AS TO THE ADMISSIBILITY OF

Application No. 14097/88
by ITALINVEST AKTIEBOLAG
against Sweden

The European Commission of Human Rights (First Chamber) sitting in private on 6 March 1991, the following members being present:

MM. J.A. FROWEIN, President of the First Chamber
E. BUSUTTIL
A. S. GÖZÜBÜYÜK
J. C. SOYER
H. DANELIUS
Sir Basil HALL
MM. C.L. ROZAKIS
L. LOUCAIDES
A.V. ALMEIDA RIBEIRO

Mr. M. de SALVIA, Secretary to the First 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 3 June 1988 by ITALINVEST AKTIEBOLAG against Sweden and registered on 5 August 1988 under file No. 14097/88;

Having regard to :

- the report provided for in Rule 47 of the Rules of Procedure of the Commission;

- the written observations submitted by the Government on 24 January 1990 and by the applicant on 26 October 1990;

- the Commission's decision of 8 January 1991 to refer the application to the First Chamber;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a limited liability company with its seat in Lund. It is represented before the Commission by Mr. Göran Ravnsborg, a lecturer at the University of Lund.

The applicant company owns 100 % of the shares of another limited liability company called Giallo Aktiebolag (hereinafter: "Giallo"). In August 1985 Giallo bought a restaurant in Malmö. The restaurant was transformed into a music restaurant, specialising in rock music. The restaurant served lunch five days a week and four nights a week it operated as a rock music restaurant, called Oves Rockklubb.

On 9 December 1985 Giallo was granted a licence to serve alcoholic beverages on condition that the restaurant also in the evenings served cooked meals to a considerable extent. The licence was renewed on 11 April and on 21 November 1986. The latest licence was valid until further notice.

By letter of 14 October 1987 the County Administrative Board (länsstyrelsen) of the Malmöhus County informed Giallo that it was considering whether or not the licence to serve alcoholic beverages should be withdrawn, inter alia for the following reasons:

On 10 October 1987 the Social Authority (socialförvaltningen) of Malmö had made an inspection of the restaurant. Many of the persons in the queue outside the restaurant were drunk. In the restaurant there had been great disorder. In all likelihood more guests than permitted had been allowed in. Everywhere there had been guests with glasses filled with alcohol. The level of intoxication in the restaurant had been high and a couple of guests had been sleeping on tables. The floor had been dirty from beer and smashed glass had been noted between the tables. The restaurant had had the appearance of a drinking place. On 19 November 1986 the County Administrative Board had pointed out that the proportion of meals served was too low. Moreover, the Social Authority had, during the last year, criticised the way in which the restaurant business was run. The restaurant had been inspected four times in December 1986 and three times in February/March 1987. It had been noted that the club was not a restaurant in the normal sense. There had been intoxicated persons in the restaurant and the rooms had always been crowded with persons walking around with glasses filled with alcohol. On 1 April 1987 it had been pointed out that the club did not meet the condition of a restaurant within the meaning of the 1977 Act on the Sale of Beverages (lagen om handel med drycker; hereinafter "the Act"). Both the County Administrative Board and the Social Authority had inspected the restaurant.

The County Administrative Board pointed out that Section 7 of the Act provides that the person selling beverages should ensure order and sobriety at the place of sale; that according to Section 11 of the Act, alcoholic beverages may not be sold to a person who is notably influenced by alcohol; and that, under Section 41 of the Act, a licence to serve alcoholic beverages may only be given if it can be assumed that the serving of cooked meals will constitute a significant part of the restaurant's activities.

Giallo was given the opportunity to submit their comments on the above. By letter of 23 October 1987 Giallo contended that the charges of disorder were too far-reaching, but admitted that the order could and should be improved.

