AS TO THE ADMISSIBILITY OF

Application No. 12782/87
by Erik KARLSSON
against Sweden

The European Commission of Human Rights sitting in private on 12 October 1988, the following members being present:

MM. C. A. NØRGAARD, President
J. A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
A. S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
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 12 January 1987 by Erik Karlsson against Sweden and registered on 2 March 1987 under file No. 12782/87;

Having regard to:

- the Government's written observations dated 7 January 1988;

- the applicant's written observations in reply dated 7 March 1988;

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case, as they appear from the parties' submissions, may be summarised as follows:

The applicant is a Swedish citizen, born in 1910 and resident at Sundborn. Before the Commission he is represented by Mr. Per-Gunnar Viklund, a lawyer practising at Falun.

The particular circumstances of the case

The applicant is a real estate owner and is active in forestry. On 14 February 1986 he acquired a property, Åsen 3:8, in the

municipality of Falun for 45.000 SEK. The property is an agricultural property of 10 hectares and to acquire such a property it is necessary to obtain a permit in accordance with the 1979 Land Acquisition Act (jordförvärvslagen). If a permit is refused the purchase becomes void.

According to the first clause of the purchase contract the applicant should take over the property as soon as he had obtained the permit. The second clause of the contract provided that the purchase sum which had been paid on 15 January 1986 would be refunded to the applicant if the permit was refused or if for some other reason the purchase would not be completed.

The applicant requested permission from the Agricultural Committee (lantbruksnämnden) of the County of Kopparberg to acquire the property. He submitted a valuation of the property according to which the property value was 49.100 SEK. He maintained that he was an active farmer and that he would be interested in changing the property for another property if this would be in the interest of a more efficient forestry.

On 13 June 1986 the Agricultural Committee refused to grant him a permit. The Committee referred to Section 4 para. 1 (1) and (3) of the Land Acquisition Act and stated that the price significantly exceeded the property value and that the property was needed to make forestry more efficient.

The applicant appealed to the National Board of Agriculture (lantbruksstyrelsen). He recalled that the purchase sum was 45.000 SEK and that the property, according to the valuation submitted to the Agricultural Committee, had a value of 49.100 SEK. He further submitted that on account of other circumstances the value could be considered to be even higher and that the purchase sum could not be a reason for rejecting the permit. He also submitted that the permit could not be rejected on the basis of the rationalisation of the forestry, as he was prepared to change the property for another property if this would promote the structural rationalisation of the forestry. He alleged that the Committee had not offered him to buy real estate that had been for sale previously and that bordered on his property.

The National Board of Agriculture rejected the appeal on 13 October 1986 on the same grounds as the Agricultural Committee. The Board stated that the Committee had assessed the value of the property at 10.000 SEK and indicated that the property should be used for the rationalisation of the property named Åsen 4:1.

The applicant's further appeal to the Government, in which he referred to his submissions to the Agricultural Committee and the National Board of Agriculture, was rejected on 11 December 1986.

Relevant domestic law

The acquisition of a 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 - 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 which, in particular, were to be promoted 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 acquisition 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 present case. A request for a permit to acquire a real estate should be made within three months after the purchase.

When deciding on an application for a permit, the desirability of encouraging the starting and development of rational holdings in agriculture, forestry and horticulture (farm holdings) shall be kept in mind (Section 3). Furthermore, according to Section 4 an application for a permit shall be refused inter alia if the price or other compensation for the property significantly exceeds the value of the property in view of its yield and other circumstances, or if the property is needed for the rationalisation of the agriculture or the forestry.

If an application for a permit to acquire a property has not been made within the time limit and in the manner prescribed, or if the permit has been refused, the purchase becomes void (Section 13).

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention that none of the authorities which have determined his case are independant and impartial tribunals and that he was unable to bring the case before such a tribunal.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced with the Commission on 12 January 1987 and registered on 2 March 1987.

On 7 October 1987 the Commission decided to invite the respondent Government to submit written observations on the admissibility and merits of the application.

The Government's observations were dated 7 January 1988 and the applicant's observations in reply were dated 7 March 1988.

On 22 January 1988 the Commission granted legal aid to the applicant.

