In the case of Håkansson and Sturesson*,

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 Thór Vilhjálmsson,
Mr L.-E. Pettiti,
Mr B. Walsh,
Mr C. Russo,
Mr R. Bernhardt,
Mrs E. Palm,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 29 September 1989 and 23 January 1990,

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

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* Note by the Registrar: This case is numbered 15/1988/159/215. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year. The last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

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PROCEDURE

1. The case was brought before the Court on 14 December 1988 by the European Commission of Human Rights ("the Commission") and on 27 January 1989 by the Government of the Kingdom of Sweden ("the Government"), within the period of three months laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. The case originated in an application (no. 11855/85) against Sweden lodged with the Commission in 1984 by Mr Gösta Håkansson and Mr Sune Sturesson, both Swedish citizens, under Article 25 (art. 25).

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 purpose of the request and of the Government's application was to obtain a decision as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Articles 6, 13 and 14 (art. 6, art. 13, art. 14) of the Convention and Article 1 of Protocol No. 1 (P1-1).

2. In response to the inquiry made in accordance with Rule 33 para. (d) of the Rules of Court, the applicants stated that they wished to take part in the proceedings and designated the lawyer who would represent them (Rule 30).

3. The Chamber to be constituted included, as ex officio members, 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 26 January 1989

the President of the Court drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr Thór Vilhjálmsson, Mr L.-E. Pettiti, Mr B. Walsh, Mr R. Bernhardt and Mr S. K. Martens (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently Mr C. Russo, substitute judge, replaced Mr Martens, who was unable to attend (Rule 22 para. 1 and Rule 24 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5). He ascertained, through the Registrar, the views of the Agent of the Government, the Delegate of the Commission and the lawyer for the applicants regarding the need for a written procedure (Rule 37 para. 1). Thereafter, in accordance with the President's Order, the registry received the memorials of the Government and of the applicants on 31 July and 4 August 1989, respectively; in a letter of 5 September, the Secretary to the Commission informed the Registrar that the Delegate did not wish to file a memorial.

5. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 29 June 1989 that the oral proceedings should open on 25 September 1989 (Rule 38). On 22 September the Commission produced various documents requested by the Registrar upon instructions from the President of the Court.

6. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. Immediately prior to its opening, the Court had held a preparatory meeting.

There appeared before the Court:

(a) for the Government

Mr H. Corell, Ambassador, Under-Secretary for Legal and Consular Affairs, *Agent*,

Mr R. Strömberg, Permanent Under-Secretary and Chief Legal Officer, Ministry of Environment and Energy,

Mr L. Lindström, Legal Adviser, Ministry of Justice,

Mr P. Boqvist, Legal Adviser, Ministry of Foreign Affairs, *Advisers*;

(b) for the Commission

Mr C. L. Rozakis, *Delegate*;

(c) for the applicants

Mr G. Ravnsborg, Lecturer in Law at the University of Lund, *Counsel*.

The Court heard addresses by Mr Corell for the Government, by Mr Rozakis for the Commission and by Mr Ravnsborg for the applicants, as well as the Government's replies to its questions. The applicants' replies were received at the registry on 20 October 1989 and the Government's comments thereon on 20 November 1989. On 4 December 1989 the President rejected an application from the Government to file additional evidence and on 23 January 1990 the Chamber rejected a similar application from the applicant (Rule 40 para. 1).

AS TO THE FACTS

I. Particular circumstances of the case

A. The 1979 compulsory auction

7. Mr Gösta Håkansson is resident at Höör and a police officer by profession, and Mr Sune Sturesson is resident at Skånes Fagerhult and a farmer by profession.

8. On 4 December 1979 the applicants bought for 240,000 Swedish crowns (SEK) at a compulsory sale by auction (exekutiv auktion; "the 1979 auction") an agricultural estate called Risböke 1:3 in the municipality of Markaryd. Their main competitors at the auction, Mr Bertil Bjarnhagen and Mr Michael Borg, bid 235,000 and 220,000 SEK, respectively. The property had been seized in July 1979 in order to secure the payment of the previous owners' debts to three banks. According to a valuation made public before the auction, the market value (saluvärde) of the property was estimated at 140,000 SEK.

9. At the auction the public was, according to the minutes drafted by the representative of the County Administrative Board (länsstyrelsen) of the County of Kronoberg, informed of the regulations contained in section 2, sub-section 10, and section 16 of the Land Acquisition Act 1979 (jordförvärvslagen 1979:230; "the 1979 Act"), whereby a purchaser would have to resell the property within two years unless he had obtained in the meantime from the County Agricultural Board (lantbruksnämnden) of the same County a permit to retain it or fell under one of the listed exceptions from the permit requirement (see paragraphs 28 and 32 below).