On 26 October 1987 the County Administrative Board withdrew the licence with immediate effect in application of Section 64 of the Act taken together with Sections 7, 11, 41, 69 and 71. In its reasons the Board stated inter alia:

"...
From your restaurant's report submitted to the County Administrative Board it appears that the proportion of (meals served) during the three periods of 1986 was 20 %, 8 % and 15 % of the total turnover and 19 % and 17.5 % for the first two periods of 1987. During July 1987 the restaurant was closed during lunch-time, as a result of which the proportion of food was reduced to 7.1 %. ... It can be established that the proportion of (meals served) would be less than 10% of the total turnover if you did not serve lunch. During the whole period at issue (the turnover of) the sale of strong beer has been three to four times higher than (the turnover of) the sale of meals. Both the County Administrative Board and the Social Authority have visited the club and noted that it is rather a drinking-place or a strong beer pub than a real restaurant. No improvement has been made in spite of remarks from the County Administrative Board. Furthermore you allow too many guests to enter for

them to have have any possibility to sit down and eat. In addition, the sale of alcohol in Oves (Rockklubb) has caused great inconveniences as regards order and sobriety.

Making a comprehensive assessment the County Administrative Board finds that the activities (carried out) in Oves Rockklubb do not satisfy the condition of a restaurant within the meaning of the Act on the Sale of Beverages and that you have failed seriously in the social responsibility imposed on you by the granting of a licence to serve alcoholic beverages. In the present case, any measure other than a revocation is out of the question."

Giallo appealed to the National Board of Health and Social Welfare (socialstyrelsen) claiming that the licence should not be withdrawn and that the enforcement of the decision of the County Administrative Board should be stayed, pending the outcome of the appeal.

On 19 November 1987 the National Board of Health and Social Welfare decided not to stay the enforcement of the County Administrative Board's decision and on 8 December 1987 the appeal was rejected. This decision was not subject to any further appeal.

COMPLAINTS

1. The applicant company submits that there was no possibility to have the withdrawal of Giallo's licence to serve alcoholic beverages reviewed by a court. It alleges a violation of Article 6 of the Convention.

2. The applicant company further alleges that the withdrawal of Giallo's licence was intended to serve as a punishment against "certain inconveniences alleged by the bureaucracy in the past". It alleges violations of Article 6 paras. 1 and 2 of the Convention, the latter provision both in itself and read together with Article 14 of the Convention.

3. The applicant company finally alleges that the withdrawal of Giallo's licence violated Article 1 of Protocol No. 1 to the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 3 June 1988 and registered on 5 August 1988.

On 9 November 1989 the Commission decided that notice of the application should be given to the respondent Government and that the parties should be invited to submit written observations on the admissibility and merits of the application, limited to the issue under Article 6 of the Convention.

The Government's observations were submitted on 24 January 1990. The applicant company's observations in reply were submitted on 26 October 1990.

On 8 January 1991 the Commission decided to refer the application to the First Chamber.

THE LAW

1. The application was introduced by Italinvest Aktiebolag as parent company of Giallo owning all the shares of Giallo. In view of this the Commission considers that the applicant company may itself claim to be a victim under the terms of Article 25 para. 1 (Art. 25-1) of the Convention.

2. The applicant company complains that there was no possibility to have the withdrawal of Giallo's licence to serve alcoholic beverages reviewed by a court. It alleges a violation of Article 6 para. 1 (Art. 6-1) of the Convention, which reads, insofar as it is relevant:

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

The issues to be decided are whether the withdrawal of Giallo's licence to serve alcoholic beverages was decisive for Giallo's "civil rights and obligations" and, if so, whether a genuine dispute of a serious nature arose between Giallo and the authorities in relation to this decision. If the answer to both these questions is affirmative, it will have to be determined whether Giallo had at its disposal a procedure satisfying the conditions of Article 6 para. 1 (Art. 6-1) of the Convention with regard to that dispute.

The Government waive objections as to the admissibility of this complaint and admit a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission finds that this complaint is not manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. As no other ground for declaring it inadmissible has been established, this complaint is admissible.

