REGERINGSKANSLIET

Ministry for Foreign Affairs
Sweden
Department for International Law,
Human Rights and Treaty Law (FMR)

Stockholm, 5 February 2015
UDFMR2014/12/ED

IN THE EUROPEAN COURT OF HUMAN RIGHTS

Application no. 36557/13

Hjelm

v.

Sweden

OBSERVATIONS OF THE GOVERNMENT OF SWEDEN ON ADMISSIBILITY AND MERITS

I. Introduction

1. These observations on the admissibility and merits of the application introduced by Mr Ola Hjelm (hereinafter 'the applicant') are submitted on behalf of the Swedish Government in response to the Court's invitation of 12 September 2014, and after an extension of the time-limit until 5 February 2015.

II. The Facts

2. The Statement of Facts prepared by the Registry of the Court appears to be essentially correct. However, the Government finds it appropriate to make a few amendments and clarifications and to submit some additional information concerning the circumstances of the case, as well as information on relevant domestic law.

The circumstances of the case

3. The applicant purchased the property Närtuna-Ubby 2:15 (hereinafter 'the property') on 23 April 2010. The property is situated within a shore protection area (see Appendices 1–2). On 13 December 2007, the Building and Environmental Board (*Bygg- och Miljönämnden*) decided to grant the previous owner's request for an exemption from shore protection. The Board also decided to issue a positive advanced ruling regarding the right to build a house on the property. The Board's decisions gained legal force on 13 November 2008 after the County Administrative Board of Stockholm (*länsstyrelsen*) had upheld them on appeal on 16 October 2008.

4. The exemption from shore protection and the positive advanced ruling were subject to a time-limit, pursuant to Chapter 7, Section 18 of the Swedish Environmental Code (*Miljöbalken*, 1998:808, hereinafter 'the Code') and Chapter 8, Section 34 of the Planning and Building Act (*Plan- och Bygglagen*, 1987:10) in their applicable wording at the time of the decisions. The exemption from shore protection would cease to apply if construction work had not started within two years or was not completed within five years of the date when the decision to grant the exemption gained legal force. The positive advanced ruling guaranteed the granting of a building permit as long as the application for such permit was filed within two years of the date when the decision to grant a positive advanced ruling gained legal force.

5. It should be noted that a decision to grant an exemption from shore protection is based on the relevant provisions of the Code, whereas a decision to grant a positive advanced ruling on the granting of a building permit is based on the relevant provisions of the Planning and Building Act (*Plan- och Bygglagen*, 2010:900). Although the Building and Environmental Board is the competent authority to take both types of decisions, the decisions concern separate issues. An examination pursuant to the Planning and Building Act of whether there are grounds to grant a positive advanced ruling does not entail an examination of whether special circumstances exist to issue an exemption from shore protection. A permission to build within a shore protection area always requires a separate decision granting an exemption from shore protection. A positive advanced ruling can never substitute such exemption. It should also be noted that a positive advanced ruling does not *per se* allow for the actual construction work to begin. Such measure requires an advance granting of a building permit (see Chapter 9, Section 39 of the Planning and Building Act).

6. According to the case files of the domestic authorities, the applicant applied to the Building and Environmental Board for a building permit on 12 October 2010, that is, one month before the exemption from shore protection expired, which it did on 13 November 2010. The Building and Environmental Board granted his request on 28 June 2011.

7. It is relevant to note that on 26 March 2013 the applicant again requested that the Building and Environmental Board examine the issue of exemption from shore protection and the building permit. On 17 January 2014, the Building and Environmental Board refused to grant an exemption from shore protection (see Appendix 3). On the same day, however, the Board granted a building permit. On 10 February 2014, the applicant appealed the Board's decision as regards the refusal to grant an exemption from shore protection to the County Administrative Board. The matter is still pending before the County Administrative Board.

8. Furthermore, at the time of the purchase of the property, it was situated in an area where, according to a decision of 3 June 1999 by the County Administrative Board of Stockholm, shore protection extended to 300 metres from the shoreline. At that time, such an extension could be granted if this was necessary in order to *fulfil* any of the purposes of shore protection (Chapter 7, Section 14 of the Code in its applicable wording at the time). After an amendment of the legislation in 2009, the provisions for extending the shore protection became stricter. Under the new legislation, extended protection may only be granted if this is necessary in order to *ensure* any of the purposes of shore

protection (see below, para. 19). In connection with the amendment, the Government commissioned all county administrative boards in the country to review the extended shore protection. After this review, the County Administrative Board of Stockholm decided on 16 September 2014 to maintain the extended shore protection areas in the municipality of Norrtälje (see Appendix 4). On 12 October 2014, the applicant appealed the decision to the Government. The matter is still pending before the Government.

9. In addition, the property is situated within an area that has been designated by the Parliament as being of particular national interest with regard to its natural and cultural values. According to the 'management provisions' (*hushållningsbestämmelser*) in Chapter 4, Sections 1, 2 and 4 of the Code, the natural and cultural values of the area shall therefore be given priority when competing against interests of exploitation and development (Government Bill 1985/86:3, *Regeringens proposition med förslag till lag om hushållning med naturresurser m.m.*, pp. 80–82 and 170–178).

Relevant domestic law

Background to the Swedish legislation on shore protection

10. In 1947, provisions were introduced in the Construction Act (*Byggnadslagen*, SFS 1947:385) giving the county administrative boards the possibility to prohibit construction in areas outside detailed development plans and rural development plans, if an area needed protection on such grounds as natural beauty, vegetation or other special natural conditions. The reason for this was that shore access was, in places, disappearing due to increasingly extensive construction near shorelines, particularly in the vicinity of built-up areas. An Act on provisional building prohibition within certain shore areas (*Lagen om tillfälligt byggnadsförbud inom vissa strandområden*, 1950:639) was issued in 1950, followed by the 1952 Shores Act (*Strandlagen*, 1952:382). The latter act was later replaced by the Nature Conservation Act (*Naturvårdslagen*, 1964:822). Until 1975, the applicable regulations meant that county administrative boards designated areas in which shore protection would apply with the aim of securing public access to bathing and outdoor recreation areas. Within such areas, permits were required for certain measures. However, the legislation proved insufficient to curb the growing expansion in the 1960s and early 1970s of the construction of second homes, in particular. This construction was a contributing factor in the strengthening of shore protection through the 1975 Nature Conservation Act. A general prohibition was introduced on construction on both coastal and inland shorelines, with an associated possibility to apply for an exemption from the

prohibition. In an amendment to the Nature Conservation Act in 1994, the aim of shore protection was broadened to include protection for flora and fauna (Government Bill 2008/09:119, *Strandskyddet och utvecklingen av landsbygden*, p. 28, see also Government Bill 1993/94:229, *Strandsskydd*).

