AS TO THE ADMISSIBILITY OF

Application No. 30328/96
by Per JONSSON
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 9 April 1997, the following members being present:

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

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 15 January 1996 by Per JONSSON against Sweden and registered on 28 February 1996 under file No. 30328/96;

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 1944, resides in Stockholm. Before the Commission he is represented by his lawyer, Ms. Ulrika Sundin Bonnedahl.

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

Adoption of building plan

On 21 October 1991 the Municipal Council (kommunfullmäktige) of Umeå adopted a building plan (detaljplan) concerning the establishment of a golf course and other recreational facilities on certain land which included parts of the applicant's forest property, Norrmjöle 1:6. The applicant, who previously had objected to the requisitioning of his land, was not personally notified of the decision, which gained legal force on 7 May 1992. He allegedly became aware of the decision in September 1992 and later applied to the Supreme Administrative Court (Regeringsrätten) for a restoration of the expired time-limit for appeal (återställande av försutten tid). His application was granted on 16 November 1995. The applicant has since appealed against the planning decision to the County Administrative Board (länsstyrelsen) of the County of Västerbotten, where the case is presently pending.

Compulsory transfer of land

On 30 December 1992 the Real Estate Formation Authority (Fastighetsbildningsmyndigheten) in Umeå, on application by the local golf club and against the applicant's will, decided that parts of Norrmjöle 1:6 (about 3.6 hectares of a total of almost 27 hectares) be transferred (fastighetsreglering) to the golf club's property. At the same time, about 0.2 hectares of land were added to Norrmjöle 1:6. The applicant was compensated for the estimated market value of the transferred land. The land added to his property was considered to be of no value. The compensation was thus fixed at 129,189 Swedish crowns (SEK).

The applicant appealed to the Real Estate Court (Fastighetsdomstolen), claiming, firstly, that the decision to transfer land should be revoked or, secondly, that he should be given higher compensation.

By decision of 7 July 1994, the Real Estate Court upheld the appealed decision. The court noted that the forced transfer of land was allowed, as the relevant area was brought into line with the above-mentioned building plan. The court further found that the benefits of the land transfer outweighed the inconveniences and costs involved, that the transfer did not make the applicant's property less suited to its purpose and that all other requirements laid down in the Real Estate Formation Act (Fastighetsbildningslagen, 1970:988) for the protection of the interests of individual property owners were fulfilled. With regard to the applicant's compensation, the court noted that it had been fixed in accordance with established principles by a land surveyor, appointed as expert valuer by the Real Estate Formation Authority. The court considered that the compensation decision was supported by the facts of the case. Before deciding in the case, the court had held an inspection of the locus in quo (syn). The applicant then appealed to the Court of Appeal (hovrätten) for Upper Norrland. He maintained that the land transfer decision should be quashed as, allegedly, the golf club was not competent under the law to apply for the measures in question. Secondly, he claimed that the case should be adjourned pending the Supreme Administrative Court's decision on his application for restoration of the time-limit for appeal against the building plan decision. Thirdly, he demanded compensation of 172,545 SEK for the loss of his land.

On 13 February 1995 the Court of Appeal rejected all the applicant's claims and accordingly upheld the Real Estate Court's decision.

On 19 July 1995 the Supreme Court (Högsta domstolen) refused the applicant leave to appeal.

COMPLAINTS

1. The applicant contends that he has not had a fair hearing as required by Article 6 para. 1 of the Convention.

2. The applicant further claims that the transfer of land in question violated his property rights under Article 1 of Protocol No. 1 to the Convention.

THE LAW

1. The applicant contends that he has not had a fair hearing as required by Article 6 para. 1 (Art. 6-1) 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 ... by ... [a] tribunal ..."

The applicant maintains that his "civil rights" were determined by the decision to transfer parts of his land to the golf club's property. He argues, however, that that decision, like other decisions on compulsory transfer of land, was taken in accordance with the plan in force. Thus, the question of the transfer was effectively determined already when the plan was adopted. As he was not informed of the planning decision, he was not able to appeal against it and his objections to the plan were not taken into account. If the appeal lodged against this decision after the Supreme Administrative Court's decision to restore the time-limit for appeal is successful, he will have to apply to the Supreme Court for a re-opening of the land transfer proceedings in an attempt to get his land back.

