CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

CASE OF FREDIN v. SWEDEN (No. 2)

(Application no. 18928/91)

JUDGMENT

STRASBOURG

23 February 1994

In the case of Fredin v. Sweden (no. 2)[*],

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr L.-E. PETTITI,
Mr B. WALSH,
Mr R. MACDONALD,
Mr A. SPIELMANN,
Mrs E. PALM,
Mr I. FOIGHEL,
Sir John FREELAND,
Mr M.A. LOPES ROCHA,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 23 September 1993 and 25 January 1994,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court on 13 April 1993 by the European Commission of Human Rights ("the Commission") and on 24 May 1993 by the Government of the Kingdom of Sweden ("the Government"), within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 18928/91) against Sweden lodged with the Commission under Article 25 (art. 25) by a Swedish national, Mr Anders Fredin, on 9 April 1991.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Sweden recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request and of the Government's application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1) of the Convention.

[*] Note by the Registrar: The case is numbered 20/1993/415/494. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mrs E. Palm, the elected judge of Swedish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 23 April 1993 the President drew by lot, in the presence of the Registrar, the names of the other seven members, namely Mr L.-E. Pettiti, Mr B. Walsh, Mr R. Macdonald, Mr A. Spielmann, Mr I. Foighel, Sir John Freeland and Mr M. A. Lopes Rocha (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 20 August 1993 and on 23 August 1993 a letter from the Government enclosing their written observations to the Commission dated 7 May 1992. On 10 September 1993 the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

On 10, 15 and 21 September 1993 the Commission and the Government produced various documents, as requested by the Registrar. On the latter date the applicant submitted additional details on his claims under Article 50 (art. 50).

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 21 September 1993. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr C.H. EHRENKRONA, Assistant Under-Secretary
for Legal Affairs, Ministry for Foreign Affairs, *Agent*,
Mr G. REGNER, Under-Secretary,
Ministry of Justice, *Adviser*;

- for the Commission

Mr S. TRECHSEL, *Delegate*;

- for the applicant

Mr J. AXELSSON, advokat, *Counsel*.

The Court heard addresses by Mr Ehrenkrona, Mr Trechsel and Mr Axelsson, as well as replies to a question put by it.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

6. Mr Anders Fredin, an agricultural engineer, is a Swedish citizen. He lives at Grödinge, Sweden.

The applicant and his wife own land in the municipality of Botkyrka, on which there is a gravel pit. They held a permit to extract gravel from the pit from 14 April 1983 until 1 December 1988, when the permit was revoked; it had previously been extended on the understanding that the activities in question would be terminated and restoration work carried out on the land by the latter date.

The revocation of the permit, and the lack of a court remedy against this and a related measure, gave rise to an earlier case before the Court, which held in a judgment of 18 February 1991 (Series A no. 192) that there had been a violation of Article 6 para. 1 (art. 6-1) of the Convention, but not of Article 1 of Protocol No. 1 (P1-1) taken either alone or in conjunction with Article 14 (art. 14+P1-1) of the Convention.

7. Following the revocation on 1 December 1988, the applicant applied to the County Administrative Board (länsstyrelsen) for a special extraction permit, so that he could comply with a plan adopted by the Board on 9 March 1987 for the restoration of the pit. The application was dismissed by the Board on 14 March 1989 and an appeal by the applicant against this decision was rejected by the Government (the Ministry of Environment and Energy) on 21 June 1989.

8. The applicant, seeking the annulment of the Government's decision of 21 June 1989, applied to the Supreme Administrative Court (regeringsrätten) for review under the 1988 Act on Judicial Review of Certain Administrative Decisions (lagen om rättsprövning av vissa förvaltningsbeslut 1988:205 - "the 1988 Act"). He alleged that, by denying him a special extraction permit, the competent authorities had prevented him from taking measures to comply with the restoration plan; the refusal contravened the principle of objectivity enshrined in Chapter 1, section 9, of the Instrument of Government (regeringsformen, which forms part of the Constitution). Moreover, contrary to the principle of proportionality and section 3 of the 1964 Nature Conservation Act (naturvårdslagen 1964:822), the authorities had gone beyond what was necessary in the interests of nature conservation, as well as other public and private interests. Their decision was also incompatible with the aim of nature conservation laid down in section 1(3) of the Act. Finally, the only reply given by the County Administrative Board to his question as to what steps he should take had been that the time-limit for restoration of the pit had expired; he had thus been the victim of a denial of justice.

In addition, the applicant asked the Supreme Administrative Court to hold an oral hearing in his case.

9. In a decision (beslut) of 13 December 1990, the Supreme Administrative Court, sitting with five judges, dismissed the latter request by three votes to two, finding that there were no grounds under section 9 of the Administrative Procedure Act 1971 (förvaltningsprocesslagen 1971:291; see paragraph 14 below) for holding a hearing. As to the merits, on the basis of written observations submitted by the applicant and the County Administrative Board, it concluded unanimously that the Government's decision was not unlawful and confirmed it.

According to the minutes of deliberations on 30 October 1990, the two judges who were in favour of a hearing had regard in particular to the fact that the 1988 Act had been enacted in order to ensure that Swedish law complied with the Convention standards and also with the Strasbourg Court's case-law in this area (see paragraph 11 below). They noted moreover that certain essential points of Mr Fredin's case remained unclear, since there was disagreement between him and the County Administrative Board as to whether the above-mentioned restoration plan (see paragraphs 7 and 8 above) required the further extraction of gravel from the pit or simply the moving of gravel within it. In addition they drew attention to the lack of clarity in Mr Fredin's plea against the Government.

The same two judges considered that the Government, like the applicant and the County Administrative Board, should have submitted written observations on the case; apart from their reasons for rejecting the applicant's appeal, they should have given their views on the above-mentioned issue of the need for further extraction of gravel and on whether their decision meant that Mr Fredin had been prevented from restoring the pit in the prescribed manner after 1 December 1988.

10. It was not possible under Swedish law for the applicant to appeal from the Supreme Administrative Court's decision of 13 December 1990.

II. RELEVANT DOMESTIC LAW

11. The 1988 Act was introduced as a result of the European Court's findings in several cases, notably against Sweden, that lack of judicial review of certain administrative decisions infringed Article 6 para. 1 (art. 6-1) of the Convention (see, for instance, the Sporrong and Lönnroth v. Sweden judgment of 23 September 1982, Series A no. 52, pp. 29-31, paras. 78-87; the Pudas v. Sweden and the Bodén v. Sweden judgments of 27 October 1987, respectively Series A no. 125-A, pp. 13-17, paras. 28-42, and Series A no. 125-B, pp. 39-42, paras. 26-37). It was enacted as a temporary law to remain in force until 1991; its validity was subsequently extended to the end of 1994.

12. Pursuant to section 1 of this Act, a person who has been a party to administrative proceedings before the Government or another public authority may, in the absence of any other remedy, apply to the Supreme Administrative Court, as the first and only judicial instance, for review of any decisions in the case which involve the exercise of public authority vis-à-vis a private individual. The kind of administrative decision covered by the Act is further defined in Chapter 8, sections 2 and 3 of the Instrument of Government, to which section 1 of the 1988 Act refers. Section 2 of the Act specifies several types of decisions which fall outside its scope, none of which is relevant in the instant case.

In proceedings brought under the 1988 Act, the Supreme Administrative Court examines whether the contested decision "conflicts with any legal rule" (section 1 of the 1988 Act). According to the preparatory work to the Act, as reproduced in Government Bill 1987/88:69 (pp. 23-24), its review of the merits of cases concerns essentially questions of law but may, in so far as is relevant for the application of the law, extend also to factual issues; it must also consider whether there are any procedural errors which may have affected the outcome of the case.

13. If the Supreme Administrative Court finds that the impugned decision is unlawful, it must quash it and, where necessary, refer the case back to the relevant administrative authority (section 5 of the 1988 Act, as applicable at the relevant time).

14. The procedure before the Supreme Administrative Court is governed by the Administrative Procedure Act 1971. It is in principle a written procedure, but the Supreme Administrative Court may decide to hold an oral hearing on specific matters if this is likely to assist it in its examination of the case or to expedite the proceedings (section 9).

PROCEEDINGS BEFORE THE COMMISSION

15. In his application of 9 April 1991 (no. 18928/91) to the Commission, Mr Fredin alleged that he had been denied a "fair and public hearing" before the Supreme Administrative Court, in breach of Article 6 para. 1 (art. 6-1) of the Convention.

16. On 12 October 1992 the Commission declared the application admissible. In its report of 9 February 1993 (Article 31) (art. 31), the Commission expressed the opinion, by sixteen votes to two, that there had been a violation of Article 6 para. 1 (art. 6-1). The full text of the

Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment[*].

FINAL SUBMISSIONS MADE BY THE GOVERNMENT TO THE COURT

17. At the hearing on 21 September 1993, the Government repeated the invitation made in their letter of 23 August (see paragraph 4 above) and calling upon the Court to rule on whether the facts of the present case disclose a breach of Article 6 para. 1 (art. 6-1) of the Convention.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

18. Mr Fredin invoked Article 6 para. 1 (art. 6-1) which, in so far as relevant, provides:

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

This provision is applicable to the proceedings in issue and this has not been disputed before the Court. On the other hand, the applicant's contention that it had been violated, accepted by the Commission, was contested by the Government.

19. As to the general scope of the right to an oral hearing in Article 6 para. 1 (art. 6-1), the Government maintained that to regard this right as unconditional might exacerbate what was already a major problem for courts in the Contracting States, namely the excessive length of proceedings. In cases where the issues to be decided were of a purely legal nature, there was no real need for an oral hearing; as has been suggested by the dissenting members of the Commission, legal arguments could often be presented more effectively in writing than orally.