11. In relation to shore protection, the Government held the following when introducing the Code. The aims on which shore protection is based – safeguarding the area for public outdoor activities, i.e. the right of public access (*allemansrätten*, see further para. 12), and preserving good living conditions for flora and fauna – are considered public interests of considerable weight. Shoreline areas are particularly important to these interests. Furthermore, the aims of shore protection are long-term and areas that appear to be of limited interest at the moment may become significant in the future. It is therefore essential that small remaining undeveloped parts of heavily exploited coastlines and inland shores are preserved along with large, contiguous, untouched areas. Even if an exemption from the prohibition in an individual case may not appear to be damaging to the interests of shore protection, attention must be given to the fact that exemptions could, in the longer term, gradually lead to cumulatively significant disadvantages in the same way as has already occurred through the exploitation of large parts of the country's shorelines. Further, shoreline areas should therefore normally not be brought into use (Government Bill 1997/98:45, *Miljöbalk*, part 1, p. 320–321).

12. The right of public access (*allemansrätten*) is a general principle in Swedish environmental law, based on custom and established in the Instrument of Government, *Regeringsformen,* which states that everyone shall have access to the natural environment in accordance with the right of public access (Chapter 2, Article 15). The principle is not fully defined in any legal provision, however, references are made to it in, *inter alia*, the Code (Chapter 7, Sections 1 and 13). The scope of the right of public access could be described as follows. In general terms, it comprises the right of the public to remain on properties of land and water which belong to others and to perform certain activities there, such as the picking of mushrooms and berries. However, the right of public access may not cause the property owners considerable damage or inconvenience. It may also be noted that the right of public access is further restricted through certain provisions in the Swedish Penal Code (*Brottsbalken, 1962:700*). Hence, a person may not in forest or field unlawfully take growing trees or grass, or for example branches or bark from growing trees (Chapter 12, Section 2 of the Penal Code). Furthermore, it is prohibited to unlawfully cross a building plot, a plantation or

other land that can be damaged thereby (Chapter 12, Section 4 of the Penal Code).

13. Thus, since 1975, shore protection – as opposed to the majority of forms of protection of areas outlined in Chapter 7 of the Code – is a general prohibition in Sweden covering all land and water areas up to 100 metres from the shoreline. Accordingly, no specific decision is needed to show that a particular geographical area is to be protected in a specific case. Shore protection areas differ in that they are described generally and directly in the legislative text, with a carefully delineated scope for exemptions. As opposed to a decision to establish a nature reserve, for example, shore protection is not an active interference with the rights of a property owner. Instead, shore protection must be understood as a generic part of each and every shoreline property. Hence, a prospective buyer will have to take into account that such property is covered by the general prohibition covering all shorelines in Sweden.

14. However, a possibility to grant exemptions from the prohibition has been deemed necessary for cases where special circumstances exist, e.g. where the public interest would not be harmed at all, or would only be harmed slightly. This could be the case, for example, where the public interest has already lost its weight, such as in cases concerning a plot of land on which the right of public access is extinguished. There is thus very little scope for exemptions from the prohibitions implied by shore protection (Government Bill 1997/98:45, part 1, p. 320–321).

15. Before 1 July 2009, there was no definition in the Code of what could constitute special circumstances warranting an exemption from shore protection. Before this time, examples of such special circumstances could only be found in the *travaux préparatoires* of the Code and in case-law. However, as stated in the Government Bill on shore protection and rural development, the Government found that this was insufficient to limit the impact on shoreline areas in the desired way. With a view to achieving a more uniform and correct application, the regulations were thus amended and, as of 1 July 2009, the circumstances that may be considered when examining whether there is reason to grant an exemption are now exhaustively described in the Code (see Government Bill 2008/09:119, p. 53). Furthermore, after the amendment in 2009, the legislation became stricter. For example, one of the grounds on which exemption from shore protection could previously be granted – subdivision of a property for residential purposes – was never included in the exhaustive enumeration of possible grounds for exemption in the amended Code.

16. It should also be noted that not all types of activities are prohibited in shore protection areas. For instance, constructions that are not intended for residential purposes are not covered by the prohibition if they are necessary for the purposes of agriculture, fishing, forestry or reindeer breeding, and if they must be placed or undertaken in the Shore Protection Area in order to function (see para. 20 below).

Swedish legislation on shore protection

17. The peaceful enjoyment of possessions is protected in, *inter alia*, the Instrument of Government. Under Chapter 2, Article 15, the property of every individual shall be so guaranteed that no one may be compelled by expropriation or other such disposition to surrender property to the public institutions or to a private subject, or tolerate restriction by the public institutions of the use of land or buildings, other than where necessary to satisfy pressing public interests.

18. Furthermore, the Code lays down the rules on shore protection. Under Chapter 7, Section 13, first paragraph of the Code, shore protection applies by the sea, lakes and watercourses. According to the second paragraph of the same provision, the long-term purpose of shore protection is two-fold: to secure the prerequisites for the right of public access to shore areas and to maintain good living conditions for plant and animal species on land and in water.

19. Under Chapter 7, Section 14, first paragraph of the Code, a shore protection area covers land and water areas up to 100 metres from the shoreline. According to the second paragraph of the same provision, a county administrative board may in individual cases decide to extend the shore protection area to no more than 300 metres from the shoreline, if this is necessary in order to ensure any of the purposes of shore protection.

