AS TO THE ADMISSIBILITY OF

Application No. 25907/94
by Christina SJÖBERG-THÖRN
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 11 April 1996, the following members being present:

Mrs. G.H. THUNE, Acting President
MM. H. DANELIUS
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 24 October 1994 by Christina SJÖBERG-THÖRN against Sweden and registered on 12 December 1994 under file No. 25907/94;

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 1949. She is a dental hygienist and resides in Saltsjöbaden.

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

The applicant is one of the joint owners of a piece of real property (fastighet) known as Hägersten 2:8 in Hägersten in the municipality of Stockholm. The property is situated by the lake of Mälaren.

The property has been in the applicant's family since the 19th century. In the 1860s a villa, a storehouse, a boat-house and a jetty were built. It is not clear from the documents when the applicant became a joint owner of the property.

In 1973 the constructions on the property burned down almost completely. The property was, for the most part, not subject to any detailed plan adopted under planning legislation. The area closest to the lake was, however, subject to a plan, adopted on 30 May 1947, according to which this part of the property was zoned for use as a public area.

In 1976 the owners of the property consulted the local

authorities about the possibility of rebuilding the destroyed constructions. The authorities responded that they were not able to grant a building permit (byggnadslov) before a detailed plan (detalj-plan) for the area in question had been adopted.

On 14 November 1979 one of the owners of the relevant property requested an advance notice as to whether a building permit was required to rebuild the destroyed buildings.

On 13 March 1980 the Building Committee (byggnadsnämnden) of Stockholm stated that it was not prepared to grant an exemption (dispens) for the reconstruction.

In November 1984 the municipal authorities began to prepare a detailed plan for the area in question.

On 12 January 1988 the applicant requested that she be granted a building permit to rebuild the villa, boat-house and jetty that had existed on the property before the fire, and to repair the roof of the storehouse.

On 23 February 1989 the Building Committee rejected the applicant's request. It stated that she did not have a right to rebuild the constructions and it referred to the preparation of the detailed plan according to which the relevant area was not zoned for construction.

The applicant, jointly with the other owners of the property, appealed to the County Administrative Board (länsstyrelsen) of the County of Stockholm. They maintained that they had the right to rebuild the buildings and that it was unlawful to base a refusal to grant a building permit on a plan that had not yet been adopted. They also maintained that the authorities had granted building permits for certain other properties also situated by the lake.

On 30 October 1989 the County Administrative Board rejected the appeal. As regards the storehouse, boat-house and jetty, the decision was based on the aforementioned plan adopted on 30 May 1947. As regards the main building, i.e. the villa, the County Administrative Board stated, firstly, that the villa would be built on an area which was not subject to a detailed plan. It stated, secondly, that the applicant did not have any right to rebuild the destroyed buildings under the legislation that had been in force in 1973. Finally, it stated that the property was more suitable for recreational purposes than for building purposes. It did not consider the applicant's reference to other building permits to be relevant in the case. The applicant appealed against the Board's decision to the Administrative Court of Appeal (kammarrätten) in Stockholm.

In the meantime, the preparation of the detailed plan had continued. On 30 October 1989 the Municipal Council (kommunfullmäktige) of Stockholm adopted the plan. The applicant's property, with its neighbouring pieces of property, were zoned for use as a public area and a park and forest area designated as a "nature" area. Furthermore, an open space area along the shore was reserved for a promenade. According to the description of the manner in which the plan was to be implemented, the municipality intended to expropriate the relevant pieces of property, including Hägersten 2:8.

The applicant appealed against the Municipal Council's adoption of the plan to the County Administrative Board of the County of Stockholm.

On 4 January 1990 the County Administrative Board rejected the applicant's appeal and confirmed the relevant plan by virtue of chapter 13, section 8 of the 1987 Plan and Building Act (plan- och bygglagen).

As indicated above, the applicant appealed against the County Administrative Board's decision of 30 October 1989 to the Administrative Court of Appeal, which on 28 June 1991 transferred the appeal to the Government. The applicant also appealed against the County Administrative Board's decision of 4 January 1990, concerning the adoption of the detailed plan, to the Government.

