AS TO THE ADMISSIBILITY OF

Application No. 22977/93
by Britt-Marie and Stanley OLSSON
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 7 September 1995, the following members being present:

Mrs. G.H. THUNE, Acting President
Mr. H. DANELIUS
MM. G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN

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 3 May 1993 by Britt-Marie and Stanley Olsson against Sweden and registered on 22 November 1993 under file No. 22977/93;

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 applicants, may be summarised as follows.

The first applicant, a librarian born in 1947, resides at Askersund. The second applicant, the first applicant's father, an economist born in 1917, resides at Växjö. Before the Commission, the first applicant is represented by the second applicant.

The first applicant owns property in Växjö. It was given to her as a gift by the second applicant in 1981. Tenancy rights were, however, reserved for the second applicant and his wife. The second applicant still lives on the property.

Adoption of a building plan

In 1987 the municipality started to plan an extension of the public baths built in the early 1970's on the land adjoining the applicants' property. An extension would require the acquisition of the applicants' property. The applicants hence requested the Building Committee (Byggnadsnämnden) of Växjö to adopt a building plan (detaljplan) for the property, which was located in an unplanned area. By decision of 13 December 1988, the Committee rejected the request. Referring to the possible extension of the public baths, it stated that it was not prepared to zone their property for housing purposes.

On 21 June 1990 the Municipal Council (Kommunfullmäktige) of Växjö, pursuant to the Plan and Building Act (Plan- och bygglagen, 1987:10), adopted a building plan for the area where the applicants' property is located. Apparently, the applicants' property was now zoned for housing purposes. Before adopting the plan, the Council had consulted different authorities and the affected property owners, including the applicants, who had submitted their observations on the proposed plan. The applicants had requested the Council to amend the plan by extending a road situated close to their property and to change its incline, by incorporating another road with their property, as it served as their access road, and by improving the drainage system on the municipality's land so as to avoid floods on their property. The applicants had alleged that the foundations of their house had been damaged due to insufficient drainage on the municipality's land. With the exception of the incorporation of the applicants' access road with their property, the Council, however, decided not to make the requested amendments, finding them unnecessary or inappropriate.

The applicants appealed to the County Administrative Board (Länsstyrelsen) of the County of Kronoberg, insisting that the plan be amended in accordance with their requests to the Municipal Council. They claimed, inter alia, that the design of the roads in question did not serve their purpose and did not correspond to the standard of the other roads of the area, as required by the relevant provision of the Plan and Building Act. However, on 15 October 1990, the Board, agreeing with the Municipal Council's assessments, upheld its decision.

On 17 October 1991 the Government rejected the applicants' further appeal, stating that it agreed with the assessments made by the County Administrative Board.

The applicants then applied to the Supreme Administrative Court (Regeringsrätten) for a review of the Government's decision under the Act on Judicial Review of Certain Administrative Decisions (Lagen om rättsprövning av vissa förvaltningsbeslut, 1988:205 - "the 1988 Act"). Requesting that the Court examine whether the decision was in conflict with any rule of law, they claimed that it was in conflict with Chapter 3, Sections 15-18, of the Plan and Building Act, Section 6 of the Public Roads Act (Väglagen, 1971:948) and Chapter 1, Section 9, of the Instrument of Government (Regeringsformen). The said provisions of the Plan and Building Act state that plots of land and public places shall be arranged and maintained in a suitable way having regard to, inter alia, the geography, the traffic conditions and the adjoining land.

In its judgment of 16 November 1992, the Supreme Administrative Court first noted, with reference to the travaux préparatoires to the 1988 Act, that its examination concerned the question whether the challenged decision was in conflict with any rule of law, but that the Court's competence was not limited to an interpretation of the law. The Court should also assess the facts and the evidence of the case and examine whether principles such as objectivity, impartiality and equality before the law had been respected. Moreover, the Court should examine whether there had been any procedural errors which might have affected the outcome of the case. If the provisions applied in the case left a certain discretion to the relevant authority, the Court should examine whether the challenged decision fell within that discretion.

As regards the particular circumstances of the case, the Supreme Administrative Court found that the Government had acted within its discretion under the Plan and Building Act and that its decision was not in conflict with any rule of law. The Court, thus, upheld the Government's decision.

Claim for damages

In March 1990 the applicants brought an action for damages under

the Environmental Damage Act (Miljöskadelagen, 1986:225) against the municipality of Växjö in the District Court (Tingsrätten) of Växjö. They asserted that, while constructing and maintaining the public baths, roads, parking places and open spaces on the land adjoining their property, the municipality had damaged the drainage system and removed a great deal of the vegetation on that land. This had allegedly changed the current and raised the level of the water on that land and the applicants' property, and so damaged the foundations of the applicants' house.

The District Court held a hearing, at which the applicants were present and represented by a lawyer. The second applicant was heard, as well as five witnesses proposed by the applicants, among them four experts, and one expert witness proposed by the municipality. A report made by an engineering firm was submitted by the applicants. Furthermore, the Court inspected the site.

By judgment of 19 October 1991, the District Court rejected the applicants' claim. It stated that the applicants had not shown that the damage to their property was caused by changes of the current and level of water on the municipality's land. Instead, the Court found the statements made at the hearing to indicate that the drainage system on the applicants' property had been inadequate.

The applicants appealed to the Göta Court of Appeal (Göta hovrätt), which held a further hearing in the case, at which the applicants and their lawyer were present. On 16 April 1993 the Court of Appeal upheld the judgment of the District Court. On 14 September 1994 the Supreme Court (Högsta domstolen) refused the applicants leave to appeal.

The second applicant later reported the municipality's legal representative to the Swedish Bar Association, claiming that he had acted contrary to the Association's statutes and its rules on professional practice (god advokatsed) during the hearings in the District Court and the Court of Appeal. Allegedly, the representative had, inter alia, made false statements and influenced a witness to do the same. The matter is apparently still pending before the Board of the Bar Association.

COMPLAINTS

1. Invoking Article 6 of the Convention, the applicants complain that they could not bring before a court the local authorities' decisions concerning the building plan. In this respect, they claim that the Supreme Administrative Court was not a tribunal within the meaning of Article 6, as it was not competent, under the 1988 Act, to deal with all aspects of the case.

2. Further under Article 6 of the Convention, the applicants assert that the District Court and the Court of Appeal were not impartial when examining their claim for damages.

3. The applicants complain that the municipality, ever since the building of the public baths, has interfered with their right to the peaceful enjoyment of their possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention.

4. The applicants also allege that their rights to respect for their family life and their home under Article 8 of the Convention have been violated, as the road conditions and the general living environment were impaired by the building of the public baths in the early 1970's, the adoption of the building plan in 1990 and the alleged damage to their property due to the raised groundwater level on the municipality's land.

Furthermore, the applicants maintain that the measures undertaken

by the public authorities and the courts have limited their invoked rights and freedoms to a greater extent than is provided for in the Convention. They further maintain that the restrictions permitted under the Convention have been applied for other purposes than those for which they have been prescribed. They invoke Articles 17 and 18 of the Convention.

5. The applicants further complain that they have been discriminated against in violation of Article 14 of the Convention in that the conditions with regard to, inter alia, roads, parking places and drainage systems, are better in the southern part of the area covered by the adopted building plan than in the part where the applicants' property is located.

6. The applicants finally allege that they did not have an effective remedy under Article 13 of the Convention in respect of which they could complain about violations of their rights committed by civil servants during the exercise of their duties.

THE LAW

1. Invoking Article 6 (Art. 6) of the Convention, the applicants complain that they could not bring before a court the local authorities' decisions concerning the building plan. In this respect, they claim that the Supreme Administrative Court was not a tribunal within the meaning of Article 6 (Art. 6), as it was not competent, under the 1988 Act, to deal with all aspects of the case.

The relevant part of Article 6 para. 1 (Art. 6-1) of the Convention reads as follows:

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

The Commission recalls that the applicants sought to have the building plan amended in accordance with the requests they had submitted to the Municipal Council. Even assuming that the decisions taken by the authorities and the Supreme Administrative Court in this respect involved a determination of the applicants' civil rights, and that thus Article 6 (Art. 6) is applicable to the present complaint, the Commission finds, for the reasons set out below, that the facts submitted do not disclose any appearance of a violation of the said Article.

The Commission first takes into account that the competence of the Supreme Administrative Court under the 1988 Act is not limited to an examination of how the law has been applied but may include a re-examination of the facts of the case. The Court shall also examine whether fundamental legal principles such as objectivity, impartiality and equality before the law have been respected and whether there have been any procedural errors which might have affected the outcome of the case.

The Commission also recalls that the scope of review must be assessed in the light of the fact that the relevant authorities do not have unfettered discretion when taking decisions concerning a building plan but that, for example, the Plan and Building Act lays down certain conditions for these decisions. As a further example, the Commission recalls the above-mentioned Chapter 3, Sections 15-18, of the Act which concern the arrangement and maintenance of plots of land and public places. It was for the Supreme Administrative Court to satisfy itself that there had been compliance with these provisions.

Finally, the Commission recalls that in the case in question the applicants requested the Supreme Administrative Court to examine whether the Government's decision was in conflict with any rule of law.

Confining itself as far as possible to examining the question raised before it, the Commission finds no evidence in this case which would lead to the conclusion that the Court, in examining the applicants' request, had to decline jurisdiction (cf. No. 18660/91, Bengtsson v. Sweden, Dec. 7.12.94, D.R. 79 p. 11).