The Commission first finds that the proceedings in the case related to the transfer of parts of the applicant's property and therefore concerned a determination of his "civil rights" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission further recalls that, when examining whether court proceedings satisfy the requirements of Article 6 para. 1 (Art. 6-1), it must look at the proceedings as a whole. In the present case, the Real Estate Formation Authority's decision of 30 December 1992 to transfer parts of the applicant's property was reviewed by the Real Estate Court, the Court of Appeal and, in deciding not to grant leave to appeal, the Supreme Court. The Real Estate Court held an inspection before deciding in the case and both that court and the Court of Appeal examined the applicant's claims before rejecting his appeals.

The Commission therefore considers that the land transfer proceedings, as such, were not unfair. The applicant contends, however, that the question of the transfer of land had been effectively determined already before these proceedings started by the decision to adopt the building plan, against which the applicant, for lack of a proper notification, had not been able to appeal. In this respect, the Commission notes, however, that the Supreme Administrative Court, by decision of 16 November 1995, restored the time-limit for appealing against the planning decision, following which the applicant appealed to the County Administrative Board. The planning decision will thus be examined in these - pending - proceedings, in which the applicant will be able to present his objections to the plan. Should the applicant be successful in these proceedings - and the planning decision thus be quashed in so far as it concerns his property - he may apply to the Supreme Court for a re-opening of the land transfer proceedings.

In these circumstances, the Commission does not find that the proceedings in the applicant's case, taken as a whole, have been unfair.

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.

2. The applicant further claims that the transfer of land in question violated his property rights, as the establishment of a golf course cannot be considered as a public interest. He invokes Article 1 of Protocol No. 1 (P1-1) to the Convention which provides the following:

"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 provision 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 first notes that proceedings concerning the adoption of the building plan are pending and that, should the applicant be successful in these proceedings, he may apply to the Supreme Court for a re-opening of the land transfer proceedings. The question thus arises whether domestic remedies have been exhausted in accordance with Article 26 (Art. 26) of the Convention. The Commission finds, however, that it does not have to resolve this question as the complaint is, in any case, inadmissible for the following reasons.The transfer of parts of the applicant's land constituted a deprivation of his possessions which falls to be considered under the second sentence of the first paragraph of Article 1 (Art. 1).

The Commission recalls that the object of the land transfer was the establishment of a golf course and other recreational facilities. The Commission considers that this is a legitimate "public interest". With regard to the lawfulness of the decisions, the Commission is further satisfied that they were in conformity with Swedish law, namely the provisions of the Real Estate Formation Act. The requirement that the deprivation be in accordance with the general principles of international law only applies to foreigners and is thus of no relevance to the present application.

A deprivation of possessions must, however, not only in principle pursue a legitimate aim in the public interest, but it must also demonstrate a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The requisite proportionality will not be found if the person concerned has had to bear "an individual and excessive burden". Compensation terms are material to the assessment of whether a fair balance has been struck between the various interests at stake and whether or not a disproportionate burden has been imposed on the person who has been deprived of his possessions. Although Article 1 of Protocol No. 1 (P1-1) does not give a right to any particular amount of compensation, the taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference which could not be considered justifiable (cf. Eur. Court HR, Lithgow and Others v. the United Kingdom judgment of 8 July 1986, Series A no. 102, pp. 50-51, paras. 120-121).

In the present case, the Commission observes that the Real Estate Court, in its decision of 7 July 1994, found that the transfer of land did not make the applicant's property less suited to its purpose. Further, the compensation granted to the applicant for the loss of his land, fixed by an expert valuer appointed by the Real Estate Formation Authority, was intended to correspond to the market value of the land.

In the light of the above and having regard to the margin of appreciation enjoyed by the national authorities under Article 1 of Protocol No. 1 (P1-1), the Commission cannot find that the means employed in the present case were disproportionate or that the compensation awarded was not reasonably related to the value of the land in question. It cannot, therefore, be said that the applicant had to bear an excessive burden.

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

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER Secretary to the Second Chamber	G.H. THUNE President of the Second Chamber