CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

COURT (PLENARY)

CASE OF SPORRONG AND LÖNNROTH v. SWEDEN
(ARTICLE 50)

(Application no. 7151/75; 7152/75)

JUDGMENT

STRASBOURG

18 December 1984

In the case of Sporrong and Lönnroth[*],

The European Court of Human Rights, taking its decision in plenary session in application of Rule 48 of the Rules of Court[**] and composed of the following judges:

Mr. G. WIARDA, *President*,
Mr. J. CREMONA,
Mr. Thór VILHJÁLMSSON,
Mr. W. GANSHOF VAN DER MEERSCH,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. G. LAGERGREN,
Mr. F. GÖLCÜKLÜ,
Mr. F. MATSCHER,
Mr. J. PINHEIRO FARINHA,
Mr. E. GARCÍA DE ENTERRIA,
Mr. L.-E. PETTITI,
Mr. B. WALSH,
Sir Vincent EVANS,
Mr. R. MACDONALD,
Mr. C. RUSSO,
Mr. R. BERNHARDT,
Mr. J. GERSING,

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

Having deliberated in private on 21 February, 25 June and 27 November 1984,

Delivers the following judgment, which was adopted on the last-mentioned date, on the application in the present case of Article 50 (art. 50) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"):

PROCEDURE

1. The present case was referred to the Court in March 1981 by the Government of the Kingdom of Sweden ("the Government") and by the

[*] The case is numbered 1/1981/40/58-59. 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.

[**] In the version of the Rules applicable when proceedings were instituted. A revised version of the Rules of Court entered into force on 1 January 1983, but only in respect of cases referred to the Court after that date.

European Commission of Human Rights ("the Commission"). The case originated in two applications (nos. 7151/75 and 7152/75) against Sweden lodged with the Commission in 1975 by the Estate of the late Mr. E. Sporrong and by Mrs. I.M. Lönnroth, both of Swedish nationality.

2. On 24 September 1981, the Chamber constituted to examine the case relinquished jurisdiction in favour of the plenary Court (Rule 48 of the Rules of Court). By judgment of 23 September 1982, the plenary Court held that, as regards both applicants, there had been violations of Article 1 of Protocol No. 1 and of Article 6 para. 1 (P1-1, art. 6-1) of the Convention, but not of Article 14 of the Convention, taken together with Article 1 of Protocol No. 1 (art. 14+P1-1). In addition, it held that it was not necessary also to examine the case under Articles 17 and 18 of the Convention, taken together with Article 1 of Protocol No. 1 (art. 17+P1-1, art. 18+P1-1), or under Article 13 (art. 13) of the Convention (Series A no. 52, paragraphs 56-88 of the reasons and points 1-5 of the operative provisions, pp. 21-33).

The only outstanding matter to be settled is the question of the application of Article 50 (art. 50) in the present case. As regards the facts, reference should be made to paragraphs 9 to 52 of the above-mentioned judgment (ibid., pp. 9-21).

3. At the hearings on 23 February 1982, counsel for the applicants had stated that should the Court find a violation, his clients would seek under Article 50 (art. 50) just satisfaction for pecuniary loss and for legal and related expenses. He considered that their claims would to a large extent depend on the tenor of the judgment to be given and had therefore suggested that examination of this issue be adjourned. The Government, for their part, had confined themselves to indicating that they reserved their position on the application of Article 50 (art. 50).

In its judgment of 23 September 1982, the Court reserved the question. It invited the Commission to submit, within the coming two months, its written observations and, in particular, to notify the Court of any friendly settlement at which the Government and the applicants might have arrived. Finally, the Court delegated to its President power to fix the further procedure if need be (ibid., paragraph 89 of the reasons and point 6 of the operative provisions).

