



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

Communicated on 8 September 2014

FIFTH SECTION

Application no. 36557/13
Ola HJELM
against Sweden
lodged on 29 May 2013

STATEMENT OF FACTS

The applicant, Mr Ola Hjelm, is a Swedish national, who was born in 1954 and lives in Lidingö.

A. The circumstances of the case

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

On 23 April 2010 the applicant purchased the property Närtuna-Ubby 2:15 in the municipality of Norrtälje (hereafter “the property”). The property is part of a shore protection area (*strandskyddsområde*) whose purpose is to ensure public access to outdoor recreation facilities, including to shores and beaches, and to maintain good living conditions for plant and animal species on land and in water.

On 13 December 2007, a time-limited exemption from shore protection had been issued by the Building and Environmental Board (*Bygg- och miljönämnden*) of the Municipality of Norrtälje. It had included a positive advance ruling regarding the right to build a house on the property, meaning that a request for a building permit filed within two years of the decision should be granted. The Board had found that the property was already clearly separated by a road from the area closest to the shore and the property was therefore of no importance to recreational activities.

On 16 October 2008, the County Administrative Board (*länsstyrelsen*) in Stockholm had upheld the decision on appeal.

At some point after the applicant had bought the property, he requested the Building and Environmental Board to grant him a building permit, which it did on 28 June 2011. It noted that the property was part of a shore protection area but that the Board had the authority to grant an exemption from shore protection. It also noted that an exemption had previously been

granted and that the planned building was well adapted to its surroundings and other buildings in the area.

Moreover, on 11 October 2011, the Board issued a new exemption from shore protection since the old exemption had expired. By this time, new rules had entered into force, specifying in which circumstances the Board could grant an exemption (Chapter 7, section 18 c, of the Environmental Code (*Miljöbalken*, 1998:80), which entered into force on 1 July 2009). The Board based its decision on the grounds that the property was no longer considered by the public to be subject to the right of public access to land (*allemannsrätt*) due to the buildings on the neighbouring properties and, moreover, that the road was such that the property was well separated from the area closest to the shore. It also considered that it was necessary to grant the exemption in order to meet other very important interests (Chapter 7, section 18 c, points 1, 2 and 6 of the Environmental Code). The Board did not specify what the other very important interests were. As regards the road, the Board noted that it was the main transportation route in the area, that it was paved, that the maximum authorised speed was 70 km/hour, and that it was used by public transport buses. It also noted that the distance between the road and the shore was 110 metres and that the area closest to the shore was farmland, which was found to have less value for the purpose of shore protection.

Furthermore, the Board expressly noted the importance of the principle of proportionality and thus took into consideration the fact that the applicant had bought the property in the light of the positive advance ruling regarding the building permit and that he had invested in infrastructure on the property and had incurred costs, *inter alia*, for the property regulation. It further found that even though he had not started to build the house on the property when the exemption expired, the request for a building permit had been filed within the time-limit. Moreover, if the applicant were not allowed to build a house on the property, it would be of no value to him at all since it could not be used for any other purpose because the entire property was located within the shore protection area. The decision was conditional on the applicant building a fence around the property.

The decision was subject to review by the County Administrative Board according to Chapter 19, section 3 b, of the Environmental Code which, in a decision of 16 April 2012, quashed it. It noted that, in a previous decision concerning a neighbouring property, it had quashed an exemption since it did not find the road to separate clearly the property from the area closest to the shore. The decision had been upheld upon appeal by the environmental courts. In line with that decision, it found that an exemption could only be granted if the property in question was *well* separated from the area closest to the shore. It noted that in the year 2000, an average of approximately 240 vehicles ($\pm 40\%$) had used the road daily, compared to the average 1,500 vehicles daily on the state road network. The road was 3.8 metres wide and classed as a “tertiary road”, one of two classes of “other roads”. Together with the fact that its previous decision regarding the neighbouring property had gained legal force, it found that the road was not such that an exemption could be granted.

The County Administrative Board further found that the property was undeveloped and that the nearest buildings in the area were located at a

distance of between 70 and 90 metres from the property. The property was also separated from the other properties by access roads, a stream and a fence. In view of this, it considered that the right of public access to land was not extinct. Finally, the Board disagreed with the Building and Environmental Board that an exemption was necessary in order to satisfy other very important interests. Such interests had to be very special, more or less unique, and should be applied restrictively. According to the Board, no such interests were applicable in the present case. It found no other grounds for an exemption.

As regards the principle of proportionality, it noted that the Environmental Court of Appeal (*Mark- och miljööverdomstolen*) had found in a judgment of 3 June 2011 (case no. M 9745-10) that it was not possible to grant an exemption based only on the interests of the individual if the conditions in Chapter 7, sections 18 c and d, of the Environmental Code were not met. It also added that an exemption would not be consistent with the purpose of shore protection regarding the right of public access to land.

The applicant appealed against the decision to the Environmental Court (*Mark- och miljödomstolen*). He argued that the conditions to grant an exemption were met. When the property was created, it had been found to be suitable for residential purposes. It had also been subject to property regulation in 2011 in order to allow for an access road that had now been constructed on the property. The fact that the property had been created through partition was in itself a reason to grant an exemption. He also had a very urgent interest in having an exemption granted since he would otherwise suffer considerable financial loss. Moreover, the property was well separated by the road. The area north of the road was also used in a way that made it of no use for shore protection. The fact that there were already buildings, access roads, other roads and fences made the area unsuitable for public recreational purposes. A building on his property would moreover not affect accessibility of the area closest to the shore.

On 18 October 2012, the Environmental Court upheld the Board's decision. It found that the Environmental Court of Appeal, in another judgment on 17 June 2011 (case no. M 214-11), had found a road with a maximum authorised speed of 70 km/hour (namely the same as the road in question) that in 2003 was used by an average of approximately 420 vehicles ($\pm 31\%$) on a daily basis (that is more than the road in question) not to be such that it clearly separated that property from the area closest to the shore. Even though the road in the present case was the main transportation route in the area, and used by public transport, it was not found to be such that it clearly separated the property from the area closest to the shore. As regards the other grounds for exemption, the court upheld the Board's decision in full. The fact that the property had been created through partition was no longer a reason to grant an exemption. It also shared the Board's conclusion that it was not possible to grant an exemption based only on the interests of the individual if the conditions in Chapter 7, sections 18 c and d, were not met.

The applicant appealed against the judgment to the Environmental Court of Appeal, which refused leave to appeal on 29 January 2013. He further appealed to the Supreme Court which, in a decision of 26 April 2013, found

that it was not possible to appeal against the decision and thus dismissed the appeal.

B. Relevant domestic law

Questions relating to shore protection areas are regulated by Chapter 7 of the Environmental Code and the provisions relevant to the present case, as applicable at the relevant time, are the following.

Chapter 7

Section 13

“Shore protection applies by the sea, lakes and watercourses.

The purpose of shore protection is to, in a long term:

1. ensure public access to shore areas, and
2. maintain good living conditions for plant and animal species on land and in water.”

Section 14

“Land and water areas shall be protected up to 100 metres from the shore at the normal average water level (shore protection area). The County Administrative Board may in each case extend this area to not more than 300 metres from the shore, if this is necessary in order to fulfil any of the purposes of shore protection.

...”

Section 15

“The following shall be prohibited in shore protection areas:

1. the erection of new buildings;

...”

Section 18 b

“The municipality may in each case grant an exemption from the prohibitions listed under section 15 in special circumstances, provided that the exemption concerns some other situation than those listed in section 18 a, points 1 and 2.”

Section 18 c

“As special circumstances when examining a question of suspension of or exemption from shore protection, it can only be considered if the area concerned by the suspension or the exemption:

1. already is used in such a way that the area lacks importance for the purposes of shore protection,
2. by a road, railroad, buildings, activities or another form of exploitation is well separated from the area closest to the shore,

...

6. needs to be used in order to meet other very important interests.

...”

Section 25

“In connection with the consideration of matters relating to protected areas referred to in this chapter, private interests shall also be taken into account. Restrictions on the rights of private individuals to use land or water under safeguard clauses provided in this chapter must therefore not be more stringent than is necessary in order to achieve the purpose of the protection.”

COMPLAINT

The applicant complains under Article 1 of Protocol No. 1 to the Convention that the domestic authorities failed to take his interests into account when deciding the question of exemption from shore protection, thereby restricting his use of his property in a disproportionate manner and in violation of his property rights.

QUESTIONS TO THE PARTIES

1. By failing to summon the Swedish State before the civil courts or request the Chancellor of Justice to grant him compensation for the alleged violation of his Convention rights, has the applicant exhausted the domestic remedies available to him? In view of the domestic authorities and courts' reasoning, would such a remedy be effective in the present case?

2. Was the interference with the applicant's peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1, necessary to control the use of property in accordance with the general interest?