On 25 June 1992 the Government (miljö- och naturresurs-departementet) rejected the applicant's appeals both in respect of the building permit and in respect of the detailed plan. It stated, inter alia, that neither the previous building regulations nor the 1987 Plan and Building Act gave the applicant any unconditional right to rebuild the destroyed buildings and that the question of building permits was to be decided on the basis of chapter 8 of the 1987 Plan and Building Act. As regards the detailed plan, the Government stated that the purpose of the plan was to maintain and develop the important open space area beside the lake of Mälaren which had unique natural features and buildings of cultural and historical importance. It further stated that the area was intended to be used for recreation, outings and other activities for the local inhabitants and that it was important to construct promenades and other walkways. The Government found that this public interest weighed more heavily in the balance than the applicant's private interest in building a residential house. Finally, as regards the building permit, the Government stated that the planned constructions would be contrary to the detailed plan.

In accordance with the provisions of the 1988 Act on Judicial Review of Certain Administrative Decisions (Lag 1988:205 om rätts-prövning av vissa förvaltningsbeslut), hereinafter the 1988 Act, the applicant appealed to the Supreme Administrative Court (regerings-rätten). She maintained that the refusal to grant her a building permit was unlawful and that her property was not needed for the implementation of the detailed plan. She also maintained that the plan was discriminatory and that there had been procedural errors in the planning procedure.

On 2 May 1994 the Supreme Administrative Court upheld the Government's decision. The Supreme Administrative Court found that the Government had not evaluated the facts incorrectly and had not exceeded the margin of appreciation which the Plan and Building Act left to them. The court found that the decisions on the detailed plan and on the building permit did not violate any provision of the Plan and Building Act or any other legal rule and that there had been no procedural errors which might have affected the outcome of the cases.

COMPLAINTS

1. The applicant maintains, firstly, that the Swedish municipalities have a monopoly in planning matters. She alleges that municipal decisions on planning cannot be reviewed at national level. She maintains that review by the County Administrative Board as well as by the Government cannot be regarded as a judicial review. She alleges, furthermore, that judicial review by the Supreme Administrative Court, in the field of planning, is meaningless since the court cannot review the municipal planning monopoly. On this basis the applicant complains that the scope of the review which could be carried out by the courts was too limited to comply with the requirements of Article 6 of the Convention.

Secondly, the applicant maintains that, since the refusal to grant her a building permit was based on the detailed plan, the above-mentioned arguments apply also to the scope of the courts' power to review the decisions regarding the building permit.

2. The applicant complains further that the detailed plan has prevented her from rebuilding the constructions that had existed on the property for many years. She maintains that it was not necessary in the

public interest for her property to be zoned as a public area, taking into account that the neighbouring shore areas were, at the same time, zoned for building purposes. She maintains that the detailed plan is arbitrary. Accordingly, she alleges a breach of Article 1 of Protocol No. 1 to the Convention.

3. Finally, the applicant alleges that the Swedish planning and building legislation discriminates against owners of property which is not subject to a detailed plan since they run the risk that their already existing constructions may not be included in the new detailed plans whereas a detailed plan guarantees a certain building volume. She complains that the allegedly discriminatory legislation as regards planned and unplanned areas, together with the way the municipality of Stockholm applied it in her case, resulted in a violation of her right to peaceful enjoyment of her possessions contrary to Article 1 of Protocol No. 1 to the Convention.

THE LAW

1. The applicant complains, firstly, that municipal decisions on planning and, consequently, decisions on building permits based on planning decisions, cannot be reviewed at national level. She complains, furthermore, that the review carried out by the County Administrative Board as well as by the Government cannot be regarded as a judicial review. She also complains that the review carried out by the Supreme Administrative Court, both in respect of the detailed plan and in respect of the building permit, was not of sufficient scope to comply with Article 6 para. 1 (Art. 6-1) of the Convention since the Supreme Administrative Court allegedly could not review the municipal planning decisions.

Article 6 (Art. 6) of the Convention reads, as far as relevant, as follows:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing ... by (a) ... tribunal ... "

Firstly, the Commission finds that it is not necessary to determine whether there was a dispute over a "right" as regards the detailed plan within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention (cf. Eur. Court H.R., Jacobsson judgment of 28 June 1990, Series A no. 180-A, p. 12, paras. 30-34) since it considers that this part of the application is in any event inadmissible for the following reasons.

As regards the applicant's allegation concerning the lack of a review at national level the Commission notes that the applicant was able to appeal against the decisions concerning both the detailed plan and the building permit to bodies at national level, i.e. first to the County Administrative Board and thereafter to the Government and, in the final resort, to the Supreme Administrative Court.

As regards the review carried out by the County Administrative Board and by the Government the Commission recalls that Article 6 para. 1 (Art. 6-1) of the Convention does not oblige States to submit disputes ("contestations") over civil rights and obligations to a judicial procedure which at each stage conforms with Article 6 (Art. 6) of the Convention. It may be sufficient that administrative or professional bodies determine the dispute at first instance, provided that their decisions are subject to review thereafter by a judicial procedure which satisfies the conditions of Article 6 (Art. 6) (cf. Eur. Court H.R., Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 22, para. 51).

The Commission notes that it was the Supreme Administrative Court which finally decided the dispute in the instant case, both in respect

of the detailed plan and the building permit. Therefore it is not necessary to examine whether the proceedings before the County Administrative Board and the Government satisfied the requirements of Article 6 (Art. 6) of the Convention. Consequently, the Commission will limit itself to examining the applicant's complaints as regards Article 6 (Art. 6) in respect of the proceedings in the Supreme Administrative Court.

The Commission notes that, in the present case, the applicant had maintained, in her appeal to the Supreme Administrative Court, that procedural errors had been committed in the process of preparing the plan, that her property was not needed for the implementation of the plan and that the plan was discriminatory. She had further maintained that the refusal to grant her a building permit, based on the allegedly unlawful plan, had therefore been unlawful.

The Commission recalls that the examination by the Supreme Administrative Court under the 1988 Act is in principle limited to the question whether the challenged decision is in conflict with any legal rule and, according to the travaux préparatoires, the examination shall concentrate on the lawfulness of the challenged decision. However, the competence of the Supreme Administrative Court is not limited to an examination of how the law has been applied but may include a re-examination of the facts upon which the application of the law was based. The Supreme Administrative Court shall also examine whether fundamental legal principles such as objectivity, impartiality and equality before the law have been respected. It shall also examine whether there have been any procedural errors which may 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 neither planning nor the granting of building permits are matters exclusively within the discretion of the administrative authorities but are based on various regulations laid down in the 1987 Plan and Building Act (cf. No. 18660/91, Dec. 7.12.94, D.R. 79 p. 11).

The Commission has found no evidence in this case which could lead to the conclusion that in examining the applicant's complaints regarding the alleged procedural errors, unlawfulness and disregard of fundamental legal principles the Supreme Administrative Court had to decline jurisdiction in ruling on them or in ascertaining the relevant facts (cf., Eur. Court H.R., Zumtobel judgment of 21 September 1993, Series A no. 268-A, pp. 13-14, paras. 31-32). The Commission finds that the scope of the review carried out by the Supreme Administrative Court fulfilled the requirements of Article 6 para. 1 (Art. 6-1) of the Convention as regards both the detailed plan and the building permit.

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 also complains that the most recent detailed plan has, without pursuing any public interest, prevented her from rebuilding the relevant constructions on her property. She maintains that, as a result, her right to the peaceful enjoyment of her possession has been violated. She invokes Article 1 of Protocol No. 1 (P1-1) to the Convention which reads:

> "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 notes that the applicant intended to rebuild certain constructions on an area that was, under the original plan of 1947 and the most recent detailed plan of 1989, zoned as a public area. The Commission considers that the adoption of the latter plan may be regarded as an interference with the applicant's right to the peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1 (P1-1) to the Convention. In the view of the Commission, this interference falls to be considered under the second paragraph of Article 1 (Art. 1-2) as being a measure to "control the use of property" (cf. 11309/84, Dec. 8.3.88, D.R. 55 p. 106).

Consequently, the Commission must examine whether the interference with the applicant's right to the peaceful enjoyment of her possessions was justified under the second paragraph of Article 1 of Protocol No. 1 (P1-1). This means that it must consider whether the adoption of the detailed plan and the refusal to grant a building permit on the basis of the plan were "necessary to control the use of property in accordance with the general interest". The task of the Convention organs in this context is to supervise the lawfulness, purpose and proportionality of the restriction in question (cf., for example, No. 10378/83, Dec. 7.12.83, D.R. 35 p. 235).