4. After an extension by the President of the above-mentioned time-limit and in accordance with his orders and directions, the Registrar received

- on 20 May 1983, through the Secretary to the Commission, a memorial of the applicants;
- on 4 October 1983, observations of the Government on that memorial;
- on 16 January 1984, comments of the Commission’s Delegates and further observations by the applicants;
- on 8, 13 and 20 February 1984, telexes and two documents from the applicants’ representative;

- on 21 February and 15 March 1984, a letter and certain observations from the Agent of the Government;

- on 21 June 1984, through the Commission's Secretariat, observations by the expert acting for the applicants.

These various documents revealed that it had not been possible to arrive at a friendly settlement. As regards the observations received on 21 June 1984, which were considered by the Government to have been filed too late, the Court has taken account of them only to the extent that they were repeated at the hearings.

5. On 16 March 1984, the President of the Court, after consulting, through the Registrar, the Agent of the Government and the Delegates of the Commission, decided that hearings should be held on 22 June 1984.

On 30 March, the Registrar sent to those appearing before the Court a list of questions put by it. He received the applicants' replies on 15 May, through the Delegates, and the Government's on 21 May.

6. The hearings were held in public at the Human Rights Building, Strasbourg, on the appointed day. Immediately before they opened, the Court had held a preparatory meeting; it had given leave to one of the Government's advisers to use the Swedish language (Rule 27 para. 2 of the Rules of Court).

There appeared before the Court:

- for the Government

Mr. H. CORELL, Principal Legal Adviser
at the Ministry of Justice, *Agent*,
Mr. B. HALL, Real Estate Judge,
Svea Court of Appeal,
Mr. B. MALMSTRÖM, advokat, *Advisers*;

- for the Commission

Mr. J. FROWEIN, *Delegate*,
Mr. H. TULLBERG, the applicants' lawyer
before the Commission,
Mr. E. AHRENBY,
Mr. M. LEVIN, assisting the Delegate
(Rule 29 para. 1, second sentence, of the Rules of Court).

The Court heard addresses by Mr. Corell and Mr. Hall for the Government and by Mr. Frowein, Mr. Tullberg and Mr. Ahrenby for the Commission, as well as their replies to the questions put by two of its members. The Commission's Delegate filed various documents.

7. The Registrar subsequently received

- on 29 June 1984, a copy of a letter from the Agent of the Government to the applicants' representative;

- on 2 July 1984, a copy of a letter from the said representative to the Agent;

- on 27 September 1984, through the Deputy Secretary to the Commission, further comments by the applicants, together with details of their expenses;
- on 22 October 1984, observations of the Government, concerning the expenses;
- on 6 November 1984, remarks by the Commission's Delegate.

The Court has taken account of the document received on 27 September 1984 only to the extent that it relates to expenses.

AS TO THE LAW

8. Under Article 50 (art. 50) of the Convention,

> "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 Sporrong Estate and Mrs. Lönnroth claimed just satisfaction for pecuniary and non-pecuniary damage and for costs and expenses.

I. DAMAGE

A. Arguments of those appearing before the Court

1. The applicants

9. The alleged pecuniary damage consisted firstly of a loss of net income, since the properties concerned had yielded only a very poor return during the periods in question.

Secondly, the market value of those properties had fallen, so much so that it was today very low. The applicants also complained of the fact that they had not been able to invest in their properties, since the Stockholm City Council would never have given permission for a full-scale redevelopment, which would have been the only reasonable course in financial terms; in the unlikely event of the Council's having granted them the authorisation required for that purpose, they would have received, had there been expropriation, no compensation for the investments effected. In the applicants' submission, they should have been offered a choice between, on the one hand, putting their properties to a normal use (in which event they would have erected new buildings on their land in accordance with the city

plans) and, on the other hand, having the possibility of selling them at a reasonable price (in which event they would have been able to reinvest just as profitably in other ways and probably to buy similar property that was free of restrictions). In short, they had been deprived of the capital gain they would have realised under either of these alternatives.

10. According to the applicants, the assessment of the foregoing damage should: be based on the probable increase in value had there been no expropriation permits and no prohibitions on construction; take account of several factors (deterioration of the economic climate since the beginning of the 1970's, increase in building costs in real terms, adoption of new regulations); and, finally, utilise indexes other than the consumer price index as a means of measuring the development of real-estate market values.

