for failure to comply with the six months' rule in Article 26 (Art. 26) of the Convention.

The Commission considers that the applicants' complaint under Article 1 of Protocol No. 1 (P1-1) raises difficult questions of fact and law, which are of such complexity that their determination should depend upon an examination of the merits. This part of the application is therefore not manifestly ill-founded and must be declared admissible, no other ground for declaring it inadmissible having been established.

2. The applicants also complain that they did not have access to a court review of the decisions relating to the refusal to grant them a permit to retain the property. They allege a violation of Article 6 (Art. 6) of the Convention.

The Government submit that this complaint should be rejected for failure to comply with the six months' rule. They further submit that this complaint is incompatible ratione materiae with the provisions of the Convention since the decision not to grant a permit to retain the property did not involve a determination of the applicants' civil rights within the meaning of Article 6 (Art. 6) of the Convention. In the event of the Commission finding that the applicants' "civil rights" were determined, the Government admit that no procedure satisfying the conditions of Article 6 (Art. 6) was open to the applicants.

Article 6 para. 1 (Art. 6-1) first sentence of the Convention reads:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

As regards the six months' rule, the Commission recalls that the applicants' first request for a permit to retain the property was finally determined on 26 February 1981 by the Government. Their second request was finally determined on 27 October 1983, and their request to the Government for a reconsideration of the decision of 27 October 1983 was answered on 14 March 1985, the Government finding no reason to take any measures since the matter had been finally decided on 27 October 1983.

The Commission considers that the last decision of the Government of 14 March 1985 cannot be taken as the starting point for calculating the six months' rule. The question which arises is whether the final decision on the second request for a permit to retain the property should be taken into account, or whether those proceedings are to be regarded as being an ineffective remedy not to be taken into account. In this respect the Commission notes that the first decision did not have the effect of res judicata and that the second set of proceedings involved a fresh examination of the merits of the applicants' request, although reference was made to the previous decision. It further notes that at least the applicants were of the opinion that there were new facts to examine in the second set of proceedings. Moreover, the fact that the National Board of Agriculture in the second set of proceedings inspected the property suggests that new circumstances had arisen which warranted a further examination of the case. In these particular circumstances the Commission accepts that the "final decision" for the purpose of Article 26 (Art. 26) of the Convention was the decision of the Government of 27 October 1983. Taking this date as the starting point for calculating the six months' rule, it follows that the applicants' complaint cannot be rejected for failure to comply with that rule.

The subsequent issues to be decided are whether the decision to refuse the applicants a permit to retain their property was a "determination" of the applicants' "civil rights" within the meaning of Article 6 para. 1 (Art. 6-1) and, if so, whether the applicants had the possibility of bringing the refusal of the permit before a "tribunal" satisfying the requirements of Article 6 para. 1 (Art. 6-1).

The Commission has made a preliminary examination of these issues in the light of the parties' submissions. It considers that these issues are of such an important and complex nature that their determination requires an examination of the merits. This complaint must therefore be declared admissible.

3. Insofar as the applicants complain that the redemption procedure failed to meet the conditions of Article 6 (Art. 6) of the Convention, the Commission notes that this procedure terminated on 14 July 1983 when the Supreme Court refused to grant leave to appeal. Since the application was introduced on 3 April 1984, which is more than six months after the said decision, it follows that in this respect the application is inadmissible pursuant to Article 27 para. 3 (Art. 27-3) of the Convention.

4. The applicants also complain of the absence of an oral hearing before the Göta Court of Appeal when it determined the applicants' appeal concerning the public auction.

The Government submit that this complaint is manifestly ill-founded.

Article 6 para. 1 (Art. 6-1) of the Convention guarantees to everyone the right to a "fair and public hearing" in the determination of his civil rights and obligations.

The Commission considers that the question as to the applicability of Article 6 (Art. 6) to the proceedings before the Court of Appeal and the question whether the applicants were entitled to a hearing in those proceedings raise issues of such an important and complex nature that their determination requires an examination of the merits. This complaint must therefore be declared admissible.

5. The applicants moreover complain that also the procedure before the Supreme Court, when it refused to grant leave to appeal, violated Article 6 para. 1 (Art. 6-1) of the Convention, since the Supreme Court did not hold a hearing.

According to Chapter 54 Section 10 of the Code of Judicial

Procedure, the Supreme Court may only grant leave to appeal if it is important in order to create a precedent that the Court examine the case, or if there are specific reasons for such an examination, such as grounds for re-opening the procedure, or if an obvious mistake has been made in the Court of Appeal.

An examination as to whether leave to appeal shall be granted is, in the Commission's opinion, only an examination as to whether the conditions of Chapter 54 Section 10 of the Code of Judicial Procedure are satisfied and not an examination of the merits of the appeal. The Commission refers to its previous case-law according to which a leave to appeal examination by the Swedish Supreme Court does not involve a determination of "civil rights or obligations" (cf. No. 11453/85, Dec. 7.7.86, unpublished).

It follows that this complaint is incompatible ratione materiae with the provisions of the Convention and must be rejected pursuant to Article 27 para. 2 (Art. 27-2).

6. The applicants have also complained of violations of Articles 13 and 14 (Art. 13, 14) of the Convention. These complaints are closely linked to those parts of the application under Article 1 of Protocol No. 1 (P1-1) and Article 6 (Art. 6) of the Convention, which the Commission has found to be admissible above. Accordingly, these complaints must also be declared admissible.

For these reasons, the Commission

DECLARES INADMISSIBLE

1. the complaint under Article 6 of (Art. 6) the Convention relating to the redemption procedure;

2. the complaint under Article 6 (Art. 6) of the Convention regarding the absence of a public hearing before the Supreme Court when it decided on leave to appeal in the proceedings concerning the public auction;

DECLARES ADMISSIBLE

the remainder of the application, without prejuding the merits.

Secretary to the Commission — President of the Commission

(H. C. KRÜGER) — (C. A. NØRGAARD)