CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 45275/99
by Bengt HELLBORG
against Sweden

The European Court of Human Rights (First Section) sitting on 15 February 2000 as a Chamber composed of

Mr J. Casadevall, *President*,
Mrs E. Palm,
Mr L. Ferrari Bravo,
Mr Gaukur Jörundsson,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr T. Panţîru, *judges*,

and Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 22 May 1998 by Bengt Hellborg against Sweden and registered on 8 January 1999 under file no. 45275/99;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Swedish national born in 1940 and residing at Åkarp. He owns a piece of real property in central Lund. On 31 March 1990 he applied, according to the 1987 Planning and Building Act (*plan- och bygglagen*), for an advance notice regarding a building permit for an addition to the residential house situated on that property.

On 19 August 1992 the Building Committee of Lund announced that the applicant could not expect to be granted a building permit for the planned addition. The Committee considered the property unsuitable for additional buildings, taking into consideration the need for unused space for parking, recreation etc. The applicant appealed against the decision.

On 16 May 1994 the County Administrative Board (*länsstyrelsen*) of the County of Malmöhus rejected the appeal finding, *inter alia*, that the unused space after an addition would consist of a narrow backyard with no sun during the afternoon.

On 21 April 1995 the Administrative Court of Appeal (*kammarrätten*) in Gothenburg, after having held an oral hearing in the case at the location of the property and in the presence of the parties involved, rejected the applicant's further appeal.

The applicant appealed to the Supreme Administrative Court (*Regeringsrätten*). He was granted leave to appeal.

On 25 November 1997, after having heard the National Board of Housing, Building and Planning (*Boverket*), the opinion of which was submitted on 26 February 1997, the Supreme Administrative Court upheld the appellate court's decision.

COMPLAINTS

1. The applicant complains, under Article 6 of the Convention, that the Supreme Administrative Court decided his case without sufficient facts.

2. He also complains, under Article 6 of the Convention, that his case was not determined within a reasonable time.

3. Under Article 13 of the Convention the applicant complains of an alleged lack of access to an effective remedy.

4. He complains, under Article 18 of the Convention, of non-permitted restrictions on his rights under the Convention.

5. Lastly, the applicant complains of an alleged violation of the right to peaceful enjoyment of his property. He refers in this respect to Article 1 of Protocol No. 1 to the Convention.

THE LAW

1. The applicant complains that the Supreme Administrative Court decided on the question of an advance notice regarding a building permit without sufficient facts.

In this respect the applicant has invoked Article 6 of the Convention which guarantees, *inter alia*, the right to a fair hearing in the determination of civil rights and obligations.

The Court recalls that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the engagements undertaken by the Parties to the Convention. In particular, it is not competent to deal with applications concerning errors of law or fact allegedly committed by the competent national authorities, to whom it falls, in the first place, to interpret and apply domestic law. The Court has no competence to examine allegations concerning such errors except where, and to the extent that, they seem likely to have entailed a possible violation of any of the rights and freedoms set out in the Convention (cf. the Garcia Ruiz v. Spain judgment of 21 January 1999, § 28, with further reference, to be published in *Reports of Judgments and Decisions* 1999).

It is true that the applicant maintains that the Supreme Administrative Court decided on the matter without sufficient facts However, an examination of this part of the application has not disclosed any appearance of a violation of any of the rights and freedoms set out in the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

2. The applicant further complains that his case was not determined within a reasonable time.

The applicant has invoked Article 6 of the Convention which, *inter alia*, guarantees the right to a determination of civil rights and obligations within a reasonable time.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. The applicant also refers to Article 13 of the Convention in respect of the right to an effective remedy.

Article 13 of the Convention guarantees everyone whose rights and freedoms as set forth in the Convention are violated the right to an effective remedy before a national authority.

The Court recalls in this respect that the applicant had access to, and indeed also availed himself of, effective remedies within the meaning of Article 13, namely the right to appeal firstly to the County Administrative Board, secondly to the Administrative Court of Appeal, and thirdly to the Supreme Administrative Court.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

4. The applicant also refers to Article 18 of the Convention in respect of the use of restrictions on rights.

Article 18 of the Convention provides that restrictions permitted under the Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

However, an examination of this part of the application, as submitted by the applicant, does not disclose any appearance of a violation of this Article.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

5. Lastly, the applicant refers to Article 1 of Protocol No. 1 to the Convention in respect of the protection of his property in that he was not granted a positive advance notice regarding a building permit.

Article 1 of Protocol No. 1 to the Convention reads, so far as relevant, as follows:

> "Every natural ... 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 ..."

The Court recalls that its task in this context is to examine the lawfulness, purpose and proportionality of the decision taken by the domestic authorities (cf., e.g., No. 12258/86, Dec. 9.5.88, D.R. 56, p. 215). As regards the choice of the detailed legal rules implementing a measure for the control of the use of property, the domestic legislature must have a wide margin of appreciation. In respect of the purpose of the measures, the Court must respect the domestic legislature's judgment as to what is in the general interest unless that judgment was manifestly without reasonable foundation (cf., e.g., the Mellacher and Others judgment of 19 December 1989, Series A no. 169, p. 26, § 45).

In the present case the Court notes that the refusal of the applicant's request for a positive advance notice was based on the relevant domestic legal provisions. Furthermore, the restrictions on buildings were clearly a measure in pursuance of a general interest, namely the proper organisation of populated areas. The Court finds no appearance of a violation of Article 1 of Protocol No. 1 to the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaint relating to the length of the proceedings;

DECLARES INADMISSIBLE the remainder of the application.

Michael O'Boyle
Registrar

Josep Casadevall
President