The applicants maintained that a representative of the County Administrative Board had stated, at the public viewing of the property on 27 November 1979, that, in this case, the requisite permit would certainly be granted speedily; they further claimed that this had been confirmed by the County Administrative Board at the auction. In support of these allegations, the applicants submitted three affidavits, each of which was signed in 1989 by a person who had been present either at the auction or at the public viewing.

B. The applications for a permit to retain the estate

10. On 7 January 1980 the County Administrative Board drew up a sale contract (köpebrev) in which the applicants were reminded of the wording of section 16 para. 1 of the 1979 Act. On the same day the applicants submitted a request to the County Agricultural Board for a permit to retain the estate Risböke 1:3.

11. By letter of 5 February 1980, the County Agricultural Board informed the applicants that the estate had, in view of its size, situation and nature, to be considered as a "rationalisation unit" (rationaliseringsfastighet) which ought to be used for the purpose of consolidating other properties in the area that were capable of further development. It added that, as neighbours were interested in acquiring the property, the request might be refused under section 4 para. 1, sub-section 3, of the 1979 Act (see paragraph 30 below). The County Agricultural Board also indicated that there were reasons to believe that the price paid was too high for redemption (inlösen - see paragraph 34 below).

On 15 February 1980 the County Agricultural Board rejected the applicants' request on the ground that the estate was a "rationalisation unit".

12. The applicants appealed to the National Board of Agriculture (lantbruksstyrelsen), which rejected the appeal on 5 September 1980.

In its decision the National Board of Agriculture noted the following. Risböke 1:3 had an area of 41 hectares of which 18 hectares were forest and 8 hectares pasture. There were no buildings on the property. Mr Sturesson's estate, which comprised 63 hectares of forest and 10 of pasture, was 25 kilometres away. Through their purchase the applicants had intended to build up units which would, in the short run, create opportunities for employment and, in the long run, become financially sound properties to be exploited by their children. The Board noted however that in the opinion of the County Agricultural Board, there was only room for one active farmer in the region. Finally, Mr Michael Borg, who leased two neighbouring properties, one of which was owned by his father, had shown a great interest in acquiring the applicants' property. The Board concluded:

"The National Board of Agriculture finds, as did the County Agricultural Board, that the real estate at issue lacks the prerequisites for remaining as a separate cultivation unit. Moreover, the National Board considers that a new establishment on the property would be likely to make it more difficult for the active farmer in the area to develop his business."

13. The applicants appealed to the Government (Ministry of Agriculture), which rejected the appeal on 26 February 1981.

14. A new request, dated 4 January 1982, for a permit to retain Risböke 1:3 was rejected by the County Agricultural Board on 25 January 1982. The Board stated that the estate was considered to be a unit suitable for rationalisation purposes, which ought to be used to consolidate properties within the area that were capable of further development. It furthermore stated that it was not prepared to redeem the estate at the price of 240,000 SEK.

15. The applicants appealed to the National Board of Agriculture. After inspecting the property, it rejected the appeal on 15 November 1982, on the ground that there were no new circumstances justifying a departure from its previous decision.

16. The applicants' further appeal to the Government was dismissed on 27 October 1983.

17. In a letter of 11 January 1985 the applicants requested the Government to reconsider their decision of 27 October 1983. The Government, recalling that the case had been finally settled by them on the latter date, decided on 14 March 1985 not to take any further action in respect of the request.

C. The redemption proceedings

18. The applicants brought proceedings before the Real Estate Court (fastighetsdomstolen) of Växjö requesting that the State redeem the Risböke 1:3 in accordance with section 14 of the 1979 Act (see paragraph 34 below). In a judgment of 11 December 1981 the court rejected the claim, stating that in view of the clear wording of section 14 this provision could not be applied by analogy to the applicants' situation. The applicants appealed to the Göta Court of Appeal (Göta hovrätt), which on 1 July 1982 confirmed the judgment of the Real Estate Court. On 14 July 1983 the Supreme Court (högsta domstolen) refused leave to appeal.

D. The 1985 compulsory resale by auction

19. At the request of the County Agricultural Board, the County Administrative Board ordered, on 10 November 1983, the compulsory resale by auction of Risböke 1:3 in accordance with the provisions of sections 16 and 17 of the 1979 Act (see paragraphs 36-38 below). The Enforcement Office (kronofogdemyndigheten) in Växjö was responsible for arranging the auction.

20. In February and March 1984 the National Board of Forestry (skogsvårdsstyrelsen) assessed the value of the property in accordance with the price-control regulations (that is, in principle, by reference to its yield) at 100,000 SEK and its market value as not exceeding 200,000 SEK. In April 1984 the Senior Land Surveyor (överlantmätaren) of the County of Kronoberg made a new valuation of the property, resulting in an estimated market value of 125,000 SEK.

21. On 19 April 1984 the Enforcement Office determined that the estate had a value of 125,000 SEK. The applicants challenged this before the Göta Court of Appeal but the court dismissed the action on 4 June 1984, stating that it was not possible to appeal against such a determination as it was only a preparatory step for a subsequent decision on the sale of the estate (see paragraph 39 below). The applicants appealed against this decision to the Supreme Court, which on 23 August 1984 refused leave to appeal.

On 26 June 1984, at the applicants' request, the County Administrative Board appointed two special valuers (see paragraph 37 below). In their report of October 1984, the valuers concluded that the property had an estimated market value of 172,000 SEK, taking into account certain expenditure deemed necessary for thinning out trees (mainly Christmas trees) that had been newly planted by the applicants.

22. The auction took place on 18 June 1985 ("the 1985 auction"). The Enforcement Office noted that the estate had an estimated market value of 172,000 SEK and a taxable value of 107,000 SEK. It decided that the lowest bid which could be accepted would be 172,000 SEK. At the auction, there was, in fact, only one bid. It was an offer of 172,000 SEK made by the County Agricultural Board and it was accepted by the Enforcement Office. After the costs of the valuation and the auction had been deducted the applicants received 155,486.50 SEK.

23. Prior to the auction in June 1985, five requests for advance permits (förhandstillstånd) to acquire the property had been filed with the County Agricultural Board (see paragraph 36 below). On 10 April 1984 the Board granted the request filed by Mr Michael Borg and Mr Thorwald Borg on condition that they applied, within two months from the public auction, for a merger of Risböke 1:3 and the two neighbouring properties which they now owned (cf. paragraph 12 above). The other requests were rejected by the Board on 10 and 14 June 1985.

24. On 19 June 1985 the applicants appealed to the Göta Court of Appeal requesting that the compulsory sale be annulled. They argued that the property had not been sold at the market price, as required by law, since the valuation which had arrived at the figure of 172,000 SEK had been based only on an assessment of the yield from the property. The applicants stated that they intended to submit to the court a new valuation report. However, on 3 July 1985 the Court of Appeal dismissed the appeal.

25. The applicants filed a further appeal with the Supreme Court, in which they also challenged the impartiality of the two special valuers on the ground that they had had a duty, under section 6 of the Land Acquisition Ordinance 1979 (see paragraph 37 below), to consult with the County Agricultural Board - which had in the event been the buyer of the estate - when making their valuation. They did not raise any complaint in respect of the absence of any public hearing before the Court of Appeal.
On 20 August 1985 the Supreme Court refused to grant leave to appeal.

26. On 17 December 1985 the County Agricultural Board sold the property to Mr Michael Borg and Mr Thorwald Borg for 125,000 SEK. On 17 January 1986 they applied for its merger with their two properties as required in their acquisition permit (see paragraph 23 above) and on 11 April 1986 the merger was accepted by the local property formation agency (fastighetsbildningsmyndigheten).

II. Relevant domestic law

27. The Land Acquisition Act 1979 was enacted in order to implement the agricultural guidelines adopted by the Riksdag in 1977 and also to meet the policy goals of forestry and regional planning. Among the aims to be specially furthered by the Act are the creation and preservation of viable family holdings so as to strengthen the connection between cultivation and ownership, and also the promotion of a continuous structural rationalisation of agriculture and forestry.

28. Under section 1 of the Act, a permit is required for the acquisition of real estate assessed for tax purposes as an agricultural holding. Section 2 lists a number of exceptions: for example, no permit is required when the property is acquired by a State authority other than a commercial undertaking (sub-section 2) or at a compulsory sale by auction (sub-section 10) other than such as take place in accordance with section 17 of the Act (see paragraph 36 below).

29. When deciding on an application for a permit, the authorities shall take into account that the setting up and development of rational enterprises in agriculture, forestry and horticulture should be promoted (section 3).

30. Section 4 para. 1 provides that a permit to acquire a property shall be refused, inter alia:

"1. If the price or other consideration exceeds, to an extent which is not insignificant, the value of the property in view of its yield and other circumstances,

2. if it can be assumed that the acquisition is effected mainly as an investment,

3. if the property is required for the rationalisation of agriculture or forestry,

..."

Paragraph 2 of this section provides inter alia that sub-section 1 of the first paragraph does not apply to the acquisition of real estate at a compulsory sale by auction under section 17 of the Act (see paragraph 36 below).

31. Section 12 specifies that the acquisition permit shall, in

principle, be applied for within three months of the purchase. Under this section the question whether or not to grant the permit may not be examined before the acquisition, except in certain circumstances, none of which obtained at the 1979 auction.

However, in the case of a public auction under section 17 (see paragraph 36 below), such as the one held in 1985, the acquisition permit shall be issued before the auction.

32. Under section 16 para. 1, a property acquired at a compulsory auction in circumstances which, in case of an ordinary purchase (see paragraph 28 above), would have required a permit shall be re-sold within two years, unless the said circumstances have by then ceased to exist or unless the purchaser has obtained a permit from the County Agricultural Board to retain the property. The granting of such a permit is subject inter alia to the provisions of sections 3 and 4, with the exception of section 4, sub-section 1.

The sale contract issued after the compulsory auction shall contain a note recalling the regulations laid down in section 16.

33. A decision by the County Agricultural Board not to grant permission to retain property acquired at a compulsory auction may be appealed to the National Board of Agriculture and ultimately to the Government.

34. "If a purchase becomes invalid because the necessary permit is refused as a result of the application of section 4 para. 1, sub-section 3", i.e. on the ground that the property is required for the rationalisation of agriculture or forestry, the State is, according to section 14, "obliged to redeem the property at the agreed purchase price if the seller so requests". However, under the same section, no such obligation exists if the purchase price exceeds, to an extent which is not insignificant, the value of the property in view of its yield and other circumstances, or if the terms are unreasonable in other respects.

There is no obligation on the State to redeem property acquired at a compulsory auction as in such a case a permit is not required for a valid acquisition of the property (see paragraphs 18 and 28 above).

35. Under section 14 para. 2, applications for redemption shall be filed with the Real Estate Court, whose decisions may be appealed to a Court of Appeal and ultimately, if leave to appeal is granted, to the Supreme Court.

36. If, in a case where this is required under section 16 (see paragraph 32 above), the property has not been re-sold within the prescribed time-limit, the County Administrative Board shall, according to the same section and on application by the County Agricultural Board, order that the property be sold at a compulsory auction by the Enforcement Office in accordance with the provisions of section 17. At such an auction the property may only be sold to someone who has received an acquisition permit (see paragraph 31 above) or who is, like the County Agricultural Board, exempted from the permit requirement by virtue of section 2 of the 1979 Act (see paragraph 28 above).

37. Section 17 specifies that no sale at a compulsory auction may take place unless the purchase price offered amounts at least to the value to be attributed to the property in accordance with the provisions of Chapter 12 of the Code of Enforcement (utsökningsbalken, see in particular section 3). Under section 17

of the 1979 Act this estimated value is to be fixed by the Enforcement Office or, if the owner of the property makes a timely request for a special valuation, by valuers appointed by the County Administrative Board. In both cases the valuation shall be made in consultation with the County Agricultural Board (section 6 of the Land Acquisition Ordinance 1979, jordförvärvsförordningen 1979:231, enacted by the Government).

38. Section 17 also provides that, if the property is not sold at the auction, the County Agricultural Board may, within a period of two years, request the County Administrative Board to hold a new auction. If no such request is made, or if no acceptable bid is made at the second auction, the owners are no longer required to sell the property.

39. The Enforcement Office's decisions in respect of a compulsory auction may, according to Chapter 18, section 1, of the Code of Enforcement, be brought before a Court of Appeal and ultimately, with leave to appeal, before the Supreme Court. However, according to section 6 (2) of the same Chapter, an appeal against a decision that is merely a preparatory step for a final decision may, in general, be lodged only in connection with an appeal against the latter.

Appeals follow the rules of the 1942 Code of Judicial Procedure (rättegångsbalken), as far as these are relevant (Chapter 18, section 1, of the Code of Enforcement). Chapter 52, section 10, of the Code of Judicial Procedure specifies that:

"Where it is necessary for the purposes of the investigation of a case that a party or other person be heard orally by the Court of Appeal, the Court of Appeal shall decide on such a hearing as it finds appropriate."

If the Court of Appeal decides to hold such a hearing, the hearing is open to the public under Chapter 5, section 1, of the Code of Judicial Procedure.

PROCEEDINGS BEFORE THE COMMISSION

40. In their application of 3 April 1984 to the Commission (no. 11855/85), Mr Håkansson and Mr Sturesson complained of alleged violations of Articles 6, 13 and 14 (art. 6, art. 13, art. 14) of the Convention and of Article 1 of Protocol No. 1 (P1-1).

41. On 15 July 1987 the Commission declared the application admissible, save as regards two complaints under Article 6 (art. 6) of the Convention: the first concerned the fact that the State was not ordered by the competent courts to redeem the estate and the second related to the absence of a public hearing before the Supreme Court when it decided in 1985 not to grant the applicants leave to appeal against the compulsory auction held that year.

In its report (Article 31) (art. 31) of 13 October 1988, the Commission expressed the opinion that:

(a) there had been no violation of Article 1 of Protocol No. 1 (P1-1), taken alone (ten votes to two) or in conjunction with Article 14 (art. 14+P1-1) of the Convention (unanimous), in respect of the applicants' complaint that the State had sold the estate to them at a compulsory auction in December 1979 for 240,000 SEK, then had refused them a permit to retain the property and finally had bought it back in June 1985 at a new compulsory auction for 172,000 SEK;

(b) there had been two violations of Article 6 (art. 6) of the Convention: firstly, as a result of the absence of a procedure satisfying this provision with respect to the dispute over the refusal to grant the applicants a permit to retain the property (unanimous); secondly, as regards the absence of a public hearing before the Göta Court of Appeal when it determined the applicants' appeal against the 1985 auction (seven votes to five);

(c) it was not necessary to examine the case also under Article 13 (art. 13) of the Convention (unanimous).

The full text of the Commission's opinion and of the partly dissenting opinions contained in the report is reproduced as an annex to the present judgment*.

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* Note by the Registrar: For practical reasons, this annex will appear only with the printed version of the judgment (volume 171 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 (P1-1)

42. According to the applicants, the refusal to grant them the permit required to retain Risböke 1:3, the compulsory sale by auction of the estate in 1985, and the conditions of this sale, constituted a serious violation of their right under Article 1 of Protocol No. 1 (P1-1), 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."

Both the Government and the Commission contested this allegation.

43. It was not in dispute that the impugned measures constituted an interference with the applicants' right to the peaceful enjoyment of their possessions or that this interference amounted to a deprivation of property and thus fell to be considered under the second sentence of the first paragraph of the Article (P1-1).

A. Lawfulness and purpose of the interference

44. The stated aim of the interference in this case was that described in section 4 para. 1, sub-section 3, of the 1979 Act, that is to promote the rationalisation of agriculture (see paragraphs 11-17 and 30 above). This is undoubtedly a legitimate "public interest" for the purposes of Article 1 of Protocol No. 1 (P1-1), even to the extent that it may imply the compulsory transfer of property from one individual to another (see, mutatis mutandis, the James and Others judgment of 21 February 1986, Series A no. 98, pp. 30-32, paras. 39-45).

45. The applicants did not challenge the aim of the law itself. However, they maintained that the Swedish legislation was defective because "the whole system of bureaucratic price assessment, as provided for in the Land Acquisition Act together with the Land Acquisition Ordinance and as used after a public auction with a free market bidding, as in the case of Mr Håkansson and Mr Sturesson, seems completely unacceptable from a rule-of-law point of view." Furthermore, the applicants alleged that the impugned measures (see paragraph 42 above) in their case did not pursue any genuine "public interest" as this term is to be understood under Article 1 of Protocol No. 1 (P1-1) and that they constituted serious instances of abuse of power; above all, they denied that their property was in fact a "rationalisation unit" within the meaning of the relevant law (see paragraphs 11-17 and 30 above) and that the compulsory resale in 1985 and its terms were lawful.

46. In proceedings originating in an application lodged under Article 25 (art. 25) of the Convention the Court has to confine itself, as far as possible, to an examination of the concrete case before it. It is accordingly not called upon to review the system of the 1979 Act in abstracto, but to determine whether the manner in which this system was applied to or affected the applicants gave rise to any violations of the Convention (see, inter alia, the Eriksson judgment of 22 June 1989, Series A no. 156, p. 23, para. 54).

47. Regarding the lawfulness of the impugned measures, the Court would recall that its power to review compliance with domestic law is limited (see, inter alia, the Allan Jacobsson judgment of 25 October 1989, Series A no. 163, p. 17, para. 57, and, mutatis mutandis, the above-mentioned Eriksson judgment, Series A no. 156, p. 25, para. 65). In the present case, it does not emerge from the evidence that the authorities' real concern was not to rationalise agriculture by consolidation of the estate in question with a neighbouring property: in fact, the County Agricultural Board eventually sold Risböke 1:3 to the Borg brothers on condition that they merged it with their own estates - which they have done (see paragraph 26 above). Furthermore, the decisions regarding the compulsory resale in 1985 were upheld by the Göta Court of Appeal and the Supreme Court did not grant leave to appeal (see paragraphs 24-25 above). The Court thus accepts, like the Commission, that the impugned measures were in accordance with Swedish law, in particular the provisions of the 1979 Act.

48. The applicants also disputed the acceptability from a rule-of-law point of view of some of the administrative practices followed in implementing the 1979 Act in their case. According to them, the representatives of the County Administrative Board had confirmed at the 1979 auction that the buyer should not have any difficulties in obtaining the necessary permit to retain the property, whereas, eventually, the County Agricultural Board had refused the applicants this permit: this, they claimed, was "double-talk" on the part of the administration.

The Court is not convinced by this argument. Even assuming that some statement to the effect alleged was made in connection with the 1979 auction, the Court is not satisfied that the applicants could reasonably have considered it binding as a matter of Swedish law: rather to the contrary, the minutes of that auction show unequivocally that the public was warned of the permit requirement and the applicants, furthermore, signed a contract which made it clear that the right of property conferred was subject to the same requirement (see paragraphs 9 and 10 above).

49. As to the actual price assessment made under the 1979 Act, the Court finds no reason to doubt the impartiality of the two special valuers who made the final estimate of SEK 172,000 (see paragraphs 21 and 37 above).

50. The impugned measures thus had a legitimate aim and were lawful for the purposes of Article 1 of Protocol No. 1 (P1-1).

B. Proportionality of the interference

51. Article 1 of Protocol No. 1 (P1-1) also requires that there be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The requisite proportionality will not be found if the person concerned has had to bear "an individual and excessive burden" (see, inter alia, the Lithgow and Others judgment of 8 July 1986, Series A no. 102, p. 50, para. 120).

52. In this connection the applicants first contended that, by its very nature, the price-control system established by the 1979 Act violated the principle of proportionality, since a person who bought an agricultural estate at a compulsory auction had no possibilities in law to protect himself against the authorities' assessment of the resale price, should they refuse him the necessary permit to retain the property. This lack of protection was, so the applicants claimed, the more serious because of the alleged misrepresentation (see paragraph 48 above) and the provisions of section 6 of the 1979 Ordinance, according to which the assessment of the property's value for the purposes of the compulsory resale had to be made in consultation with the County Agricultural Board (see paragraph 37 above).

On this point, the Court would recall that it is not its task to review the price-control system in abstracto (see paragraph 46 above).

53. As to whether the price-control system as applied in the present case raised an issue of proportionality, the Court observes the following. The applicants decided in 1979 to bid 240,000 SEK for the estate, whereas its market value was assessed only at 140,000 SEK (see paragraph 8 above). Furthermore, the 1979 Act made it quite clear that a person buying an agricultural estate (with certain exceptions which are not relevant here - see paragraph 32 above) at a compulsory auction needed a permit in order to be able to keep the estate for more than two years. It was not possible to obtain prior to the auction any binding declaration as to the likelihood of obtaining this permit (see paragraph 31 above). Prospective buyers thus had to bear in mind the risk that they might have to resell the estate within two years on the conditions laid down in the 1979 Act. The applicants claimed that they should not have run any such risk having regard to the authorities' alleged assurances in connection with the 1979 auction (see paragraph 9 above). This allegation has, however, already been rejected by the Court (see paragraph 48 above).

54. In exchange for their property the applicants eventually received 155,486.50 SEK (see paragraph 22 above), a sum considerably less than the purchase price they had paid. This figure represented the estate's estimated market value of 172,000 SEK, as assessed by two specially appointed valuers, less the costs of the valuation and the compulsory sale. There is no substantiated allegation that the valuation, or any other decision regarding the 1985 auction, was not in accordance with the 1979 Act (see paragraph 47 above). Having regard to the margin of appreciation enjoyed by the national authorities under Article 1 of

Protocol No. 1 (P1-1), the Court therefore agrees with the Commission that the price received by the applicants can be considered to have been reasonably related to the value of the estate.

55. In sum, and particularly in view of the risks deliberately taken by them when they bought Risböke 1:3, the applicants have not been made to carry an individual and excessive burden in this case.

C. Conclusion

56. Having regard to the foregoing, the Court concludes that there has been no violation of Article 1 of Protocol No. 1 (P1-1).

II. THE ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, TAKEN TOGETHER WITH ARTICLE 1 OF PROTOCOL No. 1 (art. 14+P1-1)

57. Invoking Article 14 of the Convention, taken together with Article 1 of Protocol No. 1 (art. 14+P1-1), the applicants maintained that they had been victims of discrimination as compared with the seller of the estate at the 1979 auction, with the County Agricultural Board as the buyer of the estate at the 1985 auction and with the final purchasers, the Borg brothers.

The Court does not accept this argument, which is not supported by any material before it.

III. ALLEGED VIOLATIONS OF ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION

58. The applicants also complained of the absence of any remedy before a court to challenge the Government's decisions not to grant the permit to retain the property and of the lack of any public hearing before the Court of Appeal. They saw this as a twofold breach of Article 6 para. 1 (art. 6-1), which reads:

"In the determination of his civil rights and obligations (...) everyone is entitled to a fair and public hearing (...) 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 interests 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."

A. Applicability of Article 6 para. 1 (art. 6-1)

59. The Government contested the applicability of Article 6 para. 1 (art. 6-1). They contended firstly that the applicants' right to the estate was limited to two years not only by law but also by consent, as the applicants had accepted the terms of the auction in 1979. Thus neither the decisions regarding the permit to retain the property nor those concerning the compulsory resale in 1985 could be regarded as concerning the applicants' "civil rights".

In the alternative, the Government submitted that, by subscribing to the conditions of the 1979 auction, the applicants had waived their right to a court and accepted that their possibilities of obtaining the required permit were to be examined only by the administrative authorities as provided by the law.

60. The Court, like the Commission, is unable to share these

views.

It is quite clear that the applicants considered themselves entitled, under the relevant statutory provisions, to the grant of the necessary permit. In the light of the Court's established case-law, "civil rights and obligations" were at stake in the ensuing disputes before the administrative authorities on the permit issue and before the Göta Court of Appeal on the lawfulness of the terms of the 1985 auction (see, inter alia, on the first point, the Sramek judgment of 22 October 1984, Series A no. 84, p. 17, para. 34, and, on the second, the Ettl and Others judgment of 23 April 1987, Series A no. 117, p. 16, para. 32). In addition, nothing suggests that the applicants had waived their right to a court, even assuming that this would have been permissible.

61. Article 6 para. 1 (art. 6-1) is accordingly applicable to both sets of proceedings.

B. Compliance with Article 6 para. 1 (art. 6-1)

1. The proceedings concerning the permit to retain the property

62. The Government conceded that, should the Court find that the proceedings concerning the permit to retain the property fell under Article 6 para. 1 (art. 6-1), the applicants were not afforded the safeguards set out therein. The Court nevertheless has to ascertain whether they enjoyed the "right to a court", as guaranteed to them under this provision (see, as the most recent authority, the above-mentioned Allan Jacobsson judgment, Series A no. 163, p. 21, para. 75).

63. According to Swedish law, the dispute in question could be determined only by the Government as the final instance (see paragraph 33 above). The Government's decisions were not open to review as to their lawfulness by either the ordinary courts or the administrative courts, or by any other body which could be considered to be a "tribunal" for the purposes of Article 6 para. 1 (art. 6-1).

There was thus a violation of Article 6 para. 1 (art. 6-1) on this point.

2. The absence of any public hearing before the Göta Court of Appeal

64. The Göta Court of Appeal was the first and only tribunal to deal with all aspects of the applicants' complaint against the compulsory auction in 1985. The applicants were accordingly entitled to a public hearing before that court, as none of the exceptions laid down in the second sentence of Article 6 para. 1 (art. 6-1) applied.

65. The Government submitted that the requirements of Article 6 para. 1 (art. 6-1) on the point at issue had been satisfied, in particular as the applicants had not requested any public hearing, thereby waiving any right thereto.

66. The public character of court hearings constitutes a fundamental principle enshrined in paragraph 1 of Article 6 (art. 6-1). Admittedly neither the letter nor the spirit of this provision prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to have his case heard in public (see, inter alia, the Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 25, para. 59, and the

H. v. Belgium judgment of 30 November 1987, Series A no. 127, p. 36, para. 54). However, a waiver must be made in an unequivocal manner and must not run counter to any important public interest.

67. No express waiver was made in the present case. The question is whether there was a tacit one. While in some earlier cases dealt with by the Court the confidentiality of the proceedings at issue stemmed from legislation (see the above-mentioned Le Compte, Van Leuven and De Meyere judgment, Series A no. 43, and the Albert and Le Compte judgment of 10 February 1983, Series A no. 58) or practice (see the above-mentioned H. v. Belgium judgment, Series A no. 127), in the present case the Swedish law expressly provided for the possibility of holding public hearings: the Code of Judicial Procedure gave the Göta Court of Appeal power to hold public hearings "where [this was] necessary for the purposes of the investigation" (see paragraph 39 above).

Since the applicants' appeal mainly challenged the lawfulness of the 1985 auction and since in Sweden such proceedings usually take place without a public hearing, the applicants could have been expected to ask for such a hearing if they had found it important that one be held. However, they did not do so. They must thereby be considered to have unequivocally waived their right to a public hearing before the Göta Court of Appeal. Their misgivings as to their treatment before that court only seem to have emerged in the course of the proceedings before the Convention organs; in their application to the Supreme Court for leave to appeal, no complaint was raised in this respect (see paragraph 25 above). Furthermore, it does not appear that the litigation involved any questions of public interest which could have made a public hearing necessary.

68. There has accordingly been no violation of the public-hearing requirement in Article 6 para. 1 (art. 6-1).

IV. ALLEGED BREACH OF ARTICLE 13 (art. 13) OF THE CONVENTION

69. The applicants claimed that they were deprived of any "effective remedy before a national authority" in respect of the matters of which they complained.

Having regard to its decisions on Article 6 para. 1 (art. 6-1), the Court, like the Commission, does not find it necessary to consider the case also under Article 13 (art. 13); this is because its requirements are less strict than, and are here absorbed by, those of Article 6 para. 1 (art. 6-1) (see, as the most recent authority, the above-mentioned Allan Jacobsson judgment, Series A no. 163, p. 21, para. 78).

V. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

70. 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."

The applicants sought compensation for damage and reimbursement of their costs and expenses.

A. Damage

71. The applicants stated that their claim for compensation would be based on:

(a) the free market value of the estate (estimated by them at 365,000 SEK), increased to take account of the annual price index;

(b) the costs of the valuation and the auction (16,513.50 SEK; see paragraph 22 above);

(c) the allegedly unjustified reduction for the cost of thinning-out trees (22,000 SEK; see paragraph 21 above);

(d) loss of income due to their inability to sell the Christmas trees they had planted on the estate (675,000 SEK; ibid.).

However, they would reduce this claim to 84,513.50 SEK, i.e. the difference between the 240,000 SEK which they had paid for the property and the 155,486.50 SEK they had eventually received for it, should the Court not find any violation of Article 1 of Protocol No. 1 (P1-1).

In either case, interest calculated in accordance with the Swedish Interest Act (räntelagen) should be added to the amount claimed.

72. The Court agrees with the Commission and the Government that no causal link can be established between the violation of Article 6 para. 1 (art. 6-1) of the Convention found in this judgment and any of the alleged prejudice. The refusal to grant the necessary permit to retain the property may have caused the applicants some economic loss, but the Court cannot speculate as to what result they would have achieved had they been able to bring their complaints before a court.

No award can therefore be made under this head.

B. Costs and Expenses

73. The applicants claimed 151,960 SEK in respect of their costs and expenses in the domestic proceedings and before the Convention institutions.

The Government left the matter to the discretion of the Court.

74. Taking into account all relevant circumstances, in particular the fact that the present judgment has found no violation on the main aspect of the case, i.e. the complaint under Article 1 of Protocol No. 1 (P1-1), the Court considers that the applicants are entitled, on an equitable basis, to be reimbursed the sum of 60,000 SEK under this head.

FOR THESE REASONS, THE COURT

1. Holds unanimously that there has been no violation of Article 1 of Protocol No. 1 (P1-1), taken alone or together with Article 14 (art. 14+P1-1) of the Convention;

2. Holds unanimously that there has been a violation of Article 6 para. 1 (art. 6-1) of the Convention as a result of the absence of any court remedy to challenge the decisions refusing the applicants the permit to retain Risböke 1:3;

3. Holds by six votes to one that there has been no violation of Article 6 para. 1 (art. 6-1) as regards the proceedings before the Göta Court of Appeal;

4. Holds unanimously that it is not necessary to examine the case also under Article 13 (art. 13) of the Convention;

5. Holds unanimously that Sweden is to pay to the applicants, for costs and expenses, 60,000 (sixty thousand) Swedish crowns;

6. Dismisses unanimously 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 21 February 1990.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 52 para. 2 of the Rules of Court, the partly dissenting opinion of Mr Walsh is annexed to this judgment.

Initialled: R.R.

Initialled: M.-A.E.

PARTLY DISSENTING OPINION OF JUDGE WALSH

1. I regret that I do not find myself in agreement with the majority of the Court in their conclusion that there has been no violation of the public-hearing requirement of Article 6 para. 1 (art. 6-1).

2. The Court has held that Article 6 para. 1 (art. 6-1) of the Convention is applicable to the case and that as Swedish law did not permit the judicial review of the relevant decisions of the Swedish Governemnt there has been a violation of Article 6 para. 1 (art. 6-1). On that point the Court has rejected the Government's plea that the applicants had waived their right to a court by subscribing to the conditions of the auction of 1979 as there was nothing in the evidence to suggest that the applicants had waived their right to a court.

3. It appears to me that once it has been held that there was a right to a court in accordance with Article 6 para. 1 (art. 6-1) it must follow, in the absence of evidence of a waiver, that the hearing must be a public hearing. The norm is a public hearing. The Code of Judicial Procedure provided for public hearings "where [this was] necessary for the purposes of the investigation". Such a discretion is not compatible with Article 6 para. 1 (art. 6-1) save in the particular exceptions specified in that provision. This case does not fall within any of those exceptions.

4. It is agreed that there was no express waiver. The fact that there was no express request for a public hearing does not, in my opinion, amount to a tacit waiver of a public hearing. The proof of a waiver lies upon those asserting the existence of a waiver. The absence of an express objection to a departure from the norm cannot amount to the acceptance of such a departure. In my opinion it would radically alter the interpretation of Article 6 para. 1 (art. 6-1) to hold that the mandatory requirement of a public hearing is to be interpreted as meaning that it is qualified to the extent of being dependent upon an express or tacit request. The public-hearing requirement of Article 6 para. 1

(art. 6-1) is enshrined in the Convention because the Contracting States thought it was important, not because a party may think that it is important. The administration of justice in public is a matter of paramount importance in every democracy and is one of the cornerstones put in place by the Convention to guarantee the impartial administration of justice and the defence of the rights guaranteed by the Convention. The fact that the public may not manifest any particular interest in a given case is not a consideration. Equally a lack of interest in having a hearing in public on the part of one or both parties to a suit does not alter the matter. Only where both parties agree to a hearing other than in public can the mandatory provisions of Article 6 para. 1 (art. 6-1) be waived. Any such waiver of a guaranteed right must be manifested by clear and unambiguous words or by conduct from which the only reasonable inference to be drawn is that both parties were so agreed. There is no such evidence in the present case. In my opinion silence cannot amount to such waiver, particularly, as in this case, where there is no evidence that the applicants ever contemplated a joint or several waiver.

In my opinion there was a breach of the public-hearing requirement of Article 6 para. 1 (art. 6-1) of the Convention.