20. Chapter 7, Section 15 of the Code stipulates a prohibition against, *inter alia*, the erection of new buildings in a shore protection area. Furthermore, according to Chapter 7, Section 16 of the Code, the prohibitions laid down in Section 15 shall not apply to, for example, buildings, structures, works or measures which are not intended for residential purposes, if they are necessary for the purposes of agriculture, fishing, forestry or reindeer breeding and, in order to function, they must be placed or undertaken in the shore protection area, or the building of public roads or railways in certain circumstances.

21. Furthermore, a municipality may in individual cases grant an exemption from the prohibitions laid down in Section 15, if special circumstances warrant

this (Chapter 7, Section 18b of the Code). Such an exemption shall cease to apply if work for the implementation of the measure for which the exemption was granted does not start within two years or is not completed within five years of the date when the decision to grant the exemption gained legal force (Chapter 7, Section 18h of the Code).

22. Chapter 7, Section 18c of the Code contains the exclusive list of special circumstances to be considered in relation to withdrawal or exemption from shore protection. When examining a matter relating to withdrawal of or exemption from shore protection only the following may be considered: if the area is already being used in such a way that the area is of no importance for the fulfilment of the purposes of shore protection (paragraph 1); if it is clearly separated from the area closest to the shoreline by a road, a railway, buildings, an activity or any other development (paragraph 2); if it is necessary for an installation that must be situated by the water in order to function and this need cannot be satisfied outside the area (paragraph 3); if it is needed to expand a current activity and the expansion cannot be carried out outside the area (paragraph 4); if it is to be used in order to fulfil an important public interest which cannot be fulfilled outside the area (paragraph 5); or if it is to be used in order to fulfil some other very important interest (paragraph 6).

23. According to the *travaux préparatoires*, such other very important interest as referred to in Chapter 7, Section 18c (paragraph 6), of the Code must be very special, more or less unique in nature, and the provision should be applied particularly restrictively when it comes to private interests (Government Bill 2008/09:119, p. 106).

24. When examining applications on exemption from shore protection, the interests mentioned in Chapter 7, Section 18c of the Code should also be weighed up in accordance with Chapter 7, Section 25 of the Code, which means that private interests must also be taken into account. Restrictions on the rights of private individuals to use land or water under safeguard clauses provided in Chapter 7 of the Code must therefore not be more stringent than is necessary in order to achieve the purpose of the protection. Chapter 7, Section 25 of the Code was introduced in the Code in order to reflect the principle of proportionality which had thus far only been applied in the case-law (Government Bill 1997/98:45, part 2, p. 97 and Government Bill 2008/09:119, p. 104).

25. In addition, according to Chapter 7, Section 26 of the Code, exemptions from shore protection may be granted only if this is consistent with the purpose

of the shore protection. The *travaux préparatoires* emphasise that, since an exemption means that an exception is approved in favour of a private interest in a case where the public interest is generally considered to carry more weight, exemptions from the legislator's prohibitions must be applied very restrictively and only in the circumstances outlined in the assessment principles in this section (Government Bill 1997/98:45, part 2, p. 98).

Compensation for an alleged violation of an individual's Convention rights

26. The Tort Liability Act (1972:207) contains provisions on damages and Chapter 3, Section 2 of the Act regulates, *inter alia*, the state's liability for damages in certain cases. According to that provision, acts or omissions may give rise to an entitlement to compensation in the event of incorrect or negligent exercise of public authority in activities for which the state is responsible. According to the established case-law of the Supreme Court, this provision should be read in the light of the Convention when a Convention right is violated.

27. Furthermore, compensation may also be awarded pursuant to legislation regarding specific issues. For example, the Act on Compensation for Deprivation of Liberty and Other Coercive Measures (*Lagen om ersättning vid frihetsberövanden och andra tvångsåtgärder, 1998:714*) provides compensation for pecuniary and non-pecuniary damages to anyone who has been detained on suspicion of a crime and is later acquitted.

28. Besides such explicit legislation regarding compensation for damages, Swedish tort law has, as the Court is well aware, been elaborated in case-law as regards compensation for actions involving violations of fundamental rights and freedoms. Thus, in several cases the Supreme Court, without the explicit support of the Swedish Tort Liability Act, has awarded individuals compensation in the form of pecuniary and non-pecuniary damages for violations of various articles of the Convention. The Government has already drawn the Court's attention to the above-mentioned Supreme Court judgments in previous cases (see, among other authorities*, Berg v. Sweden,* (dec.) no. 26427/06, 29 November 2011, *Eskilsson v. Sweden,* (dec.) no. 14628/08, 24 January 2012, *Eriksson v. Sweden*, no. 60437/08, 12 April 2012 and *Ruminski v. Sweden*, (dec.) 10404/10, 21 May 2013), and for this reason the Government will only refer to them briefly in the present observations.

29. An individual claimant can, of course, institute civil proceedings before the courts claiming damages in accordance with the above. In such proceedings, the State is often represented by the Chancellor of Justice, *Justitiekanslern* (Sections 6

and 10 of the Ordinance on the Administration of Claims for Damages against the State, *Förordning om handläggning av skadeståndsanspråk mot staten, 1995:1301,* and Section 2 of the Ordinance with Instructions for the Chancellor of Justice, *Förordning med instruktion för Justitiekanslern*, *1975:1345*).

30. As an alternative to turning directly to the courts, a claimant can choose to first submit a claim for damages directed at the Swedish State to the Chancellor of Justice. The Chancellor of Justice has the power, as the Government's general legal representative, to receive complaints and claims for damages directed at the Swedish State and make decisions on financial compensation for such damages which are binding for the State. Such power encompasses claims against all entities whose actions are attributable to the State (i.e., the government agencies, the courts, the Government and the legislature – the Parliament – itself). Claims for damages made to the Chancellor of Justice are dealt with by a written procedure. A decision by the Chancellor of Justice may not be appealed against (see Section 15 of the Ordinance on the Administration of Claims for Damages against the State).

31. It may also be noted that in some cases, other Swedish authorities may also award an individual compensation following an application from a claimant. This may be the case if the claim is based on the aforementioned provisions of the Tort Liability Act and the Convention, if the damage has been caused in the pursuit of the activities of those authorities and is not the result of any erroneous decision or failure to reach a decision. As a general rule, if the claim is based on Chapter 3, Section 2 of the Tort Liability Act and is the result of a decision by an authority (or failure to reach a decision), the claim is handled by the Chancellor of Justice, see Sections 3 and 5 of the Ordinance on the Administration of Claims for Damages against the State.

32. However, decisions in the above matters by the Chancellor of Justice (or any other authority) are not binding to the claimant. Hence, if the claim is fully or partly rejected, the claimant can still institute civil proceedings before the courts. It should be pointed out that a claimant does not have an absolute right to have his or her complaint examined by the Chancellor of Justice. The Chancellor can, at his or her own discretion, decide not to examine a claim submitted. This can be done, for example, where the claim is found not to be suited to the written procedure applied by the Chancellor (e.g. when the facts are complex and in dispute) or where the amount claimed as compensation is very high.

33. The Chancellor of Justice has awarded compensation to individuals on account of alleged violations of the Convention in several cases. For the

Chancellor of Justice to decide on such compensation – which is in reality a form of voluntary settlement by the State – it must, however, be clear in practice that a violation of a Convention right has taken place or that the State is otherwise responsible for an injury or damage. If the Chancellor finds that this is the case, he or she may award compensation to individuals for both pecuniary and non-pecuniary damages. If, on the other hand, the Chancellor finds that no violation of the Convention has occurred or that the matter is unclear, either regarding the facts or merits, he or she may instead reject the claim and in that way refer the individual to institute proceedings before the appropriate general court for a review of the question of an alleged violation of a Convention right. As explained above, an individual claiming compensation may always institute proceedings before the appropriate general court without first applying to the Chancellor for compensation.

34. In light of what has been stated above and depending on the circumstances of the case, an individual who wants to claim compensation from the State may essentially proceed as follows. He or she may petition the Chancellor of Justice[1], bring a civil action against the State before the appropriate general court, or bring a civil action against the State before the appropriate general court after having petitioned the Chancellor of Justice. A request for compensation for an alleged violation of the Convention may be based on the Tort Liability Act or, to the extent this does not suffice, directly on the Convention.

III. <u>On the Admissibility and Merits</u>

35. The Government has been asked to deal in its observations with the following questions:

> "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?"

[1] See Section 3 of the Ordinance on the Administration of Claims for Damages against the State. If the damage has not been caused by any erroneous decision or failure to reach a decision, an individual claiming damages based on Chapter 3, Section 2 of the Tort Liability Act may in some circumstances instead turn to the relevant authority that has caused the damage, see Section 5 of the Ordinance on the Administration of Claims for Damages against the State (see para. 31, above).

36. Initially, the Government would like to clarify that it does not raise any objection with respect to the six-month rule contained in Article 35, paragraph 1 of the Convention regarding the present application as it now stands. Hence, it will concentrate on the issues of admissibility which have been posed by the Court and will essentially limit itself accordingly.

37. To begin with, the Government submits that the present application should be declared inadmissible for non-exhaustion of domestic remedies as prescribed in Article 35, paragraph 1 of the Convention. The reason for this contention will be given below in paras. 39–53.

38. In addition, with reference to what is submitted below on the merits, the Government contends that the applicant's complaint under Article 1 of Protocol No. 1 to the Convention should be declared inadmissible as being incompatible with the provisions of the Convention *ratione materiae*, or in any event as being manifestly ill-founded.

Whether the applicant has exhausted the domestic remedies available to him and whether such a remedy would be effective in the present case (*Question no. 1*)

39. Firstly, it may be recalled that the purpose of the exhaustion of domestic remedies rule contained in Article 35, paragraph 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Consequently, States are dispensed from answering for their acts before an international body before they have had an opportunity to put matters right through their own legal system. This rule is based on the assumption, reflected in Article 13 of the Convention, with which it has a close affinity, that there is an effective remedy available in the domestic system in respect of the alleged breach (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, *Kudla v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII, and *Marinkovic v. Sweden*, (dec.) 43570/10, § 36, 10 December 2013).

40. It follows from the Court's case-law that the only remedies that Article 35 requires to be exhausted are those that relate to the breaches alleged and that are, at the same time, available and sufficient. Their existence must be sufficiently certain, not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (*Mifsud v. France*, cited above, § 15 and *Michalak v. Poland* (dec.), no. 24549/03, § 33, 1 March 2005). Hence, the Court

must be satisfied that the remedy was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 71, 17 September 2009, *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV, and *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Michalak v. Poland*, cited above, § 35, with a reference to *Giacometti and Others v. Italy* (dec.), no. 34939/97, ECHR 2001-XII, see also *Vučković and Others v. Serbia* [GC], no. 17153/11, §§ 74 and 84, 25 March 2014). On the contrary, it is in the applicant's interests to apply to the appropriate court to give it the opportunity to develop existing rights through its power of interpretation (see *Ciupercescu v. Romania*, no. 35555/03, § 169, 15 June 2010). In a legal system providing constitutional protection for fundamental rights, it is incumbent on the aggrieved individual to test the extent of that protection (see *A, B and C v. Ireland* [GC], no. 25579/05, § 142, ECHR 2010).

41. The Court has in its case-law in recent years acknowledged the existence in Sweden of a general domestic remedy capable of affording redress in respect of alleged violations of the Convention (see *Ruminski v. Sweden* (dec.), cited above, § 37, 21 May 2013, with further references). As a general rule, potential applicants may therefore be expected to lodge a domestic claim to seek compensation for alleged breaches of the Convention before applying to the Court (*Eriksson v. Sweden*, cited above, § 52, and *Marinkovic v. Sweden*, cited above, §§ 39 and 41). The Court has further held that this remedy must be considered to have been sufficiently clear following a judgment of the Swedish Supreme Court referred to as NJA 2009 N 70, delivered on 3 December 2009 (see *Ruminski v. Sweden*, cited above, § 44).

42. In this connection, the Government also finds it pertinent to emphasise that complaints under Article 1, Protocol No. 1 have previously been examined domestically by both the domestic courts and the Chancellor of Justice[2]. In the case of *Marinkovic*, cited above, the Court held that although the domestic case-law had not specifically involved the issue at stake in that case, there was nothing

[2] See e.g. Stockholm District Court, Judgment of 2 June 2009, case no T-4379-07; Decision of the Chancellor of Justice regarding claims for compensation in relation to shore protection, case no 6369-12-40, dated 10 December 2013; Decision of the Chancellor of Justice regarding claims for compensation (shore protection), case no 1491-13-40, dated 8 April 2014; and Decision of the Chancellor of Justice regarding claims for compensation (protection of property), 1726-13-40, dated 4 November 2014. See also *Johansson Prakt and Salehzade v. Sweden*, (dec.) no. 8610/11, §§ 59–60 with further references, 16 December 2014.

to suggest that the ordinary courts or the Chancellor of Justice would refuse to consider the violations alleged (see § 41 of the decision). The Government considers that this line of reasoning should apply also with regard to the present application, also noting that there is settled case-law from the Court on the issues that the present application gives rise to (see, for instance, see *Depalle v. France* [GC], no. 34044/02, ECHR 2010, and *Fredin v. Sweden (no. 1)*, 18 February 1991, Series A no. 192). In light of the above, the Government holds that there is no reason to believe that the issue at stake in the present case would not be examined domestically, if raised before the aforementioned domestic authorities.

43. In addition, the Government notes that it is clear that the Court accepts compensation as suitable redress for violations of the Convention, including for interference with property rights (see, among others, *Ruminski v. Sweden*, cited above, § 40 with further references). With reference to this, the Government contends that an appropriate redress for the applicant is a remedy which provides an examination of whether there has been a violation of any of his Convention rights and which may award damages if a violation is found. Such a remedy is available through a claim for compensation for alleged breaches of the Convention. Moreover, it should be noted that the applicant, in his complaint before the Court, claimed compensation for the alleged violation. In light of the above, the Government holds that an adequate remedy for a potential violation of the Convention in the present case would be compensation.

44. As regards the present case, the applicant lodged his application with the Court on 29 May 2013. In the absence of any reasons to depart from the main rule developed in the Court's case-law, this is the date by which the assessment of whether domestic remedies have been exhausted shall be carried out (see *Michalak v. Poland*, cited above, § 36 with further references). It follows from the above that the applicant at that point in time had access to a domestic remedy through the possibility to lodge a claim for compensation for damages in respect of any breach of the Convention, including violations of Article 1, Protocol No. 1, either with the Chancellor of Justice and/or the appropriate general courts, as has been explained above (see paras. 26–34). He has not made use of this remedy.

45. Furthermore, it may be pointed out that the compensatory remedy that existed when the application was submitted to the Court was available to the applicant at that point in time. The limitation period in respect of such a claim is ten years from the point in time when the damage occurred (see Section 2 of the Limitations Act, *Preskriptionslagen, 1981:130*). Thus, it was possible for the

applicant to take full advantage of this remedy when he filed his application with the Court, and it is still possible for him to make use of this remedy.

46. Turning now to the issue of whether, in view of the domestic authorities and courts' reasoning, such a remedy would be effective in the present case, the Government would like to put forward the following.

47. The Court has held that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *İlhan v. Turkey* [GC], no. 22277/93, § 59, ECHR 2000-VII). Furthermore, as has been stated above, the Court has reiterated that an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *T.W. v. Malta* [GC], no. 25644/94, § 34, 29 April 1999, *Nada v. Switzerland* [GC], no. 10593/08, § 142, ECHR 2012, *mutatis mutandis*, *A. v. France*, 23 November 1993, § 32, Series A no. 277-B).

48. The Government would like to begin by explaining that, in refusing exemption from shore protection, the domestic authorities and courts correctly applied the relevant provisions of the Code. As will be further explained below, the Government's contention is that the refusal to grant the applicant an exemption from shore protection was proportionate to the general interests pursued and, accordingly, that the interference complained of was necessary to control the use of the property in accordance with the general interest within the meaning of the second paragraph of Article 1 of Protocol No. 1 to the Convention. Notwithstanding this conclusion, the Government holds that the applicant, if he is of the view that his right under Article 1, Protocol No. 1 has been violated, should have recourse to the available domestic remedies in this case, before turning to the Court with his complaint.

49. In this context, it should be pointed out that it was the Environmental Court that announced its position on the refusal of exemption from shore protection. However, an examination of a claim for damages on the basis that the applicant's right under Article 1, Protocol No. 1 has been violated, can be settled by the State in accordance with a decision by the Chancellor of Justice and examined by the appropriate general court (with the Supreme Court as the final instance). Furthermore, the Environmental Court of Appeal in Sweden does not have the

same rank and authority as a Constitutional Court (cf. *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, § 27, Series A no. 332). Accordingly, there was no valid reason for the applicant to refrain from initiating proceedings for damages, especially as this general remedy must be considered to have been sufficiently clear from 3 December 2009 and as there has been case-law from the domestic courts and the Chancellor of Justice regarding violations in relation to Article 1, Protocol No. 1 (see above, para. 42). In this regard, the Government finds it relevant to reiterate the Court's case-law that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see, *Giacometti and Others v. Italy* (dec.), cited above, and *Michalak v. Poland*, cited above, § 35, and *Vučković and Others v. Serbia* [GC], cited above, §§ 74 and 84, 25 March 2014).

50. In light of the above, the Government holds that there is nothing to suggest that a claim for compensation against the State would not be effective in the case at hand. Hence, the applicant has not done everything that could reasonably be expected of him to exhaust domestic remedies (see *İlhan v. Turkey* [GC], cited above, § 59).

51. In conclusion, and in view of what has been stated above, the Government maintains that the type of compensation proceedings against the Swedish State referred to above constituted a domestic remedy that was available to the applicant for the purposes of Article 35, paragraph 1 of the Convention at the time the application was lodged with the Court and that also provides appropriate redress for the applicant. Accordingly, he was obliged to exhaust this remedy prior to the introduction of his application before the Court. In response to the Court's question therefore, the Government holds that there is nothing to suggest that such a claim would not provide the applicant with an effective national remedy in the present case. Accordingly, the applicant has not exhausted the domestic remedies available to him.

52. It follows that the application should be declared inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35, paragraph 1 of the Convention.

53. In addition to what has been stated above, the Government invites the Court to consider whether the application should be declared inadmissible for non-exhaustion of domestic remedies due to the fact that the applicant, before turning to the Court with his complaint, again has requested an exemption from

shore protection (see para. 7 above). The issue of exemption from shore protection is thus currently pending before the before the domestic authorities.

Whether the interference with the applicant's peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1, was necessary to control the use of property in accordance with the general interest (*Question no. 2*)

54. According to the Court's established case-law in this field, Article 1 of Protocol No. 1 to the Convention comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties by enforcing such laws as they deem necessary for the purpose. The second and third rules are concerned with particular instances of interference with the peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98, § 37, Series A no. 98; *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II; *Beyeler v. Italy* [GC], no. 33202/96, § 98, ECHR 2000-I; *Saliba v. Malta*, no. 4251/02, § 31, 8 November 2005; and *Đokić v. Bosnia and Herzegovina*, no. 6518/04, § 55, 27 May 2010).

On the issue of interference

55. The Court's case-law implies that an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions or judgments relate to his or her 'possessions' within the meaning of this provision. 'Possessions' can be either 'existing possessions' or 'assets', including claims, in respect of which the applicant can argue that he or she has at least a 'legitimate expectation' of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a 'possession' within the meaning of Article 1 of Protocol No. 1 (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX, with further references).

56. As the Court has stated many times, there is a difference between a mere hope, however understandable that hope may be, and a legitimate expectation,

which must be of a more concrete nature and be based on a legal provision or have a solid basis in the domestic case-law (*Von Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, § 112, ECHR 2005-V, and *Kopecký v. Slovakia* [GC], cited above, § 49). The Court has thus taken the view that where the proprietary interest is in the nature of a claim it may be regarded as an 'asset' only where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it (see *Kopecký v. Slovakia* [GC], cited above, § 52).

57. The applicant bought a property situated in an area of extended shore protection. Although there was a valid exemption from shore protection for the property in question at the time of the applicant's purchase, this exemption was temporary in accordance with the law. In view of the above, and as will be further elaborated below (see paras. 84–86), the Government holds that the applicant did not have a legitimate expectation of obtaining a new exemption from shore protection once the exemption in force at the time of the purchase had expired. In this regard, the Government also finds it pertinent to emphasise that, as has been stated above, shore protection is a generic part of each and every shoreline property. Accordingly, any prospective buyer will have to take into account that such property is covered by the general prohibition covering all shorelines in Sweden (see para. 13 above).

58. In sum, and with reference to what has been stated above, there was no interference with the applicant's peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1. Thus, the guarantees of that Article do not apply in the present case. Accordingly, the applicant's complaint should be declared inadmissible as being incompatible with the provisions of the Convention *ratione materiae*. As a consequence, there has not been any violation of Article 1 of Protocol No. 1 to the Convention in the present case.

59. However, should the Court find that the decision to refuse the applicant's application for an exemption from the shore protection did constitute an interference with his peaceful enjoyment of his possessions, the Government submits, for the reasons set out in paras. 60–91 below, that this interference must be regarded as necessary to control the use of property in accordance with the general interest under the second paragraph of Article 1 of Protocol No. 1.

Lawfulness and purpose of the interference

60. As has been stated above, the second paragraph of Article 1 must be construed in the light of the general principle laid down in the first sentence of

the provision (see para. 54). Accordingly, in determining whether the interference at issue was justified, the questions to be considered are whether the interference was lawful, whether it was performed in the general interest and whether the principle of proportionality was observed.

61. The principle of lawfulness presupposes that the interference has a basis in domestic law and also that the applicable provisions are sufficiently accessible, precise and foreseeable (see, *inter alia*, *Beyeler v. Italy* [GC], cited above, §§ 108-109).

62. As regards the present case, it seems clear that the contested measures had a basis in domestic law and that the legislation applied was sufficiently accessible, precise and foreseeable to meet the requirements of lawfulness. The Government therefore maintains that the requirement of lawfulness laid down in Article 1 of Protocol No. 1 has been met in the present case.

63. As regards the purpose of the interference, the Court has stated that the national authorities are in principle better placed than the international judge to appreciate what is 'in the public interest' and that the national authorities accordingly enjoy a certain margin of appreciation. Furthermore, since the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court will respect the legislature's judgment as to what is 'in the public interest' unless that judgment is manifestly without reasonable foundation (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 91, ECHR 2005-VI, with further references).

64. The Court has further held that environmental conservation is an increasingly important consideration in today's society and that it has become a cause whose defence arouses the constant and sustained interest of the public, and consequently the public authorities (see *Depalle v. France* [GC], cited above, § 81, with further references, and *Fredin v. Sweden*, (*no. 1*), cited above, § 48). Moreover, with particular regard to the protection of coastal areas, the Court has held that the promotion of unrestricted access to the shore is in accordance with the general interest (see *Depalle v. France* [GC], cited above, § 81, and *N.A. and Others v. Turkey*, no. 37451/97, § 40, ECHR 2005-X).

65. Accordingly, the Government holds that the purposes behind shore protection – to secure the prerequisites for the right of public access to shore areas and to maintain good living conditions for plant and animal species (see

Chapter 7, Section 13, of the Code, para. 18 above) – are clearly in accordance with the general interest within the meaning of Article 1 of Protocol No. 1.

66. In this respect, the Government notes that when examining a matter regarding exemption from shore protection, regard must be had to the purposes of shore protection and an exemption may not be granted unless it is consistent with those purposes (Chapter 7, Section 26 of the Code). Moreover, the decision of the County Administrative Board – upheld by the Land and Environment Court – explicitly affirmed the existence of these general interests by making reference to, *inter alia*, Chapter 7, Sections 13 and 26 of the Code, as well as the *travaux préparatoires* (Government Bill 1997/98:45, part 2, p. 89 and 2008/09:119, p. 53).

67. Hence, the decision not to grant the applicant's request for an exemption from shore protection was intended to secure the promotion of unrestricted public access to the shore and environmental conservation. Against this background, the Government submits that the measure taken to control the use of property served a legitimate aim in accordance with the general interest within the meaning of the second paragraph of Article 1 of Protocol No. 1 to the Convention.

Proportionality of the interference

68. An interference with the right to property must strike a 'fair balance' between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In other words, there must be a reasonable relationship of proportionality between the means employed and the aims pursued. In determining whether this requirement is met, the Court has recognised that the State enjoys a wide margin of appreciation under the second paragraph of Article 1 of Protocol No. 1 with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see, *inter alia*, *Fredin v. Sweden*, (*no. 1*), cited above, § 51, and *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 49, ECHR 1999-V). Moreover, the Court has often reiterated that regional planning and environmental conservation policies, where the community's general interest is pre-eminent, confer on the State a margin of appreciation that is greater than when exclusively civil rights are at stake (*Depalle v. France* [GC], cited above, § 84).

69. Furthermore, as regards the issue of the protection of coastal areas in particular, the Court has held that having regard to the appeal of the coast and the degree to which it is coveted, the need for unrestricted public access to the coast makes it necessary to adopt a firmer policy of management and that this applies in relation to all European coastal areas (see *Depalle v. France* [GC], cited above, § 89).

70. The applicant claims that the domestic authorities failed to take his interests into account when deciding on the issue of exemption from shore protection, thereby restricting the use of his property in a disproportionate manner and in violation of his property rights under the Convention.

71. The Government would like to begin by reiterating that the basic aims of shore protection – to safeguard the right of public access to shorelines and preserve good living conditions for flora and fauna – have long been considered by the national authorities as general interests of considerable weight (see paras. 10–25 and 65, above). Furthermore, these interests are considered as such 'pressing public interests' referred to in Chapter 2, Article 15 of the Instrument of Government (*regeringsformen*), pursuant to which no one may be compelled to tolerate restrictions by public institutions of the use of land or buildings, other than where necessary to satisfy pressing public interests (Government Bill 1997/98:45, part 1, p. 320). Moreover, as is explained in the *travaux préparatoires*, the legislation in the area of site protection, including shore protection, builds on the idea that the aims of the legislation are public interests of such weight that the interests of individuals sometimes have to be set aside (Government Bill 1997/98:45, part 1, p. 319).

72. As far as the Government understands, the applicant claims, *inter alia*, that the national authorities did not properly take Chapter 7, Section 25 of the Code into account when examining his request for an exemption from shore protection, thereby failing to take his individual interests into account. The Government contests this claim and would in this regard like to submit the following.

73. As has been stated above (see paras. 15 and 22), the special circumstances for granting an exemption from shore protection were codified in 2009 in Chapter 7, Section 18c of the Code. According to the provision, the list of special circumstances is exhaustive. The *travaux préparatoires* of the provision states that "…the regulations should be amended so that the legislative text precisely states what can be considered special grounds to […] grant an exemption. It should be clear that the circumstances outlined do not, in

themselves, automatically mean that an exemption should be granted, but rather that such circumstances may be considered in an examination" (Government Bill 2008/09:119, p. 53). According to the *travaux préparatoires*, the section clarifies the requirements that must be met in order to grant an exemption, and the introduction to the section clarifies that the list is exhaustive (Government Bill 2008/09:119, p. 104).

74. Thus, Chapter 7, Section 18c of the Code contains an exhaustive list of what circumstances may be taken into account when assessing whether there are special circumstances to grant an exemption from shore protection. The Government also holds that the existence of one of the grounds in paragraphs 1–6 is a prerequisite for the granting of an exemption. However, it is important to emphasise that this does not mean that an exemption *shall* be granted in each case where the requirements of any or some of the paragraphs are fulfilled. Instead, if one of the grounds in paragraphs 1–6 has been established, the next step to be pursued is the weighing of interests, as required by Chapter 7, Sections 25 and 26 of the Code, to determine whether special circumstances for granting an exemption exist in the specific case.

75. Judging by the decision and judgment of the County Administrative Board and the Land and Environment Court in the applicant's case, it appears that the national authorities share the view of the Government regarding the interpretation of the provisions related to exemption from shore protection.

76. In its decision of 16 April 2012, the County Administrative Board began by examining the existence in the applicant's case of any of the grounds in paragraphs 1, 2 and 6 and concluded that no special circumstance existed. In relation to the principle of proportionality and Chapter 7, Section 25 of the Code, it further stated that the provision does not entail an opportunity to grant an exemption with regard to circumstances other than those specified in Chapter 7, Section 18 c–d of the Code.

77. Furthermore, in its judgment of 18 October 2012, the Land and Environment Court applied the same line of reasoning as the Board in stating that none of the grounds in paragraphs 1, 2 and 6 in Chapter 7, Section 18c of the Code were at hand in the applicant's case. In the Land and Environment court's application of Chapter 7, Section 25 of the Code, it furthermore concluded that as regards the balance of interests included in this provision, the circumstances cited by the applicant as grounds for his strong private interest in the case cannot *in themselves* lead to the granting of an exemption from shore protection.

78. It should also be noted that the conclusions made in the above decision and judgement are in line with the established case-law of the Land and Environment Court of Appeal, which has held that Chapter 7, Section 25 of the Code does not entail an opportunity to grant an exemption with regard to circumstances other than those specified in Chapter 7, Sections 18c–d, of the Code (see i.e. the judgement by the Land and Environment Court of Appeal, *MÖD 2013:37*).

79. In this regard, it may also be noted that the County Administrative Board, in its decision of 16 April 2012 to refuse the applicant's request for an exemption from shore protection, took into account that the applicant's neighbour had been refused an exemption from shore protection by the County Administrative Board on 24 August 2011. The reasons for that decision were the same as in the applicant's case, namely that the road separating the shoreline from the rest of the property does not fulfil the prerequisite in Chapter 7, Section 18c, paragraph 2 of the Code. The decision regarding the applicant's neighbour was upheld on appeal. Accordingly, it appears that there have not been any inconsistencies on the part of the authorities in the application of the rules on exemption from shore protection (cf. *Depalle v. France* [GC], cited above, § 89).

80. As has been stated above, when examining applications on exemption from shore protection, private interests must also be taken into account in accordance with Chapter 7, Section 25 of the Code (see para. 24). In the Government's view, there is nothing to indicate that the domestic authorities have failed to take such interests into account when examining the applicant's request for exemption from shore protection. On the contrary, it is clear that Chapter 7, Section 25 of the Code indeed was applied and explicitly referred to in the aforementioned decisions. The fact that the national authorities found that the provision does not entail an opportunity to grant an exemption with regard to circumstances other than those specified in Chapter 7, Section 18c of the Code, does not mean that the principle of proportionality contained in that provision was not applied in the applicant's case.

81. Furthermore, as is clear from the wording of Chapter 7, Section 18c of the Code, a balancing of interests is included in the provision itself (see paras. 22–23, above). Hence, the Government holds that the principle of proportionality has been taken into account in the national authorities' application of that provision alone.

82. Thus, the Government refutes the applicant's claim that the national authorities failed to take his interests, or Chapter 7, Section 25 of the Code, properly into account when examining his case.

83. As further regards the Government's contention that a fair balance of interests under Article 1 of Protocol No. 1 of the Convention was struck in the applicant's case, the Government would like to point to the following circumstances.

84. To begin with, the Government is of the view that the purchase involved an element of risk of which the applicant cannot reasonably have been unaware (see *Fredin v. Sweden (no. 1)*, cited above, § 54, and *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 59, Series A no. 222). In this regard, the Government notes that the property is situated in an area in which a general prohibition against the erection of new buildings applied. Furthermore, the property is situated within an area that has been designated as being of particular national interest with regard to its natural and cultural values, which shall be given priority when competing against the interests of exploitation and development (see para 9, above). Although an exemption from the prohibition had been granted and was in force at the time of the applicant's purchase, the exemption was subject to a time-limit, with less than six months remaining before it expired (under Chapter 7, Section 18 of the Code in its applicable wording at the time). Furthermore, the applicant must reasonably have been aware of the state of the law at the time of his purchase (see *Allan Jacobsson v. Sweden (no. 1)*, 25 October 1989, § 61, Series A no. 163).

85. In addition, there are no circumstances in the applicant's case on which he can reasonably have founded any legitimate expectation of obtaining a new exemption once the one in force at the time of the purchase had expired. As has been stated above, exemptions from the legislator's prohibitions should be applied very restrictively. Moreover, there is nothing to suggest that the authorities gave the applicant any assurances or otherwise gave him reason to believe that he would be granted a new exemption from shore protection (cf. *Fredin v. Sweden (no. 1)*, cited above, § 54). In this respect it may also be noted that any decision by a public authority is to be taken independently and based on the specific circumstances of the case at the time of the decision.

86. In line with the Court's reasoning in the *Fredin* case (cited above, see § 54), the Government would moreover like to submit the following. The provisions of main relevance to the issue of exemption from shore protection applicable at the time of the purchase were Chapter 7, Sections 18c, 25 and 26 of the Code. The Government considers that the applicant's reliance on the authorities' obligation under Chapter 7, Section 25 of the Code, to take due account of his interests, is not sufficient to found a legitimate expectation on the applicant's part of actually being granted a new exemption.

87. Furthermore, the Government would like to draw the Court's attention to the fact that the applicant, who purchased the property on 23 April 2010, remained passive for almost six months before applying for a building permit, which he did on 12 October 2010, i.e. one month before the exemption from shore protection expired. At this juncture, the Government would like to reiterate that under Chapter 7, Section 18h of the Code, the applicant would have gained an additional three years to complete the construction work had he only started it before the expiration of the two-year time-limit. Thus, in the Government's view, the applicant's failure to implement his plan to erect a new building on the property is attributable to his own behaviour. In accordance with the Court's case-law, the degree of fault or care displayed by the applicant should be taken into account in the assessment of whether a fair balance of interests was struck in the applicant's case (see, *AGOSI v. the United Kingdom*, 24 October 1986, § 54, Series A no. 108).

88. As regards the applicant's claim that the rejection of his request for a new exemption rendered the property worthless, the Government would like to state the following. Before the Court, the applicant has not specified the amount of his alleged financial loss, nor has he in any way substantiated that the property has indeed been rendered worthless. Notwithstanding this, the Government contests that the property would be worthless without a valid exemption from shore protection. For instance, the applicant could lease the property for purposes of pasture or cultivation or some other activity which is not in conflict with the legislation on shore protection. In any case, the Government notes that individual economic interests, such as a decrease in property value, have been accorded relatively little weight by the Court when balanced against environmental interests such as the protection of nature (cf. *Fredin v. Sweden (no. 1)*, cited above, and *Pine Valley Developments Ltd and Others v. Ireland*, cited above).

89. It is also pertinent to note that the applicant may at any point in time file a new request for an exemption from shore protection (cf. *Allan Jacobsson v. Sweden*, cited above, § 62). It cannot be excluded that the conditions on the property or its surroundings may change in the future so that one or more of the special circumstances in Chapter 7, Section 18c of the Code would be met.

90. Lastly, the granting of exemptions from shore protection on the basis of the applicant's individual economic interests would clearly undermine the efforts to achieve the aims of the rules on shore protection. The Government thus contends that in order to preserve the underlying aims of shore protection, the prohibition against erecting new buildings within a certain distance of the shoreline must be regarded as a proper way – if not the only way – of achieving

that aim (cf. *Pine Valley Developments Ltd and Others v. Ireland*, cited above, § 59). Thus, the Government fails to see that any less severe measure could have been taken in the applicant's case.

91. In conclusion and with reference to what has been stated in paragraphs 54–90 above, the Government submits that refusal to grant the applicant an exemption from shore protection was proportionate to the general interest pursued and, accordingly, that the interference complained of was necessary to control the use of the property in accordance with the general interest within the meaning of the second paragraph of Article 1 of Protocol No. 1 to the Convention. The applicant's complaint therefore reveals no violation of the Convention and should be declared inadmissible as being manifestly ill-founded.

IV. Conclusions

92. The position of the Swedish Government in this case is,

concerning the **admissibility**,

- that the complaint should be declared inadmissible for non-exhaustion of domestic remedies, or alternatively, as being incompatible with the provisions of the Convention *ratione materiae*, and in any event as being manifestly ill-founded under the Convention, and

concerning the **merits**,

- that the case reveals no violation of the Convention.

Katarina Fabian
Agent of the Swedish Government

List of appendices

1. Map of the property Närtuna-Ubby 2:15
2. