Applications Nos. 8588/79 and 8589/79

Lars BRAMELID and Anne Marie MALMSTRÖM

against Sweden

REPORT OF THE COMMISSION

(adopted on 12 December 1983)

83.296
06.2

8588/79 and 8589/79

I. INTRODUCTION

1. The following is an outline of the cases as they have been submitted by the Parties to the European Commission of Human Rights, and a description of the proceedings.

The substance of the applicants' complaints

2. The applicants, Lars Bramelid (born 1941) and Anne Marie Malmström (born 1943), are Swedish citizens. They owned shares in a limited company, Aktiebolag Nordiska Kompaniet (NK).

Under the 1977 Companies Act, any company which holds more than 90% of the shares of another company is entitled to purchase the remaining 10% from the minority shareholders. Where the purchasing company has acquired the greater part of the shares through a public offer, the purchase price for the outstanding shares must be equivalent to the public offer price. Any dispute concerning the right to purchase the shares or the price payable for them has to be referred to three arbitrators. Appeal against the arbitration award is allowed only on certain conditions.

In January 1977, the Åhlén och Holm company ("Åhléns") held over 90% of the shares in NK, and so was in a position to purchase the outstanding shares. In November 1977, three arbitrators ruled that Åhléns was entitled to purchase the outstanding NK shares. In September 1978 they agreed on a purchase price of 53 kronor per share.

3. Before the Commission, the applicants alleged that Article 1 of the First Protocol had been violated. They claimed of having been compelled to surrender their shares for a price below their real value and maintained that this measure which deprived them of their possessions was unwarranted since there was no public interest involved.

The applicants further claimed a violation of the rights they enjoy by virtue of Article 6(1) of the Convention. They argued that the arbitrators did not constitute a "tribunal" within the meaning of that Article. The applicants also invoked Article 13 of the Convention on the grounds that they were not afforded an effective remedy before a national authority.

Proceedings before the Commission

4. The applications were lodged with the Commission on 26 February 1979 and registered on 9 April 1979.

On 6 October 1981, the Commission decided to invite the respondent Government to submit its observations on the admissibility and merits of the applications (Rule 42, paragraph 2 (b) of the Commission's Rules of Procedure).

On 5 January 1982, the Government presented its observations. The applicants submitted a memorial in reply on 9 February 1982.

On 4 May 1982, the Commission decided to join the two applications and to invite the parties, in accordance with Rule 42, paragraph 3 (b) of the Rules of Procedure, to submit observations on the admissibility and merits of the applications.

On 12 October 1982, the Commission held a hearing at which the applicants were represented by Mr Bertil Grennberg, a patents consultant. The Government was represented by Mr Hans Danelius, Ambassador, Director of Legal and Consular Affairs at the Ministry of Foreign Affairs, Agent, and by Mr Lars Beckman, Head of Division at the Ministry of Justice, adviser.

5. The Commission decided, on 12 October 1982, to declare inadmissible the applicants' complaint that the compulsory surrender of their shares constituted a violation of Article 1 of the Protocol, and declared admissible the remainder of the applications.

On 15 February 1983, the applicants submitted observations on the merits of the applications. On 29 April 1983, the Government informed the Commission that it did not intend to reply to the applicants' observations. On 12 October 1983, the Commission considered the merits of the applications.

In accordance with Article 28 (b) of the Convention, the Commission placed itself at the disposal of the parties with a view to securing a friendly settlement. However, in view of the parties' attitude, the Commission finds that there is no prospect of obtaining such a settlement.

The Commission's Report

6. The Commission drew up this Report in accordance with Article 31 of the Convention after deliberating and voting in plenary sitting, with the following members present:

MM C A NØRGAARD, President
J A FROWEIN
G JÖRUNDSSON
G TENEKIDES
S TRECHSEL
B KIERNAN
M MELCHIOR
J SAMPAIO
A WEITZEL
H G SCHERMERS

7. The Report was adopted by the Commission on 12 December 1983 and will be transmitted to the Committee of Ministers in accordance with Article 31 (2) of the Convention.

As a friendly settlement of the case has not been reached, the purpose of the present Report, as provided in Article 31 (1), is accordingly:

a. to establish the facts, and

b. to state the Commission's opinion as to whether the facts found disclose a breach by the respondent Government of its obligations under the Convention.

