AS TO THE ADMISSIBILITY OF

Application No. 12835/87
by W. and Others
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 5 March 1991, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
MM. F. MARTINEZ RUIZ
Mrs. J. LIDDY
J.-C. GEUS
M.P. PELLONPÄÄ

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 15 July 1985 by W. and Others against Sweden and registered on 2 April 1987 under file No. 12835/87;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to the observations submitted by the respondent Government on 19 May 1989 and the observations in reply submitted by the applicant on 8 July 1989;

Having regard to the Commission's decision of 8 January 1991 to refer the application to the Second Chamber;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicants, all Swedish citizens, are set out in the Annex.

Before the Commission the first applicant, Mr. P.W., represents the other applicants.

Particular circumstances of the case

The applicants are owners of properties in the area of Värnäs. In 1978 the National Road Administration (Vägverket; hereinafter "the NRA") announced that it planned to reconstruct the existing road between the villages Värnäs and Ljusnästorp, the distance between the villages being about three kilometres.

Two alternative stretches for the reconstruction were considered, a new bypass around Värnäs or a through-way, the latter alternative implying the repair and reconstruction of the existing

road through Värnäs.

On 4 September 1980 the NRA adopted a working-plan for the bypass, which was regarded as the more favourable alternative in view of traffic, environmental and cost aspects. The decision was taken after consultations with property owners and following the exhibition of the working-plan, as prescribed in the Roads Act (väglagen, hereinafter "the Act").

The applicants appealed to the Government (Ministry of Transport and Communication) which, on 2 April 1981, quashed the decision and referred the matter back to the NRA for re-examination on the ground that it had not been shown that the bypass could be constructed in such a way that its purpose could be achieved with the least possible interference and inconvenience and without unreasonable costs, this being a requirement under Section 13 of the Act.

The NRA drew up an alternative working-plan for the through-way and re-examined the bypass alternative. Both alternatives were examined together, including consultations with the property owners and the exhibition of the plans. The estimated cost for the bypass was 7,2 million SEK and for the through-way 8 million SEK.

On 1 July 1983 the NRA adopted an amended working-plan for the bypass, stating inter alia that the road connection at issue was the most important transportation way in the northern part of the County of Värmland; that its reconstruction was of importance with regard to traffic safety, environmental protection and the flow of traffic; that the through-way was in bad condition; and that the aim to reconstruct the road connection would best be achieved by the bypass alternative, which also would be 0,8 million SEK cheaper than the through-way alternative. The NRA noted that, as a result of the bypass, 3,4 hectares of farming land would disappear and that questions of redemption of land and compensation would be examined in separate proceedings.

The applicants appealed to the Government, alleging inter alia that the bypass would run straight through their farming land and seriously diminish the possibilities to use the properties for farming in the future.

On 31 January 1985 the Government rejected the applicants' appeals, noting that this time two alternative working-plans had been drawn up and examined. It thus had been established that by choosing the bypass alternative the purpose of the road could be achieved with the least possible interference and inconvenience and without unreasonable costs.

During 1986 and 1987 an agreement was reached between the applicants and the NRA concerning the compensation for the right of way gained by the NRA. Compensation was paid to the applicants in the following amounts: P.W. and four other joint owners 45.000 SEK, Gudmund Olofsson 5.800 SEK, Bengt Sonesson 17.000 SEK, Märtha Haglund 4.700 SEK, Olle and Hildur Nygren 5.000 SEK, Axel Nordqvist 29.509 SEK and Elle and Frida Nilsson 12.500 SEK.

In October 1987 the bypass was opened for traffic.

Relevant domestic law and practice

According to Section 10 of the Act a road may be constructed if it is needed for public traffic or may be assumed to be of particular importance to the community. The construction of a road in a new direction, including the repair of a road, may take place when it is required in the general public interest.

Section 15 of the Act provides that, for the construction of a

road, a so called working-plan shall be drawn up. The plan shall inter alia specify the land needed for the road. When the plan is drawn up there shall be consultations with inter alia the property owners concerned (Section 16). It shall also be exhibited for inspection in a way similar to that regarding a building plan. The plan is adopted by the NRA after consultations with the County Administrative Board (Section 17). If the NRA and the County Administrative Board have different views on the matter, it shall be referred to the Government (Section 18).

Section 48 first paragraph of the Act provides that, from the moment a decision to adopt a working-plan has gained legal force until the road construction work is finished, no building may be erected or any other measure be taken within the road area specified in the working-plan, if this could subsequently obstruct the use of the area for road purposes. Such measures may only be taken with the permission of the County Administrative Board.

According to Section 31 of the Act a right of way (vägrätt) arises when the authority responsible for the road starts using the land specified in the working-plan, that is when the stretch of the road across the property has been clearly marked on the land and the construction work has commenced. Under Section 32 of the Act the right of way ceases to exist when the road is withdrawn. The right of way authorises the maintainer of the road to determine the use of land needed for the road, notwithstanding the right of any other party with regard to the property. The right of way also includes the right to make use of resources that can be extracted from the land.

Under Section 55 of the Act the property owner or any other party who has a right of usufruct is entitled to compensation for the right of way gained by the maintainer of the road. If the maintainer of the road and the property owner cannot agree on the amount of compensation, it is decided by the Real Estate Court (fastighetsdomstolen) in application of relevant parts of the 1972 Expropriation Act (expropriationslagen).

COMPLAINTS

1. The applicants complain that the decision to construct a road over their properties was not taken in accordance with Swedish law. They allege a violation of Article 1 of Protocol No. 1 to the Convention.

2. The applicants further complain that they could not obtain a court examination of the decision to construct the road. They allege a violation of Article 6 para. 1 of the Convention.

3. The applicants finally complain that they did not have an effective remedy before a national authority for the above violations of their rights under the Convention. They allege a violation of Article 13 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 15 July 1985 and registered on 2 April 1987.

On 13 March 1989 the Commission decided that notice of the application should be given to the respondent Government and that the parties should be invited to submit written observations on the admissibility and merits of the application limited to the issue under Article 6 of the Convention.

The Government's observations were submitted on 19 May 1989. The applicants' observations in reply were submitted on 8 July 1989.

On 8 January 1991 the plenary Commission decided to refer the application to the Second Chamber.

THE LAW

1. The applicants complain that the decision to construct a road over their properties was not taken in accordance with Swedish law. They allege a violation of 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 Government submit that the adoption of the working-plan had the effect of obliging the applicants to give up parts of their properties in a way similar to expropriation. However, the decisions at issue were taken in accordance with domestic law. The Government refer to the wide margin of appreciation conferred on the authorities in matters of this kind.

The applicants contend that, when the Government quashed the first decision regarding a working-plan, the matter involved prestige. The Government's decision had no effect, since nothing essential was changed in the new plan subsequently drawn up and adopted.

The Commission observes that the decision to adopt the working-plan had the temporary effect that the applicants, within a specified area of their properties, were prohibited from erecting buildings or taking any other measures which could substantially obstruct the use of this area for road purposes. This prohibition was in force from the moment the decision to adopt the working-plan gained legal force until the road construction work was finished.

The Commission notes that the right of way, authorising the NRA to make use of the applicants' property, insofar as it was needed for the road, only arose when the road construction work commenced. The applicants reached an agreement with the NRA as to the amount of compensation. In this respect no issue arises under Article 1 (Art. 1).

However, the adoption of the working-plan interfered with the applicants' right to the peaceful enjoyment of their possessions, in that it restricted the use of their properties. It constituted a measure to control the use of property which must be examined under the second paragraph of Article 1 (Art. 1) as to its lawfulness, purpose and proportionality (cf. Eur. Court H.R., Tre Traktörer AB judgment of 7 July 1989, Series A No. 159, pp. 22-24, paras. 55-62).

The Convention organs' power to review compliance with domestic law is limited. It is in the first place for the national authorities to interpret and apply that law. The requirement of lawfulness includes that the impugned measure should have a basis in domestic law. Furthermore, the law must have a certain quality, that is it must be accessible, foreseeable and compatible with the rule of law. A law which confers a discretion on the authorities must indicate the scope of that discretion. The degree of precision required will depend on the particular subject-matter (cf. Eur. Court H.R., Huvig judgment of 24 April 1990, Series A No. 176, pp. 52-55, paras. 26, 28-29).

As to the lawfulness of the the working-plan the Commission observes that, apart from the requirements under Section 13 of the Act, the domestic law leaves some discretion to the authorities in choosing the working-plan to be adopted. It further notes that the first working-plan was quashed by the Government; that the NRA then drew up alternative working-plans on which the applicants were consulted and which were exhibited for public inspection, as provided for in the Act; and that the decision adopting the new working-plan, taken after comprehensive investigation, contained detailed reasons. The Commission is therefore satisfied that the decision complained of had a basis in Swedish law.

As to the purpose of the interference, the Commission observes that the aim of the working-plan was to improve the condition of the road connection with regard to traffic safety, environmental protection and the flow of traffic. The Commission considers this to be a legitimate aim in the general interest.

As regards the proportionality between the interference with the applicants' property rights and the aim pursued, the Commission observes that according to the working-plan the bypass would run straight through the applicants' farming-land. However, in view of the aim of the decision to adopt the working-plan for the bypass and having regard to the wide margin of appreciation enjoyed by the Contracting States in this area, the Commission cannot find that the decision was disproportionate to the aim pursued.

Consequently the interference 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 manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicants furthermore complain that they could not obtain a court examination of the decision to construct the road. They allege a violation of Article 6 para. 1 (Art. 6-1) of the Convention, which reads, insofar as it is relevant:

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

The issues to be decided are whether the working-plan was decisive for the applicants' "civil rights and obligations" and, if so, whether a genuine dispute of a serious nature arose between the applicants and the authorities in relation to this plan. In the affirmative, it would have to be determined whether the applicants had at their disposal a procedure satisfying the conditions of Article 6 para. 1 (Art. 6-1) of the Convention with regard to the dispute.

The Government admit the admissibility of this complaint and state that it was not at the time possible under Swedish law to have the working-plan reviewed by a court.

The Commission finds that this complaint is not manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention and that no other ground for declaring it inadmissible has been established.

3. The applicants finally allege a violation of Article 13 (Art. 13) of the Convention, which reads:

"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 considers that the issue under Article 13 (Art. 13) of the Convention is closely linked to the corresponding issue under Article 6 (Art. 6) of the Convention which the Commission has found above to be admissible.

For these reasons, the Commission, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits of the case, the applicants' complaints under Article 6 para. 1 (Art. 6-1) and Article 13 (Art. 13) of the Convention;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Second Chamber President of the Second Chamber

(K. ROGGE) (S. TRECHSEL)

ANNEX

The applicants:

1. Mr. W., a Bachelor of Arts born in 1950 and resident at T. ;

2. Mr. O., an engineer born in 1934 and resident at K. ;

3. Mr. S., a farmer born in 1919 and resident at St; .

4. Mrs. H., born in 1934 and resident at St. ;

5. Mr. N., a farmer born in 1919 and resident at St. ;

6. Mrs. N., a farmer born in 1917 and resident at St. ;

7. Mr. N., a farmer born in 1905 and resident at St. ;

8. Mrs. N., a farmer born in 1927 and resident at St. ; and

9. Mrs. N., born in 1897 and resident at St.