3. The applicant company further alleges that the withdrawal of Giallo's licence was intended to serve as a punishment and alleges violations of Article 6 paras. 1 and 2 (Art. 6-1, 6-2) of the Convention, the latter provision both in itself and read together with Article 14 (Art. 14) of the Convention.

In the Government's view there has been no other violation of Article 6 (Art. 6) of the Convention.

The Commission finds that an examination of this complaint as it has been submitted does not disclose any appearance of a violation of the provisions invoked by the applicant company.

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.

4. The applicant company finally alleges that the withdrawal of Giallo's licence violated Article 1 of Protocol No. 1 (P1-1) to the Convention, which reads:

> "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 economic interests connected with the running of the restaurant were "possessions" for the purposes of Article 1 of Protocol No. 1 (P1-1) to the Convention; that the maintenance of the licence was one of the principal conditions for the carrying on of Giallo's business; that its withdrawal had adverse effects on the goodwill and the value of the restaurant; and that the withdrawal thus constituted an interference with the applicant

company's and Giallo's right to the "peaceful enjoyment of (their) possessions" (cf. Eur. Court H.R., Tre Traktörer AB judgment of 7 July 1989, Series A No. 159, p. 21, para. 53).

The Commission further finds that the withdrawal of Giallo's licence constitued a measure to control the use of property which falls to be considered under the second paragraph of Article 1 of Protocol No. 1 (P1-1) to the Convention (loc.cit., pp. 21-22, para. 54).

Under the second paragraph of Article 1 of Protocol No. 1 (P1-1) the Commission must examine whether the withdrawal of Giallo's licence was "necessary to control the use of property in accordance with the general interest". The task of the Convention organs in this context is to supervise the lawfulness, purpose and proportionality of the withdrawal of the licence (cf. e.g. No. 10378/83, Dec. 7.12.83, D.R. 35 p. 245). The question of proportionality requires a determination as to whether there was a reasonable relationship between the means employed and the aim sought to be realised or, in other words, whether a fair balance has been struck between the demands of the general interest and the interest of the individual. In determining whether a fair balance exists, the State enjoys a wide margin of appreciation with regard both to choosing means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the measure in question (Eur. Court H.R., Agosi judgment of 24 October 1986, Series A No. 108, p. 18, para. 52).

As to the lawfulness of the withdrawal of the licence the Commission observes that the decision was based on Section 64 of the Act, read together with other Sections of the same Act. The Commission considers that the Act has been enforced in the general interest of controlling the consumption and sale of alcohol and that the aim so pursued was the control of the use of property in accordance with the general interest. The Commission is thus satisfied that the withdrawal of the licence was lawful and served the general interest (Tre Traktörer AB judgment, loc.cit, pp. 22-23, paras. 57-58).

As to the relationship of proportionality between the means employed and the aim sought to be realised, the Commission observes that the withdrawal of the licence had immediate effect. No stay of the enforcement of the decision having been granted by the National Board of Health and Welfare, the repercussions of the decision were serious. On the other hand, it appears from the file that the restaurant, on a number of occasions, had been subject to inspections both by the Social Authority and by the County Administrative Board and that it had been found that the restaurant did not meet the requirements stated in the Act. However, there was no improvement in the way in which the restaurant was run.

In view of the Swedish policy concerning alcoholic beverages and having regard to the wide margin of appreciation enjoyed by Contracting States under the second paragraph of Article 1 of Protocol No. 1 (P1-1), the Commission therefore concludes that the withdrawal of Giallo's licence was not disproportionate to the aim pursued.

Accordingly, the withdrawal of the licence was justified under the terms of the second paragraph of Article 1 of Protocol No. 1 (P1-1).

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 ADMISSIBLE, without prejudging the merits of the case, the applicant company's complaint concerning the

absence of a right to a court review of the withdrawal of Giallo's licence to serve alcoholic beverages;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the First Chamber — President of the First Chamber

(M. de SALVIA) — (J.A. FROWEIN)