8. A schedule setting out the history of the proceedings before the Commission, and the Commission's decision on the admissibility of the applications are attached hereto (Appendices I and II). The Swedish Arbitration Act is reproduced in Appendix III.

The full texts of the parties' observations with the documents lodged as exhibits are held in the archives of the Commission and are available to the Committee of Ministers, on request.

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II. ESTABLISHMENTS OF THE FACTS

9. The applications concern the system for the purchse of shares and the procedure followed in the event of a dispute between the parties concerned. The legislation applicable to the case is presented briefly below, followed by a summary of the facts.

A. Applicable legislation

The system for purchasing shares from minority shareholders

10. Chapter 14, section 9 et seq. of the Companies Act (Aktiebolagslagen), which came into force on 1 January 1977, contains provisions relating to the purchase of minority shares. By virtue of these provisions, where a company holds in its own right or together with an undertaking it controls, more than 90% of the shares and more than 90% of the votes in another company, it is entitled to buy up the outstanding 10% of the shares of that other company. For their part, persons holding any of the outstanding shares are entitled to have them purchased. The price payable for those shares is not specified in the Act, except where the purchasing company has acquired the greater part of the shares through a public offer. Section 9, paragraph 3, of the Act specifies that the purchase price of the outstanding shares shall be equivalent to the public offer price, unless there are specific reasons to decide otherwise.

Chapter 14, Section 9 (1-3) of the Companies Act (Aktiebolagslagen), reads as follows:

> "9 (1-3): Where a parent company (moderbolag) holds in its own right or together with an undertaking that it controls (dotterföretag), more than nine tenths of the shares and more than nine tenths of the votes in a subsidiary company (dotterbolag), it is entitled to purchase the outstanding shares from the other shareholders of the subsidiary company concerned. A shareholder owning any of the outstanding shares is entitled to have his shares purchased.
>
> In the event of a dispute concerning whether or not there is a right to purchase or an obligation to purchase, or concerning the amount of the purchase, the matter shall be referred to three arbitrators by virtue of the Arbitration Act (Lagen om Skiljemän) 1929 : 1945) unless this chapter contains any provision to the contrary. Section 18 (2) of the said Act, concerning the time limit allowed for the arbitration award, shall not apply.
>
> Where the parent company has acquired the greater part of its shares in the subsidiary company through a public offer to shareholders to sell their shares to the parent company for a certain price, the price for which the outstanding shares are surrendered shall be equivalent to that price, unless there are specific reasons to decide otherwise." (Unofficial translation).

11. Similar provisions were included in the former 1944 Companies Act.

However, Section 9, paragraph 3, quoted above, had no counterpart in the 1944 Act. The reason for its inclusion is given in the Government's draft proposing the new legislation. According to the draft, it would be unreasonable if, once the offer had been accepted by the great majority of shareholders, the remaining shareholders could obtain a better price through compulsory purchase procedure, which would then amount to a kind of blackmail against the purchasing company. Moreover, the rule is not applied if there are specific grounds for deciding otherwise, for instance, if a long period has elapsed between the public offer and the start of the compulsory purchase procedure, if the information supplied at the time of the public offer was incomplete or if significant new facts have arisen since.

Also, the 1944 Act enshrined the right or obligation to purchase only if at least 90% of the shares were owned by the purchasing company itself (and not by undertakings controlled by it). Furthermore, the purchase price had to be based on the real value of the shares.

Procedure

12. In the event of a dispute concerning whether or not there is a right to purchase or an obligation to purchase, or concerning the amount of the purchase, the matter is referred to three arbitrators by virtue of the Arbitration Act (cf. Section 9 (2) of the Companies Act: paragraph 10 above).

The arbitration procedure is set in motion under the terms of chapter 14, section 10, of the Companies Act, which reads as follows:

> "10.: Where a parent company (moderbolag) wishes to buy up the shares of a subsidiary company (dotterbolag) by virtue of Section 9, and no agreement can be reached in the matter, the parent company shall ask the Board of Directors of the subsidiary company in writing to submit the dispute to arbitration and shall appoint an arbitrator.
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> Upon receiving such a request, the Board of Directors of the subsidiary company shall without delay, by means of notices published in ... (certain newspapers), ask the shareholders whom the purchase offer concerns to notify to it in writing the name of their arbitrator within 15 days of publication of the notices. The same request must be sent by letter to each of the shareholders concerned whose address is known to the company.

> If no common arbitrator has been appointed within the prescribed time limit by all the shareholders appearing on the share register concerned with the purchase offer, the Board of Directors of the subsidiary company shall ask the Regional Court to appoint an administrator, who shall in turn invite the Executive Office (överexekutor) to designate an arbitrator, and shall defend the interests of absent shareholders in the dispute." (Unofficial translation).

13. The procedure according to the Swedish Arbitration Act of 1929 requires each party to appoint an arbitrator, and those two arbitrators to appoint a third. The arbitrators must give the parties an opportunity to present their case orally or in writing. The arbitration award must be put down in writing and signed by all the arbitrators. They should state in the award when and where it was given and notify the parties in the shortest possible time. An action to challenge the award may be brought before a court of first instance if an arbitrator was not appointed in the proper manner or fails to act impartially, if a procedural defect might have influenced the decision or if there is a dispute regarding the compensation of the arbitrators. (For further details see the Arbitration Act, reproduced in Appendix III).

Under the 1944 Companies Act (Article 223, paragraph 2) any party could appeal for the price to be determined by the courts.

B. Facts of the case

The purchase of the "NK" shares

14. The share capital of Aktiebolag Nordiska Kompaniet ("NK") was made up of 4,062,000 two-vote shares and 30,000 single-vote preference shares. In order to acquire the NK shares of which the applicant Lars Bramelid held 300 and the applicant Anne Marie Malmström one, the company Åhlén och Holm Aktiebolag (Åhléns) decided to make alternative offers of purchase to NK's shareholders.

By 7 July 1976, Åhléns had acquired 3,660,255 ordinary shares in NK, representing 89.45% of the share capital. On the same day, Åhléns signed an agreement with Aktiebolaget Wessels, a company it controlled, under the terms of which the latter was to acquire, by the end of 1976, all NK shares still available for purchase.

On 3 January 1977, Åhléns announced ownership of 3,634,126 ordinary shares and Wessels stated that it owned a further 323,640, as well as 12,229 preference shares, representing altogether more than 90% of the NK share capital; this meant that Åhléns was now entitled to purchase all the remaining shares.

Arbitration procedure

15. On 3 January 1977, the Board of Directors of NK informed its shareholders that they should appoint an arbitrator. As the shareholders failed to do so, the Board asked the Stockholm Regional Court (Tingsrätt) to appoint an administrator, and one was duly appointed on 19 January 1977.

On 21 January 1977, at the request of the administrator, the Regional Administration (Länsstyrelsen) of Stockholm appointed Mr Olsson, chartered accountant, as second arbitrator. Mr Löfgren and Mr Olsson then agreed to appoint Mr Nial as the third arbitrator and President of the Court of Arbitration.

16. On 22 November 1977, the arbitrators issued a partial decision. They decided that Åhléns was entitled to purchase the outstanding shares of NK for a price which remained to be determined. They further declared that Åhléns was from then on owner of the outstanding shares. The arbitrators considered that, under current legislation, there was no appeal against their decision.

17. Åhléns asked for the purchase price of the shares to be fixed at the price for which the majority of shareholders had voluntarily sold their shares at the time of the public offer, which amounted, according to its calculations, to 46.22 Swedish kronor per share.

The minority shareholders held that Section 9, paragraph 3, did not apply in the event, and that the real value of the shares was substantially higher than the proposed price.

18. After observations had been exchanged, and after hearing the parties on seven occasions, and two experts appointed by the minority shareholders, the arbitrators issued their final decision on 5 September 1978.

They declared that Section 9, paragraph 3, did in fact apply in the circumstances and that it was not possible to determine the "objective" value of the shares, since that would imply resorting to suppositions and subjective judgements. In their opinion, the intention in the provision compelling minority shareholders to accept the price agreed by the majority, was that the rule should apply even if substantially higher evaluation seemed conceivable. The arbitrators nevertheless made an estimation of the value of the shares and said that, although the liquidation value could be roughly estimated to be higher than the price offered by Åhléns, the difference was not such as to render section 9, paragraph 3, inapplicable. In accordance with that rule, they established the share purchase price at 53 kronor, which included 46.89 kronor for the actual share value and 6.11 kronor for dividends accrued up to the day of the decision. They further awarded each applicant a certain amount for arbitration costs. Finally, the arbitrators stated that if Åhléns did not accept the decision concerning the payment of compensation to them, it would be entitled to proceed against the decision before the Stockholm Regional Court.