In these circumstances the Commission finds that the review available to the applicants in the instant case fulfilled the requirements of Article 6 para. 1 (Art. 6-1) of the Convention.

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. Further under Article 6 (Art. 6) of the Convention, the applicants assert that the District Court and the Court of Appeal were not impartial when examining their claim for damages.

In this connection, the applicants maintain that the municipality's legal representative acted contrary to the Bar Association's professional practice rules and that his conduct was allowed by the District Court judge. The partiality of the two courts was allegedly further shown by their departure from existing case-law concerning the required evidence in environmental damage cases.

Noting in particular that the applicants were represented by their lawyer during the court hearings and were able to respond to the statements of the municipality's legal representative, the Commission finds that an examination of this complaint as it has been submitted does not disclose any appearance of a violation of the rights and freedoms set out in the Convention and in particular in the Article invoked.

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.

3. The applicants complain that the municipality, ever since the building of the public baths, has interfered with their right to the peaceful enjoyment of their possessions. They invoke Article 1 of Protocol No. 1 (P1-1) 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 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 applicants assert that the construction and maintenance of the public baths and the attached parking place have caused damage to their property since 1971. They further claim that their ownership of the property has been threatened since 1987 when the municipality started to plan an extension of the public baths. Their property rights have further been infringed by the decisions taken in connection with the adoption of the building plan, inter alia the decisions concerning the roads adjacent to the applicants' property.

The Commission first notes that the applicants have not been deprived of their possessions, nor have any of the decisions taken deprived them of their property. The alleged interference with their property rights, therefore, falls under the second paragraph of the

above provision concerning control of the use of property.

The Commission recalls that, by its planning decision of 21 June 1990 which was later upheld on appeal, the municipality rejected the applicants' requests that a road situated close to their property be extended, its incline be changed, and the drainage system on the municipality's land be improved. The requested amendments to the plan were found to be unnecessary or inappropriate. Concerning the damage on the applicants' property, the Commission further recalls that the applicants' action against the municipality was rejected by the domestic courts as it had not been shown that the damage was caused by changes of the current and level of water on the municipality's land.

The Commission, having regard to the findings of the domestic courts, considers that the applicants' submissions fail to show that their property has been damaged by actions or events for which the State could be held responsible. Moreover, it has not been shown that any decisions or measures taken in the present case have interfered with the use of the applicants' property.

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.

4. The applicants allege that their rights to respect for their family life and their home, ensured by Article 8 (Art. 8) of the Convention subject to certain limitations, have been violated. In this connection, they claim that the road conditions and the general living environment were impaired by the building of the public baths in the early 1970's, the adoption of the building plan in 1990 and the alleged damage to their property due to the raised groundwater level on the municipality's land.

Furthermore, the applicants maintain that the measures undertaken by the public authorities and the courts have limited their invoked rights and freedoms to a greater extent than is provided for in the Convention. They allege that the restrictions permitted under the Convention have been applied for other purposes than those for which they have been prescribed. They invoke Articles 17 and 18 (Art. 17, 18) of the Convention, which prohibit the abusive interpretation or application of Convention rights and limitations.

However, having regard to the basis of its conclusions in respect of the applicants' above complaint under Article 1 of Protocol No. 1 (P1-1), the Commission also finds these complaints unsubstantiated, failing to disclose any appearance of a violation of Articles 8, 17 or 18 (Art. 8, 17, 18) of the Convention.

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.

5. The applicants complain that they have been discriminated against in that the conditions with regard to, inter alia, roads, parking places and drainage systems, are better in the southern part of the area covered by the adopted building plan than in the part where the applicants' property is located. They invoke Article 14 (Art. 14) of the Convention, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Recalling that this provision has no independent existence, but

prohibits discrimination only with respect to the enjoyment of the rights and freedoms set forth in the Convention, the Commission finds no evidence of discrimination disclosed in the present case as it has been submitted.

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.

6. The applicants allege that they did not have an effective remedy under Article 13 (Art. 13) of the Convention in respect of which they could complain about violations of their rights committed by civil servants during the exercise of their duties. Article 13 (Art. 13) provides the following:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission notes that the applicants have not stated which violations they were unable to complain about before a national authority. Having regard to this and to its above conclusions in respect of the Convention complaints submitted, the Commission considers that the applicants do not have any arguable claims necessitating a remedy under Article 13 (Art. 13) of the Convention (cf. Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 23, para. 52). The Commission also notes that the applicants had access to and used several channels of complaint. It recalls that the applicants' complaints concerning the building plan were examined by the County Administrative Board, the Government and the Supreme Administrative Court, and that their claim for damages was heard by courts at three levels.

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.

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