AS TO THE ADMISSIBILITY OF

Application No. 35143/97
by Christel JOHANSSON
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 9 September 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
D. ŠVÁBY
P. LORENZEN
E. BIELIŪNAS
E.A. ALKEMA
A. ARABADJIEV

Ms M.-T. SCHOEPFER, Secretary to the Chamber

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

Having regard to the application introduced on 14 December 1996 by Christel JOHANSSON against Sweden and registered on 3 March 1997 under file No. 35143/97;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Swedish citizen born in 1945, is residing in Oxelösund, Sweden. Before the Commission she is represented by her husband, Ingemar Johansson, who is an engineer.

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

The applicant owns a plot of land, Mättinge 1:27, in the municipality of Trosa (until the end of 1992 the property belonged to the municipality of Nyköping). The property which is situated by the sea is regulated by coastal protection provisions (strandskydds-bestämmelser). This means, inter alia, that the applicant is prohibited from erecting a building on the property unless she is granted an exemption from the coastal protection provisions. An exemption from this building ban may be granted only if there are special reasons. According to a detailed development plan (detaljplan), adopted in June 1989 (the 1989 development plan), the adjacent properties are supposed to be used for summer-houses. The applicant's property was, however, left outside this plan although, according to a subdivision plan (avstyckningsplan) adopted in 1958, it was registered as a summer-house property. Moreover, the surroundings are classified as an area of national interest due to its natural and cultural value.

On 21 March 1991 the applicant applied for an exemption from the building ban and for a preliminary opinion (förhandsbesked) concerning a permission to build a summer-house on the property. On 19 June 1991 the Building Committee (byggnadsnämnden) of Nyköping granted her application. The Committee stated, inter alia, that there were special reasons and that the property - in view of its size and location, the character of the beach and terrain and other circumstances - was considered to have limited value for outdoor life. In so far as the exemption from the building ban was concerned, the National Environment Protection Board (Statens Naturvårdsverk) appealed against the decision to the County Administrative Board (länsstyrelsen).

On 25 October 1991 the County Administrative Board revoked the Building Committee's decision. However, the Board did not base its decision on the merits of the case. Instead, the Board found that the applicant had withdrawn her application to the Building Committee and had requested that all decisions taken thereafter be declared null and void. On the same day the Board rejected a petition from the applicant in which she had requested an examination of the procedure which resulted in the 1989 development plan for the adjacent properties. This request had been made by the applicant in order to substantiate her application for an exemption from the building ban.

On 12 November 1991 the applicant appealed against the Board's decisions to the Government. As far as the decision regarding the examination of the 1989 development plan was concerned, the Government rejected the applicant's appeal on 24 September 1992. With regard to the exemption, the Government, on the same day, found that the applicant, by making her appeal, had withdrawn her previous withdrawal before the County Administrative Board. Thus, the Government quashed the Board's decision and referred the matter back to the Board for a re-examination of the case on its merits.

Subsequently, on 18 November 1992, the County Administrative Board decided in favour of the National Environment Protection Board and quashed the Building Committee's decision to grant the applicant an exemption from the building ban. The decision was upheld on appeal by the Government on 3 June 1993. The applicant later made a petition to the Government for a "political" reconsideration of its decision but, on 24 June 1993, the Government decided not to take any further action in the matter.

In the meantime, on 5 May 1993, the Building Committee of Trosa had decided to grant the applicant permission to build a summer-house on the property. However, this permission was given under certain conditions, inter alia that the applicant would receive an exemption from the building ban.

In accordance with the provisions of the 1988 Act on Judicial Review of Certain Administrative Decisions (Lag om rättsprövning av vissa förvaltningsbeslut, 1988:205) the applicant, on 31 October 1993, challenged all of the Government's above decisions in the Supreme Administrative Court (Regeringsrätten). After an extension of the time-limit she completed her complaints on 28 November 1993. The applicant requested the court to quash the Government's decision regarding the exemption so that the Building Committee's decision to grant her an exemption from the building ban could become effective. In the alternative, she asked the court to revoke the decision and refer the case back to the Government for a new decision. The applicant also complained about the Government's decision regarding the requested examination of the 1989 development plan. In this respect, she argued that her intentions with the examination had been to establish facts to support her claim for an exemption from the building ban. By refusing the examination her possibilities to argue in favour of an exemption had been impaired and, thus, the authorities had lacked adequate information to decide that case correctly. Furthermore, the applicant made several complaints regarding alleged irregularities during the proceedings in the Government and the lower public authorities. She stated that the common purpose of all her complaints was to obtain a legally valid permission to build on her property.

On 29 December 1994, 17 January 1995, 8 May 1995 and 23 October 1995 the applicant made further submissions to the Supreme Administrative Court claiming, inter alia, that the court should request a preliminary ruling from the European Court of Justice pursuant to Article 177 of the EC Treaty and that the court should examine her case with regard to the Convention, the principle of proportionality and applicable EC legislation.

On 5 September 1995 the Supreme Administrative Court invited the Government to submit their observations in the case. The observations were submitted to the court on 15 March 1996 and on 15 April 1996 the applicant made her final observations.

On 14 May 1996 the Supreme Administrative Court decided to have an oral hearing in the case and to hold an inspection of the locus in quo. The hearing and the inspection were held on 30 May 1996.

On 18 June 1996 the court pronounced its judgment. The court held that "... special reasons to grant an exemption from the coastal protection provisions exist and it must be considered contrary to the principle of proportionality not to grant such an exemption". Consequently, the court quashed the Government's decision regarding an exemption from the building ban and referred the case back to the Government for re-examination. However, the court dismissed the applicant's appeal concerning the Government's decision on 24 September 1992 to refer the exemption case back to the County Administrative Board for a review and rejected her complaint concerning the Government's decisions on 24 June 1993 not to review the exemption matter. Moreover, the court rejected the applicant's complaint regarding the Government's decision to reject her request for an examination of the 1989 development plan.

Subsequently, on 19 September 1996, the Government quashed the County Administrative Board's decision of 18 November 1992 and confirmed the Building Committee's decision of 19 June 1991 to grant the applicant an exemption from the building ban under the coastal protection provisions and, thus, permitted her to build a summer-house on her property.

COMPLAINTS

1. The applicant complains that she was denied a fair hearing. She alleges procedural irregularities as well as errors in law. She claims, inter alia, that several of her complaints have been disregarded and that the Supreme Administrative Court's review was incomplete as it failed to determine certain guilt and liability questions which she had requested the court to resolve in order to obtain sufficient grounds for a damage claim against the State. Furthermore, she complains that the court's oral hearing was limited to one specific issue and was held without the opposite party, the National Environment Protection Board, being present. She alleges also that the County Administrative Board is not an independent and impartial tribunal. The applicant invokes Article 6 para. 1 of the Convention.

2. Further, also invoking Article 6 para. 1 of the Convention, the applicant maintains that the proceedings were not concluded within a reasonable time.

3. The applicant also complains that the proceedings as a whole have violated her right under Article 1 of Protocol No. 1 to the Convention to the peaceful enjoyment of her possessions.

4. Furthermore, the applicant claims that the judicial review by the Supreme Administrative Court cannot be considered to be an effective remedy. In this respect, she invokes Article 13 of the Convention.

THE LAW

1. The applicant complains that, due to, inter alia, procedural irregularities and the Supreme Administrative Court's omission to establish certain guilt and liability questions,

she was denied a fair hearing. The applicant invokes Article 6 para. 1 of the Convention which, in relevant parts, reads as follows.

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by an independent and impartial tribunal ..."

The Commission recalls that Article 25 of the Convention provides that the Commission may only receive petitions from persons "claiming to be the victim of a violation". Therefore, before examining the merits of the complaints raised by the applicant, the Commission must first establish whether, in the present case, the applicant may claim to be a victim of a violation of her rights under Article 6 para. 1 of the Convention within the meaning of Article 25 of the Convention.

The Commission notes that the present application concerns basically the applicant's right to erect a building on her property. However, from the contested proceedings, two separate issues can be distinguished, i.e. first, the exemption from the building ban as such and second, the applicant's request for an examination of the 1989 development plan. It is clear from the applicant's submissions that this latter issue was subsidiary to the exemption matter and that its sole purpose was to establish facts which could support the applicant's request for an exemption from the building ban. In these circumstances the Commission considers - even assuming that the decisions relating to the examination issue concerned the determination of the applicant's civil rights - that it is more expedient to assess the proceedings as a whole when examining the applicant's complaint under Article 6 para. 1.

The Commission recalls that the Supreme Administrative Court decided that there were special reasons to grant an exemption from the building ban under the coastal protection provisions and that, subsequently, the Government confirmed the Building Committee's decision of 19 June 1991 to grant the applicant an exemption and, thus, allowed her to erect a building on her property. The Commission notes that the outcome of the proceedings as a whole could not have been more favourable to the applicant. Thus, thanks to the use of domestic remedies, any defects the proceedings might have had must be considered to have been remedied (cf. No. 15831/89, Dec. 25.2.91, D.R. 69, p. 317).