11. A monetary award was the only form of compensation that fell to be considered, because the withdrawal of the expropriation permits and of the prohibitions on construction affecting the properties could not be regarded as amounting to restitutio in integrum. Since Swedish law made no provision for granting compensation for damage of the kind alleged by the applicants, they requested the Court to award 13,284,540 Swedish crowns (SEK) to the Sporrong Estate and 10,912,303 SEK to Mrs. Lönnroth.

Each of these amounts was made up of pecuniary loss as at 31 December 1980 (8,400,000 SEK for the Sporrong Estate and 6,900,000 SEK for Mrs. Lönnroth) and interest (4,884,540 SEK and 4,012,303 SEK). The pecuniary loss represented "compound net operational income loss" (10,900,000 SEK and 3,600,000 SEK) and the "market value on the hypothesis that the property had been redeveloped" (8,700,000 SEK and 11,250,000 SEK), after deduction of the "market value at actual use" (1,200,000 SEK and 2,400,000 SEK) and of "compounded building costs" (10,000,000 SEK and 5,550,000 SEK). The interest was computed in accordance with the Swedish Interest Act and related to the period from 1 January 1981 to 1 July 1984.

12. The applicants also alleged that they had suffered non-pecuniary damage, for which they claimed compensation of an amount to be determined by the Court.

2. The Government

13. In the first place, the Government questioned the method of calculation utilised by the Sporrong Estate and Mrs. Lönnroth, maintaining in particular that a comparison could not be made between figures corresponding to the actual use of the properties and figures based on hypothetical investments. For the Government, the applicants were really seeking compensation for an unrealised gain; in fact, that gain would have been generated solely by the effects of inflation on borrowed capital. The amounts claimed were more than four times the value of the properties at the date of expiry of the expropriation permits and were therefore excessive.

14. Moreover, the Government denied the very existence of any pecuniary damage. The properties yielded a reasonable direct return, that is to say the excess of the rental income over the management and maintenance expenses, expressed as a percentage of the market value. The latter value, for its part, had not fallen. The total return on capital, namely the aggregate of the direct return and the increase in market value, had been perfectly normal and significantly more than the rate of inflation. In addition, the Government emphasised that the applicants had been only temporarily deprived of the opportunity of developing their properties. Finally, they contended that the applicants could have mortgaged their properties and invested their capital in other properties that were free of restrictions, thereby realising the same gain as if they had erected new buildings on the site of Riddaren No. 8 and of Barnhuset No. 6.

15. With regard to the claims for interest, the Government submitted that since there was no provision in Swedish law on which a demand for compensation could be based, the Interest Act could not be applied in the present case. They requested the Court, should it take a different view, not to award interest on any damage that had occurred before 1 June 1983, the date on which they had had notice of the applicants' claims.

16. As for the alleged non-pecuniary damage, on the other hand, the Government declared that they were prepared to pay compensation for the inconvenience suffered by the applicants as a result of the long-term expropriation permits and the violation of Article 6 (art. 6). They left this matter to the Court's discretion.

3. The Commission's Delegate

17. According to the Commission's Delegate, real-estate investments in the centre of Stockholm had proved to be very profitable during the periods in question and today, following the expiry of the expropriation permits, property owners were in a rather favourable position. Compensation would be called for only if at the relevant time the applicants had really tried to sell their properties for a reasonable price but had been unable to do so or had had to accept a lower figure or, alternatively, if they had not derived any profit from their properties. However, none of these circumstances had obtained in the present case; hence, the conclusion should be that there had been no loss capable of compensation under Article 50 (art. 50).

On the other hand, the Delegate was in favour of some award in respect of the non-pecuniary damage occasioned by the long period during which the applicants were left in complete uncertainty as to the outcome of the proceedings concerning their properties.

B. Decision of the Court

18. The Court has to determine whether the Sporrong Estate and Mrs. Lönnroth suffered damage by reason of the violations found in the judgment of 23 September 1982 and, if so, how to assess that damage.

1. Existence of damage

19. In its above-mentioned judgment, the Court left open the question of the existence of damage (Series A no. 52, p. 28, para. 73). It did, however, point out that the applicants had borne "an individual and excessive burden" as a result of the upsetting of the fair balance which should be struck between the protection of the right of property and the requirements of the general interest (ibid., loc. cit.). In the Court's view, the length of the validity of the expropriation permits affecting Riddaren No. 8 and Barnhuset No. 6 had had "prejudicial effects", which had been accentuated even further by the prohibitions on construction (ibid., p. 27, para. 72). As was alleged before and found by the Court, the reduction of the possibility of disposing of the properties concerned had had several effects, namely difficulties of selling at normal market prices and of obtaining loans secured by way of mortgage, and additional risks involved in the event of expenditure being incurred; there was also the prohibition on any "new construction" (ibid., pp. 22-24, paras. 58 and 63). The Court further noted that the applicants were left in complete uncertainty as to the fate of their properties and were not entitled to have any difficulties which they might have encountered taken into account by the Swedish Government (ibid., p. 26, para. 70).

20. In order to decide whether or not the applicants have been prejudiced, the Court has to determine during which periods the continuation of the measures complained of was in violation of Protocol No. 1 (the "periods of damage") and then which constituent elements of damage warrant examination.

(a) Duration

21. The expropriation permits remained in force for twenty-three years as regards Riddaren No. 8 and for eight years as regards Riddaren No. 8 and for eight years as regards Barnhuset No. 6 (ibid., pp. 11 and 12, paras. 18 and 25).

The applicants excluded from the "periods of damage" the time during which the permits were acceptable (seventeen and fifteen months, respectively), the design phase of the "hypothetical redevelopment" (one year) and the duration of the demolition and reconstruction (one year). On the other hand, they included the time that would be required, after expiry of the permits, for preparing plans, demolishing and reconstructing (two years). They thus arrived at approximately twenty-one years for Riddaren No. 8 (1960-1980) and approximately seven years for Barnhuset No. 6 (1975-1981).

The Government, for their part, deducted from the total duration the time required by the City Council to take action (two years) and also the period that would, on the assumption that there were an expropriation, be comprised between the institution of the court proceedings and the taking-over of the property by the City (three years). Recalling, inter alia, that the Stockholm City Council had already decided on 16 October 1978 to apply for cancellation of the expropriation permits (ibid., p. 13, para. 28), the Government arrived at approximately eighteen years for Riddaren No. 8 (1961-1978) and approximately three years for Barnhuset No. 6 (1976-1978).

22. The Court finds it reasonable that a municipality should, after obtaining an expropriation permit, require some time to undertake and complete the planning needed to prepare the final decision on the expropriation contemplated.

In the present case, four years should, in the Court's view, have been sufficient for the Stockholm City Council to arrive at decisions. The periods of damage should therefore be taken to be nineteen years for Riddaren No. 8 (1960-1978) and four years for Barnhuset No. 6 (1975-1978).

(b) Constituent elements

23. With regard to the net income actually received during the said periods, there is no disagreement between those appearing before the Court as to the amount of the rental income and the management and maintenance expenses. In addition, the material before the Court does not indicate whether there was a significant decrease in the rental income from Riddaren No. 8 and Barnhuset No. 6 when the expropriation permits were issued; it does, on the other hand, clearly show that there was a reasonable rate of increase in the level of the rents throughout the periods of damage and even thereafter, the withdrawal of the permits not having led to any sudden rises. Finally, although Mrs. Lönnroth did on occasion experience difficulties in finding tenants, that does not appear to have affected the income derived from the property. To sum up, the information before the Court does not prove that the return from the properties in question diminished on account of the excessive duration of the expropriation permits.

24. With regard to the market value, the Agent of the Government and the Delegate of the Commission considered that in real terms that value had not fallen and, in the case of Riddaren No. 8, had even increased slightly between the issue and the withdrawal of the expropriation permits. The Court agrees with this view, which was in fact scarcely challenged by the applicants.

25. Whilst a comparison between the beginning and the end of the periods of damage thus does not show that the applicants were prejudiced in financial terms, the Court nevertheless does not conclude that there was no loss within that period.

There are, in fact, other factors which also warrant attention. Firstly, there are the limitations on the utilisation of the properties: the applicants could not erect any "new construction" on their own land and they would have exposed themselves to serious risks if, even with permission, they had had work carried out since they would have been obliged to undertake not to claim - in the event of expropriation - any indemnity for the resultant capital appreciation (see the judgment of 23 September 1982, Series A no. 52, pp. 22-23, para. 58). To this were added the difficulties encountered in obtaining loans secured by way of mortgage; thus, Mrs. Lönnroth failed to obtain a loan for the renovation of the façade of Barnhuset No. 6 (ibid., p. 12, para. 24).

In addition, it cannot be forgotten that during the periods of damage the value of the properties in question naturally fell; it is evident that a property which is subject to an expropriation permit and may thus be taken away from its owner at any moment will not continuously retain its former value, even though in the present case the applicants' properties were, after the said periods, once again worth no less in real terms than they were when the measures in question were adopted. Furthermore, any scheme for the redevelopment of the properties which the applicants may have contemplated was impracticable at the time. In this respect, they may be said to have suffered a loss of opportunities of which account must be taken, notwithstanding the fact that the prospects of realisation would have been questionable.

Above all, the applicants were left in prolonged uncertainty: they did not know what the fate of their properties would be and they were not entitled to have their difficulties taken into account by the Government.

To these factors has to be added the non-pecuniary damage occasioned by the violation of Article 6 para. 1 (art. 6-1) of the Convention: the applicants' case (in French: cause) could not be heard by a tribunal competent to determine all the aspects of the matter (ibid., p. 31, para. 87).

26. The Sporrong Estate and Mrs. Lönnroth thus suffered damage for which reparation was not provided by the withdrawal of the expropriation permits.

2. Assessment of the damage

27. The assessment of the damage suffered presents particular difficulties on this occasion and is thus very problematical. The difficulties turn in part on the technical nature of real-estate matters, the complexity of the calculations made by the experts acting for the applicants and for the Government and the intervening changes in the claims put forward by the injured parties; they arise above all from the virtual impossibility of quantifying, even approximately, the loss of opportunities.

28. In this connection, neither of the methods suggested by those appearing before the Court seems capable of providing a satisfactory answer.

29. The first, so-called "hypothetical redevelopment", method, which was put forward by the applicants, assumes that they renovated their properties completely, by having the existing buildings demolished and new ones erected in their place. This is an extreme or outside hypothesis, which cannot be supported by the facts of the case. Quite to the contrary, the Court notes that as early as 18 April 1974 prohibitions on demolition were placed on the applicants' properties, yet they did not complain of those measures before the Convention institutions. This method therefore cannot reasonably be utilised in the present case.

30. Neither does the second, so-called "actual use", method, which was urged by the Government, of itself provide an acceptable basis of calculation. It is true that it can be utilised to measure the direct return from the properties, which did not diminish as a result of the expropriation permits (see paragraph 23 above), but it can be applied only partially to the market value. As applied in the present case, the method is both inflexible and incomplete. It is confined, firstly, to comparing the value of the properties before the issue of the said permits and the value after their withdrawal and, secondly, to comparing the evolution of the value of the properties with the evolution of the rate of inflation. The method takes no account of the interval between the two events. It thus disregards the difficulties then encountered by the owners, notably by reason of the depreciation in value of their properties, and the possibilities which they would have had of improving their properties had the measures in question not existed; although the hypotheses advanced by the applicants in this latter respect have not been such as to convince the Court, they nevertheless constitute a factor which has to be borne in mind.

31. The Court thus finds the methods proposed to be inadequate, but it does not consider that it has to establish another. This is because the circumstances of the case prompt the Court to confine itself to, and make an overall assessment of, the factors which it has found to be relevant (duration and constituent elements of damage; see paragraphs 22 and 25 above).

32. In conclusion, the violations of Article 1 of Protocol No. 1 and of Article 6 para. 1 (P1-1, art. 6-1) of the Convention did cause prejudice to the applicants. The damage suffered is made up of a number of elements which cannot be severed and none of which lends itself to a process of precise calculation. The Court has taken these elements together on an equitable basis, as is required by Article 50 (art. 50). For this purpose, it has had regard, firstly, to the differences in value between Riddaren No. 8 and Barnhuset No. 6 and, secondly, to the difference between the two periods of damage.

The Court thus finds that the applicants should be afforded satisfaction assessed at 800,000 SEK for the Sporrong Estate and at 200,000 SEK for Mrs. Lönnroth.

II. COSTS AND EXPENSES

33. The applicants claimed reimbursement of the costs and expenses referable to the proceedings before the Convention institutions, subject to deduction of the amounts paid by the Council of Europe to Mrs. Lönnroth by way of legal aid. They provided an outline of their claims in their observations of 7 December 1983 and supplied further particulars in their reply of 15 May 1984 to a written question from the Court and in a memorandum received on 27 September.

34. At the hearings on 22 June 1984, the Agent of the Government stated that he had some difficulty in expressing an opinion on these claims, as they were not clear: the figures in the observations of 7 December 1983 were different from those in the reply of 15 May 1984. He was surprised at the amount of the costs for the proceedings on the question of the application of Article 50 (art. 50) and considered that a substantial part thereof should be borne by the applicants. He nevertheless acknowledged that Sweden ought to reimburse their reasonable expenses incurred before 23 September 1982, the date of the Court's first judgment in this case.

35. At the same hearings, the Commission's Delegate suggested that the Court should obtain a more detailed list of the services rendered by the principal lawyer in the case, Mr. Hernmarck.

36. On 27 September 1984, the Court received from the applicants, through the Secretary to the Commission, a list of their costs and expenses, together with copies of the corresponding fee notes or bills (see paragraph 7 above).

These documents revealed that the Sporrong Estate and Mrs. Lönnroth were claiming:

(a) 469,217.25 SEK for the fees and disbursements of Mr. Hernmarck (259,110.65 SEK) and of Mr. Tullberg (210,106.60 SEK), who had acted for them before the Commission and the Court;

(b) 371,392.54 SEK for the fees and disbursements of the experts consulted by them, namely Mr. Ahrenby (182,900 SEK), Mr. Kjellson (77,762.54 SEK), Mr. Westerberg (70,750 SEK), Mr. Hellstedt (28,480 SEK), Mr. Myhrman (7,000 SEK), Mrs. Wollsén (3,500 SEK) and Mr. Sundberg (1,000 SEK);

(c) 50,581.60 SEK for translation fees;

(d) 46,984.50 SEK for travel expenses to and subsistence expenses in Strasbourg (hearings on 9 October 1979 before the Commission and on 23 February 1982 and 22 June 1984 before the Court);

(e) 25,000 SEK for estimated expenses for which bills had not yet been received.

From the total of 963,175.89 SEK, the applicants deducted 24,103 SEK, the equivalent of the amount received by Mrs. Lönnroth by way of legal aid. They thus arrived at a sum of 939,072.89 SEK, that is 307,523.14 SEK before the Commission and 631,549.75 SEK before the Court (185,204.75 SEK for the proceedings on the merits and 446,345 SEK for the proceedings concerning Article 50) (art. 50).

37. On 22 October 1984, the Agent of the Government filed comments on these various claims. Although he observed that the level of the costs sought was very high and that it was difficult to assess their relevance to the present case since the vouchers were partly masked, he declared that he was prepared to accept the claim per se.

However, he rejected the amounts corresponding to research effected by Mr. Kjellson (77,762.54 SEK) and Mr. Westerberg (70,750 SEK) and to registration for a course on European procedure conducted by Mr. Sundberg (1,000 SEK), since the first two items had not been relied on before the Convention institutions and the third could not be regarded as attributable to a particular case; he questioned whether the fees claimed by Mr. Tullberg - especially "another" 100,000 SEK for the period up to the judgment of 23 September 1982 when the main responsibility for the case rested with Mr. Hernmarck - were reasonable as to quantum and reduced them by 5,475 SEK, based on clerical errors and on the ground that there was no reason to prepare observations (for 11,200 SEK) on the statement made by the Commission's Delegate at the hearings on 22 June 1984; he excluded the 40% tax on translation services (13,797.60 SEK) and research work (1,000 SEK), which the applicants had not paid; finally, he considered that the costs for which bills had not yet been received (25,000 SEK) could not be taken into account.

In addition, the Government, in agreement with the applicants' representative, requested the Court, should it not find that the foregoing suggestions with regard to Mr. Kjellson ought to be adopted, to deduct 11,345.71 SEK of his fees and disbursements.

As to the costs relating to Article 50 (art. 50), the Government reiterated their request, made at the hearings on 22 June 1984, that the Court should, depending on its decision on the just-satisfaction issue, consider whether the applicants should not bear a considerable part of those costs themselves.

38. In his remarks of 6 November 1984, the Commission's Delegate suggested that the reimbursement of costs and expenses should substantially depend on the Court's finding on the claim for compensation for material loss. He agreed with the Government as regards the research effected by Mr.

Kjellson and Mr. Westerberg, the registration for the course conducted by Mr. Sundberg, certain fees of Mr. Tullberg and the costs for which bills had not yet been received.

39. The Court will apply the criteria which emerge from its case-law in the matter (see, amongst many other authorities, the Zimmermann and Steiner judgment of 13 July 1983, Series A no. 66, p. 14, para. 36). It has no reason to doubt that the applicants' expenses were actually incurred since it is in possession of the corresponding vouchers. As to whether they were necessarily incurred and were reasonable as to quantum, the Court finds that the amount of the costs and fees is high. However, it notes that this can be explained by at least two factors. In the first place, there is the length of the proceedings, nearly ten years having elapsed since the applications were lodged with the Commission. In the second place, there is the complexity of the case (see paragraph 27 above): it was not unreasonable to have recourse to the services of experts for the submission of the claims for just satisfaction, and the Agent of the Government also consulted specialists in real-estate matters.

The Court cannot, however, retain certain expenses which it is not persuaded were necessarily incurred: fees of Mr. Tullberg and Mr. Ahrenby for preparing documents which the Court has not taken into account (see paragraphs 4 and 7 above), estimated at 50,000 SEK; sums paid to jurists for consultations and a legal course (149,512.54 SEK); tax on translation services and research work (14,797.60 SEK); costs for which bills have not yet been received (25,000 SEK).

In these circumstances, the applicants are entitled to be reimbursed, in respect of costs and expenses, the sum of 723,865.75 SEK, less the 24,103 FF received by Mrs. Lönnroth by way of legal aid.

FOR THESE REASONS, THE COURT

1. Holds by twelve votes to five that the Kingdom of Sweden is to pay, for damage, eight hundred thousand Swedish crowns (800,000 SEK) to the Sporrong Estate and two hundred thousand Swedish crowns (200,000 SEK) to Mrs. Lönnroth;

2. Holds by thirteen votes to four that the Kingdom of Sweden is to pay, for costs and expenses, seven hundred and twenty-three thousand eight hundred and sixty-five Swedish crowns and seventy-five öre (723,865.75 SEK), less twenty-four thousand one hundred and three French francs (24,103 FF), to the Sporrong Estate and Mrs. Lönnroth jointly.

Done in English and in French, the French text being authentic, at the Human Rights Building, Strasbourg, on 18 December 1984.

For the President
Walter GANSHOF VAN DER MEERSCH
Judge

For the Registrar
Herbert PETZOLD
Deputy Registrar

In addition to a declaration by Mr. Cremona and Mr. Bernhardt, the separate opinions of the following judges are annexed to the present judgment (Article 51 para. 2 of the Convention and Rule 50 para. 2 of the Rules of Court) (art. 51-2):

- joint dissenting opinion of Mr. Thór Vilhjálmsson, Mr. Lagergren, Mr. Walsh, Sir Vincent Evans and Mr. Gersing, with regard to damage;

- joint dissenting opinion of Mr. Thór Vilhjálmsson, Mr. Lagergren, Sir Vincent Evans and Mr. Gersing, with regard to the costs of the Article 50 (art. 50) proceedings.

W. G.v.d.M.
H.P.

DECLARATION BY JUDGES CREMONA AND BERNHARDT

In separate opinions annexed to the Court's judgment of 23 September 1982 we expressed views at variance with those of the majority of the Court.

After that judgment and for the purposes of the present one we, like others before us in similar circumstances, have deemed it proper to proceed on the basis of the findings of the majority.

JOINT DISSENTING OPINION OF JUDGES THÓR VILHJÁLMSSON, LAGERGREN, WALSH, SIR VINCENT EVANS AND GERSING, WITH REGARD TO DAMAGE

1. The applicants have claimed just satisfaction for pecuniary and non-pecuniary damage. We accept that they should be awarded just satisfaction for non-pecuniary damage for the reasons already set out in the judgment of the Court. However we regret that we cannot agree that any pecuniary damage has been proved.

2. The burden of proof rests upon the applicants to prove that they have suffered pecuniary loss under the three headings of their claim, namely, loss of income during the periods in question, a diminution of the market value of their properties and the impossibility of undertaking a full-scale redevelopment of the properties.

3. With regard to the alleged loss of income we agree with the opinion of the Court, expressed at paragraph 23, that the applicants have failed to prove any loss under this heading. With regard to the alleged diminution of the market value we note that at paragraph 24 the Court has found not only that the market value ultimately did not fall but in the case of Riddaren No. 8 had even increased. It is worth recalling the expert evidence of Mr. Ahrenby who told the Court that "investment in real estate in Sweden over the last ten years, especially, let us say, over the last six or seven years, has been extremely profitable".

4. We do not accept that the evidence established there had been a temporary fall in the market value of the properties. However, even on the hypothesis that there had been a temporary fall in value we do not agree with the judgment of the Court to the effect that a financial loss was thereby occasioned. As the applicants did not sell the properties during the periods in question a temporary fall in market value gave rise only to a notional loss. We accept the view of the Commission’s Delegate that such a "loss" would be relevant only if at the time the applicants had endeavoured unsuccessfully to sell their properties at a reasonable price and had been compelled to accept a lower figure. Such situations had not arisen.

5. Further, we are not satisfied that even if there had been no expropriation permits or construction prohibitions, the applicants really would have redeveloped their properties or that this would have been profitable.

6. Therefore, we do not agree that any basis exists for finding that financial loss was suffered by the applicants.

7. In respect of the non-pecuniary damage we are satisfied that just satisfaction should be assessed at 300,000 SEK for the Sporrong Estate and at 100,000 SEK for Mrs. Lönnroth.

JOINT DISSENTING OPINION OF JUDGES THÓR VILHJÁLMSSON, LAGERGREN, SIR VINCENT EVANS AND GERSING, WITH REGARD TO THE COSTS OF THE ARTICLE 50 (art. 50) PROCEEDINGS

The applicants' claim under Article 50 (art. 50) amounts to above 24 million SEK, and the Court has accepted 1 million SEK. Analysing the costs of the Article 50 (art. 50) proceedings, we consider that a significant part of those incurred in relation to the claim for material damages must be regarded as unnecessary and out of proportion. We are therefore of the opinion that the sum assessed for the applicants' costs should have been further reduced.