SUBMISSIONS OF THE PARTIES

A. The Government

1. The admissibility

The Government have no objection to make as far as the domestic remedies rule and the six months rule of Article 26 of the Convention are concerned.

2. The merits

The Government submit that, by gradually widening the scope of Article 6 para. 1 of the Convention, the European Court of Human Rights has construed wide areas of what has traditionally been recognised as public or administrative law to involve the "determination" of "civil rights". In view of this development, the Government are now aware that the proceedings in question might, contrary to what could reasonably have been expected at the time the Convention was acceded to, be considered to involve the "determination" of "civil rights" within the meaning of Article 6 para. 1.

However, the Government point out that it follows, not only

from the provisions of the Land Acquisition Act, but also from the first and second clauses of the contract of purchase of 14 February 1986, that the applicant's acquisition of the property depended on the permission of the Agricultural Committee, or that of an authority to which the decision of that Committee could be appealed. The Government consider that in this respect the present case differs from the Ringeisen and Sramek cases, in that the contract itself foresees the procedure required to obtain a permit to acquire the real estate, and expressly deals with the event of such a permit being refused (cf. Eur. Court H.R., Ringeisen judgment of 16 July 1971, Series A no. 19 and Sramek judgment of 22 October 1984, Series A no. 84).

In the Government's opinion, these characteristics carry considerable weight when considering whether the proceedings should be viewed as involving the "determination" of "civil rights" within the meaning of Article 6 para. 1. They may possibly also be construed as an acceptance by the parties of the procedure in question and, consequently, as a waiver of their rights under Article 6 para. 1 of the Convention (cf. Eur. Court H.R., Deweer judgment of 27 February 1980, Series A no. 35, p. 19, para. 49).

The Government's basic position is thus that there has been no violation of Article 6 of the Convention.

In case the Commission were to find that the present decisions did amount to a determination of the applicant's "civil rights" and that the applicant had not waived his rights under Article 6 para. 1, the Government admit that the applicant did not have the benefit of a procedure meeting the requirements of this provision.

B. The applicant

The applicant does not share the opinion of the Government on the merits as regards the legal significance of the first and second clauses of the contract of purchase. He refers to Article 13 of the 1979 Act according to which a purchase becomes void if a permit to acquire the property is not obtained. He maintains that when an agricultural property has been sold the buyer can in theory from the day of his purchase start exploiting the property. He can cut down valuable trees and sell them. If a permit to acquire the property is refused and the purchase becomes void, this could create considerable problems for both parties. Therefore a contract of purchase usually contains a clause providing that the buyer shall take over the property only after he has obtained the permit to acquire it.

The applicant finds it obvious that the purchase sum shall be refunded if the purchase of the property becomes void.

THE LAW

The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that none of the authorities which have determined his case are independent and impartial tribunals and that he was unable to bring the case before such a tribunal.

The Government submit that there has been no violation of Article 6 para. 1 (Art. 6-1) of the Convention. They maintain that, as the contract of purchase deals with the procedure to obtain a permit to acquire the property and takes into account that the permit may be refused, there has been no determination of the applicant's civil rights. The Government further maintain that the applicant has waived his rights under Article 6 para. 1 (Art. 6-1) of the Convention by accepting the permit procedure.

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

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

The issues to be decided are whether the refusal to grant the applicant a permit to acquire the property concerned his "civil rights" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. If so, it would then have to be examined whether the applicant can be said to have waived his rights under Article 6 para. 1 (Art. 6-1) and, if not, whether he had at his disposal a procedure satisfying the requirements of Article 6 para. 1 (Art. 6-1) in regard of the dispute which arose over the refusal of the permit.

The Commission has made a preliminary examination of the above issues in the light of the submissions of the parties. It considers that these issues raise questions of fact and law which are of such a complex nature that their determination requires an examination of the merits. The complaint cannot therefore be declared inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention, but must be declared admissible, no other ground for declaring it inadmissible having been established.

For these reasons, the Commission

DECLARES THE APPLICATION ADMISSIBLE
without prejudging the merits of the case.

Secretary to the Commission	President of the Commission
(H.C. KRÜGER)	(C.A. NØRGAARD)