It follows that the applicant can no longer claim to be a victim, within the meaning of Article 25 of the Convention, of a violation of her right to a fair hearing under Article 6 of the Convention. This complaint is therefore manifestly ill-founded and must be rejected pursuant to Article 27 para. 2 of the Convention.

2. Also invoking Article 6 para. 1 of the Convention, the applicant further complains about the length of the proceedings. In particular, she complains about the proceedings in the Supreme Administrative Court.

The Commission recalls that the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, having regard in

particular to its complexity, the applicant's conduct and that of the authorities dealing with the case (cf. Eur. Court HR, Kemmache v. France judgment of 27 November 1991, Series A no. 218, p. 27, para. 60).

The Commission notes that the proceedings started on 21 March 1991 when the applicant lodged her application for an exemption from the building ban and ended on 19 September 1996 when the Government's final decision in the case was pronounced. Hence, the period to be taken into account is approximately five years and six months.

The Commission recalls that the initial administrative procedure, involving three levels, lasted for about two years and eight months. However, following the Building Committee's favourable decision on 19 June 1991, the applicant apparently withdrew her application and the Committee's decision was, consequently, revoked by the County Administrative Board. The applicant's subsequent appeal to the Government, lodged on 12 November 1991, was considered as a "withdrawal of the withdrawal" and the examination of the case on the merits was resumed. Having regard to this, the Commission finds that the applicant must be held responsible for any delays during the initial eight months of the proceedings. In view of this and the other circumstances of the case, the Commission finds no reason to criticise the length of the proceedings before the administrative authorities.

As regards the proceedings in the Supreme Administrative Court the Commission recalls that these proceedings started on 31 October 1993, when the applicant lodged her request for a judicial review, and ended with the court's judgment on 18 June 1996. Thus, these proceedings lasted approximately two years and eight months. In this respect, the Commission notes that the applicant was given one month's extension to complete her complaint, which she did on 28 November 1993. It appears that the case was, at least to some extent, complicated by the applicant's excessive litigation before the court. However, there is a period for which the applicant appears not to be responsible. Thirteen months elapsed between 28 November 1993 and 29 December 1994 when the applicant made her first additional submissions to the court, during which period there was no apparent activity by the court. After the applicant's first additional submissions, a further eight months elapsed before the court decided to request observations from the Government. Taking into account that during these months the applicant submitted further observations and claims to the court, there appears to be no reason to criticise the court for this delay. Furthermore, after receiving the parties final observations, the court pronounced its judgment within two months.

Having regard to the above, the Commission finds that the only phase in the proceedings that is questionable is the period between 28 November 1993 and 29 December 1994. However, bearing in mind that, apart from the examination by the Supreme Administrative Court, the case was examined at three levels during the administrative procedure -twice by the County Administrative Board and three times by the Government - and taking into account the complexity of the case and the applicant's conduct, the Commission finds that the length of the proceedings, taken as a whole, did not exceed what could be considered reasonable under Article 6 of the Convention.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

3. The applicant complains that, although she was finally awarded an exemption from the building ban, her right to the peaceful enjoyment of her possessions has been violated. She invokes Article 1 of Protocol No. 1 to the Convention which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws at 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."

According to the constant case-law of the Commission and the European Court of Human Rights, an applicant who obtains adequate redress at the domestic level for the alleged violation of the Convention cannot, or cannot any longer, claim to be a "victim" of a violation by one of the High Contracting Parties of the rights set forth in the Convention (cf., e.g., No. 21649/93, Rep. 8.9.93, D.R. 75, p. 257, and Eur. Court HR, Eckle v. Germany judgment of 15 July 1982, Series A no. 51, p. 30, para. 66).

The Commission considers that, in the present case, the final domestic decision which indeed awarded the applicant the requested exemption from the building ban and, thus, allowed her to erect a building on her land constitutes for the applicant an appropriate and sufficient redress for the alleged violation of her entitlement to the peaceful enjoyment of her possessions. Therefore, she can no longer claim to be a victim of the alleged violation of Article 1 of Protocol No. 1 to the Convention.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

4. The applicant also claims, under Article 13 of the Convention, that she had no effective remedy at her disposal.

The Commission recalls that, in previous cases, the judicial review by the Supreme Administrative Court under the 1988 Act on Judicial Review of Certain Administrative Decisions has been considered to satisfy the requirements of Article 6 of the Convention (cf. No. 18660/91, Dec. 7.12.94, D.R. 79-A, p. 11). Moreover, the applicant was in fact awarded the exemption from the building ban she had applied for. Thus, she had an effective remedy.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE

M.-T. SCHOEPFER
Secretary
to the Second Chamber

J.-C. GEUS
President
of the Second Chamber