AS TO THE ADMISSIBILITY OF

Application No. 13724/88
by Brita KJELLBERG
against Sweden

The European Commission of Human Rights sitting in private on 5 March 1991, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ

Mr. J. RAYMOND, Deputy 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 December 1987 by Brita Kjellberg against Sweden and registered on 30 March 1988 under file No. 13724/88;

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

The applicant is a Swedish citizen, born in 1919. She resides at Ärla, Sweden.

The applicant moved to her present residence at Ärla in 1968. The residence is situated at the Ärla ridge (Ärlaåsen) which contains several million cubic metres of valuable gravel. It appears that the competent authorities, in accordance with the applicable legislation, intended to grant permission to exploit gravel from the area to a number of firms and certain correspondence followed between the authorities and the applicant who wanted to preserve the area in order to protect nature. Nevertheless it appears that a number of permits to exploit gravel were granted.

In 1975 the applicant complained to the Parliamentary

Ombudsman (JO) that certain machines were used in a gravel pit without permission, but JO dismissed the case as the applicant's complaints were being examined by the competent authorities. On 18 December 1975 the Government (Ministry of Agriculture) rejected the applicant's various complaints against the gravel exploitation as she was not considered a party to the case.

In 1976 the applicant tried to buy a certain piece of land from her neighbour, who had permission to extract gravel in the area, as she wanted to preserve it, but apparently the neighbour did not want to sell the land.

In 1978 the applicant then instituted proceedings in the Real Estate Court (fastighetsdomstolen) maintaining that the gravel exploitation should stop as it caused noise and pollution and threatened the existing water resources. The applicant withdrew the case from the Court on 18 January 1980 as she found it did not proceed with the necessary speed.

The applicant, however, pursued her case against the gravel exploitation with the competent administrative authorities, but on several occasions the County Administrative Board (länsstyrelsen) or the Government rejected her complaints having found that appropriate measures had been taken, and complied with, in order to protect the environment.

On 19 August 1986 the Municipality of Eskilstuna extended the permission to extract gravel provided a number of requirements in accordance with the existing legislation were fulfilled. The applicant complained thereof to the County Administrative Board which decided, after visiting the site and the applicant, that the applicable legislation for the protection of the environment had been complied with.

The applicant's subsequent complaint to the Government was rejected on 11 February 1988.

COMPLAINTS

The applicant complains of "sanitary inconveniences" caused by the nearby gravel pit and that its presence is a violation of the right to respect for her home and her private life. She also complains that in so far as the authorities' decisions state that she cannot complain about the matters this amounts to a violation of her right to freedom of expression.

THE LAW

1. The applicant has complained of the gravel exploitation which the Swedish authorities permit and which is carried out close to her home. She maintains that this amounts to an unjustified interference with her right to respect for her private life and her home.

The Commission has considered this complaint under Article 8 (Art. 8) of the Convention which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission considers that this provision cannot be interpreted so as to apply only with regard to direct measures taken by the authorities against the privacy and/or home of an individual. It may also cover indirect intrusions which are unavoidable consequences of measures not at all directed against private individuals (cf. No. 9310/81, Dec. 16.7.86, D.R. 47 p. 5). For example considerable noise nuisance can undoubtedly affect the physical well-being of a person and thus interfere with his private life, and it may also deprive a person of the possibility of enjoying the amenities of his home.

In the present case the Commission recalls that the applicant has tried at least for the last 15 years to bring the gravel exploitation at the Ärla ridge to an end as this in her opinion creates "sanitary inconveniences" and ruins the environment.

The Commission finds that it can leave open the question whether the gravel exploitation and its consequences as regards noise and other inconveniences near the applicant's home at all constitute an interference with her right to respect for her private life and her home as, even assuming this to be the case, such an interference is justified under Article 8 para. 2 (Art. 8-2) of the Convention for the following reasons.

The Commission is satisfied that the operation of the gravel pits is lawful under Swedish law and that the alleged interference is "in accordance with the law". Furthermore, the operation is aimed at protecting the rights of others, i.e. the rights of gravel pit owners to enjoy their property.

The Commission furthermore finds that the alleged interference is proportionate to the legitimate aim pursued and notes in particular that the gravel exploitation is under constant supervision by the competent authorities which control that it is carried out in accordance with the applicable legislation, inter alia enacted for the protection of the environment.

In these circumstances the alleged interference with the applicant's right under Article 8 para. 1 (Art. 8-1) of the Convention is justified under the terms of its paragraph 2 (Art. 8-2).

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 has also complained that the various decisions made by the authorities involved violated her rights under Article 10 (Art. 10) of the Convention which secures the right to freedom of expression. However, the Commission finds no issue under this provision which would merit any further examination.

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.

Deputy Secretary to the Commission — President of the Commission

(J. RAYMOND) — (C. A. NØRGAARD)