AS TO THE ADMISSIBILITY OF

Application No. 19027/91
by A.P.
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 1 April 1992, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H. G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
A.V. ALMEIDA RIBEIRO

Mr. K. ROGGE, Secretary to the Second 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 26 June 1991 by A.P. against Sweden and registered on 31 October 1991 under file No. 19027/91;

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 is a Swedish citizen, born in 1943, and resident at Vingåker, Sweden. Before the Commission he is represented by Mr Carl-Magnus Liljengren, a lawyer practising in Stockholm.

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

The applicant is the owner of a limited liability company, Aktiebolaget Skenäs ("Skenäs"), which in its turn owns a large property, Skenäs 6:1, which includes 1,850 hectares of land as well as half of the lake of Kolsnaren.

Sometime around 1987 the County Administrative Board (länsstyrelsen - "the Board") of Södermanland started to examine whether or not to create a joint fishing area (fiskevårdsområde) in accordance with the 1981 Act on Joint Fishing Areas (lag 1981:533 om fiskevårdsområden - "the 1981 Act") covering the lakes Kolsnaren and Viren. After the land surveyor, on 8 April 1987, had held a meeting (förrättning) to examine the possibilities of creating this joint fishing area , Skenäs, which had just acquired the property Skenäs 6:1, started to protest to the Board against the measure which Skenäs claimed violated section 6 of the 1981 Act. This section provided that joint fishing areas could not be created if "the owners of the fishing waters more generally opposed the creation of the joint fishing area and this for valid reasons". Skenäs claimed that surveys it had made

tended to show that there was in fact a strong opposition against the creation of the area.

In its decision of 14 December 1987 the Board stated that it had found nothing to suggest that the land surveyor had not performed his task correctly and impartially. It decided that the joint fishing area should be established in accordance with the land surveyor's proposal.

Skenäs appealed to the Administrative Court of Appeal (kammarrätten) reiterating its allegations that the creation of the area violated section 6 of the 1981 Act as a majority of fishing waters owners opposed the measure. It requested the Court to remit the case back to the land surveyor, or in the alternative to reject the application for the creation of the area.

By judgment of 25 June 1990 the Administrative Court of Appeal rejected Skenäs' appeal. On the basis of the material available it found established that only seven persons representing 20 % of the total fishing rights had opposed the creation of the area at the land surveyor's meeting. The fact that the new owner of Skenäs 6:1 also opposed the measure only implied that those opposing the measure now represented 39 % of the total fishing rights. The Court furthermore found that Skenäs had not demonstrated any valid reasons for its position. Taking all the circumstances of the case into consideration the Court held that the legal conditions for creating the joint fishing area were met.

Skenäs' application for leave to appeal was rejected by the Supreme Administrative Court (regeringsrätten) on 28 December 1990.

COMPLAINTS

The applicant complains that he has in reality been deprived of the property right to his waters. As a result of the formation of the joint fishing area, all the owners of fishing rights in the area will have an unlimited right to fish in the applicant's waters, and he will not receive any compensation. He considers that the violation of his rights is disproportionate to the public interest in forming the joint fishing area. He alleges a violation of Article 1 of Protocol No. 1.

THE LAW

The applicant complains that, as a result of the formation of a joint fishing area, his property right has been violated contrary to Article 1 of the First Protocol (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 Commission considers that the formation of a joint fishing area including the waters belonging to the applicant's company, is a measure taken for the purpose of controlling the use of property and therefore falls to be considered under the second paragraph of Article 1 (Art. 1) (see, mutatis mutandis, No. 11763/85, Banér v. Sweden, Dec. 9.3.89, unpublished, p. 14 and No. 11764/85, Braunerhielm v. Sweden, Dec. 9.3.89, unpublished, p. 14).

The joint fishing area was formed in accordance with the provisions of the 1981 Act on Joint Fishing Areas and the Commission finds that it had a legal basis in domestic law. The Commission has not otherwise found any indication that the interference would not be "lawful" within the meaning of the Convention.

The purpose behind the measure complained of was undoubtedly that defined in Section 1 of the Act, i.e. "the co-ordination of fishery and the preservation of fish stocks and the promotion of the common interests of the fishing right owners", a purpose which must be deemed to be in accordance with the general interest. Nevertheless, the question remains whether the measure is proportionate, having regard to the public and private interests involved.

The Commission notes that, as a result of the formation of the joint fishing area, the other fishing rights owners in the area will be entitled to fish in the applicant's company's waters, whereas the applicant will also be entitled to fish in their waters. The rules regulating fishery in the area will, within the framework set by the law and the articles of association fixed by the County Administrative Board, be adopted by the members of the joint fishing area association (fiskevårdsområdesföreningen) at the fishery assembly (fiskestämman).

The Commission further notes that, in a number of previous decisions (see, inter alia, the above-mentioned applications No. 11763/85 and No. 11764/85), it found no violation of Article 1 (Art. 1) when private fishing waters were made available, through new legislation, for fishing with hand-held tackle by the general public without any compensation being paid to the fishing waters owners concerned. The Commission finds no indication that the interference with the applicant's private rights in the present case is more serious than that with which the applicants in those previous cases were confronted. Consequently, it does not find the measure complained of to be disproportionate and it therefore concludes that the application is 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 — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)