III. SUBMISSIONS OF THE PARTIES

A. The applicants

As to Article 6 (1) of the Convention

19. The manner in which the price of shares is determined is an issue with implications for civil rights and obligations. Consequently, the applicants were entitled to a court hearing and to proceedings consistent with Article 6 (1) of the Convention.

In acquiring the NK shares, the applicants acquired all the former shareholders' rights. There is no question of the rights guaranteed by Article 6 (1) being tacitly waived. The wishes of the shareholders are not taken into consideration. The Act provides that the dispute must be settled by an Arbitration Board which does not afford all the guarantees of a court.

20. The guarantees of independence and impartiality of an Arbitration Board are not the same as those afforded by a court. True, it is possible in certain circumstances to challenge arbitrators, but that cannot make up for the absence of a tribunal.

The opposing party was free to appoint an arbitrator of its choice, whereas the applicants' arbitrator was appointed by an authority. The minority shareholders were unable in practice to appoint an arbitrator since, according the the law, their choice had to be unanimous. Their arbitrator was therefore appointed legally ex officio, but in fact under the influence of the opposing party. The arbitrators thus chosen by the parties are well-known experts whose clients include some major corporations. Even though this may not constitute sufficient grounds for challenging the arbitrators from a legal point of view, it is doubtful whether such personalities can be considered to be as independent as judges.

21. The arbitration procedure does not afford the guarantees required by Article 6 (1). The proceedings take place in private. The arbitration award was not read out publicly. It was not made public.

The Arbitration Board was appointed to settle a single dispute. Moreover, the setting up of an ad hoc court to hear a particular dispute is prohibited under the Swedish Constitution.

In general, arbitrators are not required to take the oath. In fact, the Arbitration Act expressly prohibits this.

Unlike the courts, the arbitrators are under no obligation to apply the law. Even when an arbitration award is manifestly at variance with the law, it cannot be set aside.

Thus arbitration is deemed to be an advisable course only when the parties place themselves in the hands of arbitrators who enjoy their trust.

22. The remedies enshrined in the Arbitration Act are very limited. Legally, arbitration awards may be challenged in the ordinary courts only if there is proof of an obvious procedural defect or of bias on the part of an arbitrator. In addition, the award is subject to no judicial control.

As to Article 13 of the Convention

23. The applicants claim that they were left with no effective remedy against the alleged violations. An Arbitration Board is a private body and cannot be considered to provide an effective remedy when the Convention is violated. Article 13 requires a remedy before a national authority.

B. The Government

As to Article 6 (1) of the Convention

24. The Government is prepared to concede that the price of the shares was a matter concerned with civil rights and obligations.

The arbitrators can be considered to constitute an independent and impartial tribunal. The Arbitration Act is founded on the principle that the parties must be afforded full guarantees of independence and impartiality. The way in which the arbitrators are appointed, the procedure followed, the right of appeal in certain conditions and the rules governing the payment of their expenses, are all means of ensuring their independence and impartiality. They must deal with all cases "in an impartial, practical and speedy manner" (Section 13 of the Act). In this case there can be no doubt as to the impartiality of the arbitrators, whose President is one of the most eminent specialists in company law. The circumstances in which an arbitrator may be challenged are governed by Section 5 of the Act. This may be done prior to the proceedings. After the proceedings either party may appeal to a court for annulment on any of the grounds listed in Section 5 (Section 21).

25. The procedure complies with the requirements of a fair hearing. Arbitration was chosen in preference to court proceedings so that a decision could be taken rapidly by persons particularly competent to determine the price of the shares. It was natural, therefore, to have recourse to the Arbitration Act, which is generally recognised in Sweden as guaranteeing fair proceedings in business disputes.

The procedure may be conducted in writing, but the arbitrators may also invite the parties to explain their case orally. The Act makes no provision for hearings to be held in public. Inasmuch as the parties may appeal to a court against the arbitration decision, they are entitled to proceedings before that court, which will then pronounce judgment in public. In this particular case, it would not appear that the lack of a public hearing has been in any way to the applicants' disadvantage.

