AS TO THE ADMISSIBILITY OF

Application No. 19026/91
by Gerd SPARRENLÖV
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 30 June 1993, 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
M.A. NOWICKI
I. CABRAL BARRETO

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 27 March 1990 by Gerd SPARRENLÖV against Sweden and registered on 31 October 1991 under file No. 19026/91;

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 Norwegian citizen born in 1940. She is an office employee and resides in Västerås, Sweden.

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

On 8 September 1962 the applicant married Mr P. who directed a small business. On 14 January 1963 the spouses concluded, in accordance with the provisions of the Marriage Code of 1920 (äktenskapsbalken), a marriage settlement (äktenskapsförord) to the effect that any existing community property (äktenskapsgods) and any property acquired in the future, as well as any yield, should henceforth be each spouse's separate property (enskilda egendom). This settlement was entered on the register of the City Court (rådhusrätten) in Västerås on 30 January 1963, as of which date it also gained legal force in respect of third parties.

On 28 September 1973 the applicant bought a real estate in Västerås. According to the purchase contract she was the sole buyer of the estate and she was also entered as owner on the land register. The applicant and her husband moved to the house. They lived there together until 13 November 1986 when their relationship broke down and the husband moved out.

After the couple had divorced, the former husband brought proceedings against the applicant, claiming that the house was their common property. The applicant maintained that the house was hers in accordance with the purchase contract and the entry in the land register. The husband submitted that they had bought the house together but had agreed to register her as owner merely in order to protect the estate against his creditors in case his business activity would run into financial problems. The parties also disputed who had paid the purchase price as well as the subsequent repair and improvement costs.

By judgment of 27 September 1988 the District Court (tingsrätt) of Västerås found, after it had held an oral hearing, that the evidence showed that the husband owned half of the estate. The applicant appealed to the Svea Court of Appeal (Svea hovrätt) which on 14 August 1989 confirmed the District Court's judgment. On 3 October 1989 the Supreme Court (Högsta domstolen) refused leave to appeal.

COMPLAINTS

1. The applicant alleges that the decision to award half her estate to her former husband violates her right of property guaranteed in Article 1 of Protocol No. 1 of the Convention.

2. She also alleges that the decision constitutes a violation of her right to respect for her home in Article 8 of the Convention.

3. She furthermore complains of a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1 and Article 8 of the Convention as she is not treated in the same way as other property owners.

4. She finally alleges a violation of her right to a fair hearing in Article 6 para. 1 of the Convention because of the retroactive effects of the judgments in her case.

THE LAW

1. The applicant alleges that the decisions of the Swedish courts amount to a violation of her "right to the peaceful enjoyment of her possessions" in Article 1 of Protocol No. 1 (P1-1) of the Convention.

She claims in particular that these decisions broke with an earlier practice when they disregard the terms of the purchase contract and marriage settlement and that the decisions amounted to a retroactive change of the law. She maintains that such a change of the law cannot be lawful for the purposes of the Convention. She also maintains that no public interest, within the meaning of the said Article 1 (Art. 1), was served by the transfer of her property rights.

The Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with a complaint alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to its constant case-law (see, for example, No. 13021/87, Dec. 8.9.88, D.R. 57, p. 268 and 176). It follows that it was primarily for the domestic courts to determine the property dispute between the applicant and her former husband.

The Commission recalls that the right of property guaranteed by Article 1 of Protocol No. 1 (P1-1) only comprises property rights recognised under domestic law (see, inter alia, Campicelli v. Italy,

Comm. Report 1.7.92, pp. 8-9). The Commission, accordingly, finds that the applicant cannot invoke the protection of the said Article 1 (Art. 1) in respect of interferences with property rights, the existence of which she has not been able to prove (cf. loc. cit.). In the present case, the Commission has found no reason to question the conclusions reached by the Swedish courts as regards the scope of the applicant's property rights. In particular it does not find it established that the impugned decisions implied any radical departure from the state of the law at the time of the purchase of the house. It finds on the contrary that what was at issue was the correct interpretation of the rights and obligations contracted between the spouses, in particular through the marriage settlement and the alleged subsequent oral agreement that the spouses should buy the house together but formally register only the applicant as owner in order to protect the home from the husband's creditors.

The Commission concludes that the facts of the present case do not disclose any appearance of a violation of Article 1 of Protocol No. 1 (P1-1).

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 alleges that the impugned decisions amount to a violation of her "right to respect for her home" guaranteed in Article 8 (Art. 8) of the Convention.

The Commission notes that the impugned judgments did not give any indications as to who should eventually be allowed to stay in the house. In such circumstances, the Commission finds no indication of any interference with the applicant's right to respect for her home.

It follows that this part of the application is also manifestly ill-founded.

3. The applicant furthermore alleges a violation of Article 14 of the Convention combined with Article 1 of Protocol No. 1 and Article 8 (Art. 14+P1-1+8) of the Convention.

Under the said Article 14 (Art. 14) "the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground ...".

The applicant maintains that a spouse who allows the other spouse to live on his or her property is discriminated against as compared with other property owners who allow third persons to live on their estates.

Having regard to its conclusions under Article 1 of Protocol No. 1 and Article 8 (P1-1, Art. 8) of the Convention, the Commission finds no issue under Article 14 (Art. 14), and the complaint relating to that Article is accordingly also manifestly ill-founded.

4. The applicant finally alleges a violation of her right to "a fair ... hearing ... before a ... tribunal" guaranteed in Article 6 para. 1 (Art. 6-1) of the Convention, as a result of the alleged retroactive effects of the domestic judgments.

The Commission, recalling its conclusions under Article 1 of Protocol No. 1 (P1-1), finds no indication of any violation of the Article invoked. It follows that this part of the application is also manifestly ill-founded.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)