The Commission finds that the adoption of the detailed plan has a basis in Swedish law, in this case in the 1987 Plan and Building Act. It is satisfied that the interference resulting from the adoption of the plan was lawful within the meaning of Article 1 para. 2 of Protocol No. 1 (P1-1-2) to the Convention. Also the refusal to grant the applicant a building permit was based on the 1987 Plan and Building Act and was, consequently, lawful within the meaning of Article 1 para. 2 of Protocol No. 1 (P1-1-2) to the Convention.

As to the "general interest" served by the detailed plan, the Commission notes that the purpose of the plan was to maintain and develop the open space area beside the lake of Mälaren which was considered to be important from the point of view of nature and cultural history. In these circumstances the Commission is satisfied that, as such, the detailed plan served the "general interest". This applies also in so far as the applicant's request for a building permit was rejected on the basis of the regulations deriving from the relevant detailed plan.

The question of proportionality requires a determination as to whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (cf., for example, Eur. Court H.R., Air Canada judgment of 5 May 1995, Series A no. 316, p. 12, para. 36). In determining whether a fair balance exists, the Contracting State enjoys a wide margin of appreciation with regard both to choosing means and to ascertaining whether the consequences are justified in the general interest for the purpose of achieving the object of the measure in question.

As regards the proportionality between the interference with the applicant's property rights and the general interest pursued, the Commission recalls that originally, according to the 1947 plan, part of the applicant's piece of real property was already zoned as a public area. As regards the remainder of the real property, the Commission notes that the applicant did not, even before the adoption of the most recent detailed plan, have any unconditional right to restore the building that had previously existed on this part of the property. The Commission finds that there is no reason to reach the conclusion that the adoption of the detailed plan, which aimed at conservation of nature, was disproportionate. Consequently, the refusal to grant the applicant a building permit, which aimed at enforcing the relevant plan, was not disproportionate either.

In so far as the applicant might be understood as complaining about a possible expropriation of her property in the future the Commission notes that any expropriation would be subject to provisions of law and guarantees of compensation. In any event the applicant cannot at present claim to be a victim of such a measure.

In these circumstances the Commission considers, in view of the wide margin of appreciation enjoyed by the Contracting States in the area of regulation of detailed planning, that the adoption of the most recent detailed plan cannot be considered to be disproportionate to the authorities' legitimate aims. Nor could the refusal to grant the applicant a building permit be regarded as disproportionate to the aim pursued.

The Commission therefore finds that the interference with the applicant's right to peaceful enjoyment of her possessions was justified under the terms of the second paragraph of Article 1 of Protocol No. 1 (P1-1) to 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.

3. Finally, the applicant complains that the Swedish planning and building legislation discriminates against owners of property which is situated on unplanned areas. She further complains that the way in which the authorities applied the relevant legislation in her case resulted in a violation of her right to peaceful enjoyment of her possessions. The Commission has considered this complaint under Article 14 (Art. 14) of the Convention which reads:

> "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."

The Commission recalls that Article 14 (Art. 14) of the Convention complements the other substantive provisions of the Convention and the Protocols. It may be applied in an autonomous manner as a breach of Article 14 (Art. 14) does not presuppose a breach of those other provisions. On the other hand, it has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms safeguarded by the other substantive provisions" (see Eur. Court H.R., Van der Mussele judgment of 29 September 1983, Series A no. 70, p. 22, para. 43).

The Commission considers that it must examine this complaint in conjunction with Article 1 of Protocol No. 1 (P1-1) to the Convention. In so doing it recalls that Article 14 (Art. 14) does not forbid every difference in treatment in the exercise of the rights and freedoms recognised by the Convention. It safeguards persons who are "placed in analogous situations" against discriminatory differences of treatment. Furthermore, a difference of treatment is discriminatory only if it "has no objective and reasonable justification" and the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law (see Eur. Court H.R., Lithgow judgment of 22 May 1984, Series A no. 102, p. 66, para. 177).

The Commission finds that, in the instant case, the discrimination alleged by the applicant, i.e. differences in opportunities to build on planned or unplanned areas, does not concern similar situations within the meaning of Article 14 (Art. 14) of the Convention. In so far as the applicant intends to complain that the relevant detailed plan was discriminatory as such, the Commission

refers to its finding above.

Accordingly, the Commission has found no appearance of a violation of Article 14 (Art. 14) of the Convention read in conjunction with Article 1 of Protocol No. 1 (P1-1).

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)