AS TO THE ADMISSIBILITY OF

Application No. 26105/95
by STIFTELSEN ANURAG SAGAR
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 28 February 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 3 November 1994 by STIFTELSEN ANURAG SAGAR against Sweden and registered on 3 January 1995 under file No. 26105/95;

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 foundation established in Stockholm. Before the Commission the foundation is represented by a member of its board, Mr. Håkan Berggren.

a. The particular circumstances of the case

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

On 2 December 1992 the applicant foundation applied to the Building Committee (Byggnadsnämnden) of the Municipality of Ljusdal for a preliminary decision (förhandsbesked) under the Plan and Building Act (Plan- och bygglagen, 1987:10) concerning the admissibility of certain construction work on the applicant's property, including the erection of buildings and the dredging of a small part of the adjoining lake.

The Building Committee noted that the buildings would be situated within 100 metres from the lake. In order to secure public access to beaches, Section 16 of the Nature Conservation Act (Naturvårdslagen, 1964:822) provides that no buildings may be erected in such areas (strandskyddsområden), unless, inter alia, they are required for farming purposes. However, under Section 16 a, the County Administrative Board (Länsstyrelsen) may grant an exemption from the building ban, if there are special reasons. On 16 December 1992 the

Building Committee therefore decided to submit the applicant's application to the Board of the County of Gävleborg and to recommend that an exemption be granted. As a consequence, the request for a preliminary decision was adjourned.

On 20 April 1993 the County Administrative Board decided not to grant an exemption from the building ban. It found that the buildings in question could be situated on other parts of the applicant's property and that there were therefore no special reasons for granting the exemption.

The applicant foundation appealed to the Government. It claimed, firstly, that the projected construction work was not covered by the building ban as the buildings were to be used in the applicant's farming business and, secondly, if the ban applied, that an exemption should be granted as the buildings caused a mere insignificant interference with the public's access to the beach and this interest was thus outweighed by the public interests of creating jobs and promoting agricultural research and development.

On 6 October 1994 the Government rejected the appeal.

The applicant foundation did not apply 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").

b. Relevant domestic law

Decisions taken by the County Administrative Board pursuant to Section 16 a of the Nature Conservation Act may, in accordance with Section 40, be appealed to the Government.

The Nature Conservation Act does not contain any provision providing for the possibility to appeal to a court. However, under the 1988 Act, the Supreme Administrative Court (Regeringsrätten) has jurisdiction in certain administrative cases. Section 1 of this Act provides the following:

(translation)

> "At the request of a private party in such administrative proceedings before the Government or an administrative authority as pertain to any situation envisaged by Chapter 8, Sections 2 and 3, of the Instrument of Government, the Supreme Administrative Court shall review whether the decision in the case is contrary to any legal rule in a manner indicated by the requesting party or otherwise apparent from the circumstances of the case.
>
> Judicial review may pertain only to such decisions as
> - imply exercise of public authority in relation to a private subject,
> - may not otherwise be reviewed by a court except upon a request for relief for substantive defects, and
> - could not otherwise be subject to review."

According to the travaux préparatoires to the Act, the Supreme Administrative Court's examination should concentrate on the lawfulness of the challenged decisions, but the Court also has the power to re-examine the facts upon which the application of the law has been based. Furthermore, the Court should examine whether the challenged decision is compatible with the principles of objectivity, impartiality and equality before the law. In addition, it should examine whether there have been any procedural errors which might have affected the outcome of the case. If the relevant law leaves a certain discretion to the

deciding authority to make a choice between different options, all of which must be considered lawful, the Court should examine whether the challenged decision falls within that discretion (cf. Government Bill 1987/88:69, pp. 23-25 and 234). When examining the Government Bill, the Council of Legislation (Lagrådet) stated that the examination of the lawfulness of an administrative decision in some cases must include an assessment of whether the prescribed balance of interests has been appropriately observed.

The Supreme Administrative Court has, under the 1988 Act, reviewed Government decisions concerning exemptions from Section 16 of the Nature Conservation Act (cf., e.g., Regeringsrättens årsbok, RÅ 1991 not 240). In a case reviewed under the 1988 Act, the Court, basing itself on the case-law of the European Court of Human Rights, decided to hold an oral hearing before delivering its judgment (the Court's judgment of 30 May 1995 in case no. 2060-1994).

COMPLAINT

Invoking Article 6 para. 1 of the Convention, the applicant foundation claims that it did not have a determination by a court of the decisions refusing the requested exemption and that it was denied an oral hearing. The applicant contends that the judicial review available under the 1988 Act does not meet the requirements of Article 6 para. 1.

THE LAW

The applicant foundation complains that it did not have access to court and that it was not given an oral hearing. It invokes Article 6 para. 1 (Art. 6-1) of the Convention which, in relevant parts, reads as follows:

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

The Commission notes that the applicant foundation did not attack the decision of the Government by requesting judicial review under the 1988 Act on Judicial Review of Certain Administrative Decisions. It appears from the case-law of the Supreme Administrative Court that that Court has considered itself competent under the 1988 Act to review Government decisions concerning exemptions from Section 16 of the Nature Conservation Act. It would thus have been possible for the applicant foundation to obtain such a review by the Supreme Administrative Court. In assessing whether the scope of this review would have been sufficient to satisfy the requirements of Article 6 para. 1 of the Convention, the Commission notes that, in its appeal to the Government, the applicant foundation claimed, firstly, that the projected construction work was not covered by the building ban in Section 16 and, secondly, that, if the ban applied, an exemption should be granted as the public interests of creating jobs and promoting agriculture outweighed the interest of public access to the beach. An application by the applicant foundation for judicial review based on these elements could have been examined by the Supreme Administrative Court under Sections 16 and 16 a of the Nature Conservation Act. Thus, in the circumstances of the present case, the Commission finds no reason to believe that the Supreme Administrative Court, in examining an application by the applicant foundation for judicial review, would have had to decline jurisdiction (cf. No. 18660/91, Bengtsson v. Sweden, Dec. 7.12.94, D.R. 79-A p. 11).

The Commission further observes that in judicial review proceedings before the Supreme Administrative Court the applicant foundation could have requested an oral hearing.

In these circumstances the Commission finds that the applicant's

right under Article 6 para. 1 (Art. 6-1) to a court determination has not been violated.

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