As to Article 13 of the Convention

26. The Government considers that there has been no violation of Article 13. The matter was referred to three arbitrators in accordance with Article 9 (2) of Section 14 of the Swedish Companies Act, and this remedy, as applied in the present case, constitutes an effective remedy within the meaning of Article 13. The Government emphasises the incontrovertible competence and impartiality of the arbitrators appointed to settle the dispute between Åhléns and the minority shareholders of NK.

IV. OPINION OF THE COMMISSION

Points of issue

27. In this case the Commission has to consider:

A. Whether the applicants' right under Article 6 (1) of the Convention to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law was respected in the proceedings before the Arbitration Board;

B. Whether the applicants had an effective remedy before a national authority, as required by Article 13 of the Convention, against the violations of the Convention that they allege.

A. As to the alleged violation of Article 6 (1)

28. Article 6, paragraph 1, states:

"in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice".

29. In its decision on the admissibility of the present applications (cf Appendix II, page 36), the Commission expressed the view that in this case the arbitration procedure had a direct bearing on the applicants' civil rights and obligations. It hereby confirms this opinion, noting in particular that the outcome of those proceedings was crucial in deciding the ownership of the NK shares held by the applicants, and the price for which they were compulsorily purchased by Åhléns. Neither party disputes the fact that the purpose of those proceedings was to determine the applicants' private civil rights and obligations (cf Eur. Court HR, Ringeisen case, judgment of 16 July 1971, paragraph 94).

30. The applicants were therefore entitled to a hearing before a tribunal, within the meaning of Article 6 (1).

The Commission notes that the remedy before the District Court (cf Articles 21 and 26 of the Arbitration Act, Appendix III), was of so limited a character as to be of negligible relevance to its present investigations. It did not provide a means for the applicants to challenge the arbitrators' decision on the purchase of the shares or on the price payable for them. The Commission's attention must therefore focus on the arbitration procedure.

Furthermore, the Commission notes that a distinction must be drawn between voluntary arbitration and compulsory arbitration. Normally Article 6 poses no problem where arbitration is entered into voluntarily (cf Application No 1197/61, Yearbook 5, pages 88, 94 and 96). If, on the other hand, arbitration is compulsory in the sense of being required by law, as in this case, the parties have no option but to refer their dispute to an Arbitration Board, and the Board must offer the guarantees set forth in Article 6 (1).

31. It must be emphasised at this point that the Commission is not required to consider whether the general system of arbitration under Swedish law complies with Article 6 (1) of the Convention, but to examine, in the light of that Article, a particular situation in which two individuals had to have recourse to arbitration by virtue of a legal obligation.

A number of features of that situation are worthy of mention:

a. Firstly, the subject of the dispute submitted to arbitration is wholly covered by the law itself, and not by the will of the parties.

b. Secondly, the parties do not have the option of determining the legal standards (national law, foreign law, common law, equity etc) by which the arbitrators will settle the dispute. In this case, the arbitrators are required to apply the Swedish Companies Act, and so verify the lawfulness of the right to purchase; their discretionary power is confined to the technical issue of the price for which the shares were purchased.

c. Thirdly, the Swedish arbitration law which the arbitrators have to apply, contains procedural rules which are comparatively detailed and precise (see Sections 11-19); these rules leave the parties, and the arbitrators themselves, with only a very narrow margin of influence over the conduct of the procedure.

d. Lastly, parties to a dispute concerning the compulsory purchase of shares are not entitled to choose between judicial procedure and arbitration procedure. They are required by law to use the arbitration procedure.

32. Since in this case recourse to arbitration was compulsory, and since the applicants were unable to bring their case to court capable of settling the dispute and offering the guarantees set forth in Article 6 (1) of the Convention, the Commission has to consider whether those guarantees were respected in the proceedings before the Arbitration Board.

33. For instance, Article 6 (1) states that the hearing must take place before an "independent and impartial tribunal". The Commission observes that there is a functional relationship between independence and impartiality, the former being essentially a precondition for the latter.

34. The arbitrators must be presumed impartial until there is proof to the contrary (cf, mutatis mutandis, Eur. Court HR, Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, paragraph 58) and the applicants have produced no conclusive evidence, to date, establishing bias on the part of one or other of the arbitrators.

35. With regard to the criterion of independence, the Commission emphasises that it is not sufficient that the arbitrators were in fact independent. Their independence must be seen by all to be incontrovertible. The Commission recalls in this respect that the maxim of English law "justice must not only be done; it must also be seen to be done", expresses an idea contained in Article 6 (1) of the Convention (cf. Piersack v Belgium, Report of the Commission of 13 May 1981, paragraph 56; Eur. Court HR, Delcourt judgment, paragraph 31).

36. Whether a body qualifies as a court is a question to examine from two angles: independence of the executive and of the parties to the case (cf Eur. Court HR, Ringeissen case, judgment of 16 July 1971; Eur Court HR, De Wilde, Ooms and Versyp cases, judgment of 18 June 1971, paragraph 78).

In the opinion of the Commission, the arbitrators may be regarded in this case as being independent of the executive, since the law allows them complete freedom to assess the evidence in the cases referred to them.

37. The Commission further notes that in this case there is no tangible evidence that the arbitrators may have failed to act independently of the parties to the case.

However, in the arbitration system designed for dealing with the compulsory purchase of shares, it is inevitable that the Arbitration Board's independence of one of the parties cannot always be guaranteed. In regard to their relationship with the arbitrators they have themselves appointed, the parties may not always be on an equal footing.

38. In this case, the minority shareholders, who included the applicants, had no practical means of reaching an agreement over the choice of their arbitrator, since the law states that their choice must be unanimous. They were therefore obliged to have their arbitrator appointed by an authority. This procedure is common and necessary in arbitration, but in this case it had the effect of preventing each shareholder's preferences from being taken into consideration.

On the other hand, the opposing party, Åhléns, was able to choose its arbitrator for itself; it chose Mr Löfgren, chartered accountant. It is no secret that Åhléns is one of a number of high-powered commercial enterprises that are constantly having to entrust chartered accountants with important assignments, (dealings with fiscal implications, for example) in which the agent is required to take the company's side and defend its interests.

Considering the position of the arbitrators in relation to the parties appointing them, the Commission notes a degree of imbalance in this case which the appointment of the third arbitrator did nothing to correct.

39. The above considerations show the importance of pre-established courts to which are appointed judges who are totally unconnected with the case they are to hear. The tribunals referred to in Article 6 of the Convention are of this kind in the Contracting States. The Commission does not rule out the possibility of exceptions in specific procedures. On this assumption it considers that there must be a rigorous guarantee of equality between the parties in regard to the influence they exercise on the composition of the court. Examination of the facts reveals that such equality did not prevail in this case.

40. Consequently, the independence and impartiality required by Article 6 (1) was not fulfilled.

41. Having found that the arbitrators did not constitute an independent and impartial tribunal, the Commission finds it unnecessary also to consider whether the Arbitration Board was established by law within the meaning of Article 6 (1).

It notes that the applicants do not allege that the hearing was not fair.

But it finds that the applicants' hearing was not public, within the meaning of Article 6 (1).

Conclusion

42. Consequently, the Commission unanimously expresses the opinion that the applicants' case was not heard publicly by an independent and impartial tribunal.

B. As to the alleged violation of Article 13

43. The Commission has to consider whether the applicants had an effective remedy before a national authority against the alleged violations of the Convention.

Article 13 states:

"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."

44. Inasmuch as the applicants rely on Article 13 combined with Article 1 of the Protocol, the Commission recalls that it has declared inadmissible as being manifestly ill founded, the applicants' complaint under Article 1 of the First Protocol (cf Decision as to admissibility, in Appendix II), but emphasises that a violation of Article 13 does not presuppose violation of the rights and freedoms set forth in other Articles of the Convention. Consequently, the decision on admissibility would not preclude an examination of the application from the standpoint of Article 13 by the Commission.

Inasmuch as the applicants rely on Article 13 combined with Article 6 (1), their complaint concerns, in substance, the absence of any remedy whereby they might have complained of the failure to observe Article 6 (1).

45. Having regard to its opinion on the violation of Article 6 (1), the Commission considers that no examination of the applications is necessary from the standpoint of Article 13 of the Convention.

The requirements of the latter are less strict than, and are here absorbed by, those of Article 6 (1) (for a similar approach see Eur. Court HR, Sporrong and Lönnroth judgment of 23 September 1982, paragraph 88).

Conclusion

46. The Commission expresses the unanimous view that no examination of the applications is necessary from the standpoint of Article 13 of the Convention.

Secretary to the Commission

(H C KRÜGER)

President of the Commission

(C A NØRGAARD)