With regard to the specific circumstances of the case, the Government stressed that the Supreme Administrative Court's role was primarily to review the lawfulness of the decision before it and to determine whether it should be upheld or quashed; it could not substitute its own decision. It had

[*] Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 283-A of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

refused the applicant an oral hearing because the majority of the judges sitting on the case had found they did not require a clarification of the facts in order to be able to reach a decision; since the case only gave rise to questions of law, an oral hearing could not have assisted the Supreme Administrative Court in its examination.

20. The applicant and the Commission considered that the right to a fair and public hearing in Article 6 para. 1 (art. 6-1) meant that a party must as a rule be entitled to present his arguments orally before a court at a hearing which must be public. Since the Supreme Administrative Court had been the only tribunal dealing with the applicant's case, his being denied an oral hearing constituted a breach of Article 6 para. 1 (art. 6-1). The applicant, in addition, stressed that the lack of a hearing had meant that the Supreme Administrative Court had failed to review all the aspects of the case.

21. It is clearly established under the Court's existing case-law that in proceedings before a court of first and only instance the right to a "public hearing" in the sense of Article 6 para. 1 (art. 6-1) may entail an entitlement to an "oral hearing" (see, for instance, the Håkansson and Sturesson v. Sweden judgment of 21 February 1990, Series A no. 171-A, p. 20, para. 64). In the present case the Court sees no need to go beyond an examination of whether, in the particular circumstances, the fact that the applicant was denied an opportunity to present oral argument before the Supreme Administrative Court gave rise to a violation of Article 6 para. 1 (art. 6-1).

22. In this regard, the Court observes that the Supreme Administrative Court acted as the first and only judicial instance in the contested proceedings. As the Government conceded, its jurisdiction was not limited to matters of law, but also extended to factual issues (see paragraph 12 above). In the particular case, as appears from the applicant's submissions to the Supreme Administrative Court, his appeal was capable of raising issues of both fact and law in relation to the Government's decision of 21 June 1989 (see paragraph 8 above). This is shown by the opinion expressed by the minority, to the effect that it was necessary to obtain, inter alia by means of an oral hearing, clarifications on certain points, which in their view were essential (see paragraph 9 above).

The Court is of the view that, in such circumstances at least, Article 6 para. 1 (art. 6-1) guarantees a right to an oral hearing. Accordingly, the refusal by the Supreme Administrative Court to hold an oral hearing in the applicant's case constituted a violation of Article 6 para. 1 (art. 6-1) of the Convention.

II. APPLICATION OF ARTICLE 50 (art. 50)

23. Article 50 (art. 50) of the Convention reads:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with

the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Non-pecuniary damage

24. The applicant did not seek compensation for pecuniary damage, being unable to prove that the Supreme Administrative Court would have ruled in his favour had it held a hearing in his case. However, he maintained that, in the event of an oral hearing, it would have had to determine the dispute between him and the County Administrative Board as to the exact nature of the requirements of the restoration plan (see paragraph 9 above). He also laid stress on the fact that this would be the second time Sweden had been found to have violated his rights under Article 6 para. 1 (art. 6-1) of the Convention. For these reasons he claimed 50,000 Swedish kronor for non-pecuniary damage.

25. The Government agreed to pay some compensation for non-pecuniary damage, the amount to be assessed in the light of what had been awarded by the Court in previous cases against Sweden concerning the lack of access to a court. The Commission's Delegate agreed that compensation should be awarded.

26. The Court, making an assessment on an equitable basis, awards the applicant 15,000 kronor for non-pecuniary damage.

B. Costs and expenses

27. The applicant claimed, in addition, reimbursement of costs and expenses, totalling 196,852 kronor, in respect of the following items:

(a) 45,100 kronor to cover costs referable to the proceedings before the County Administrative Board and the Government, namely 21,700 kronor for lawyer's fees and also 14,400 kronor and 9,000 kronor for the fees of two experts, respectively, for technical assistance and an opinion;

(b) 131,250 kronor for lawyer's fees for work done in connection with representing him before the Convention institutions;

(c) 20,502 kronor for travel and subsistence expenses relating to his lawyer's and his own journey to Strasbourg to appear before the Court.

28. As to item (a) the Government considered that this claim must be rejected altogether, whereas the Delegate was of the view that not all the domestic costs were recoverable. On the other hand, both the Government and the Delegate agreed that item (b) should be reimbursed, though, in their opinion, the amount claimed was excessive.

29. With regard to item (a), the Court finds that it is only in so far as the domestic costs related to the request for an oral hearing that these were

necessarily incurred in order to avoid the violation of Article 6 para. 1 (art. 6-1) of the Convention (see paragraph 22 above). For this and item (b), the Court, making an assessment on an equitable basis, awards the applicant 100,000 kronor. Item (c), which is undisputed, should be recovered in its entirety.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 6 para. 1 (art. 6-1) of the Convention;

2. Holds that Sweden is to pay to the applicant, within three months, 15,000 (fifteen thousand) Swedish kronor for non-pecuniary damage and 120,502 (one hundred and twenty thousand, five hundred and two) kronor for costs and expenses;

3. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 February 1994.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar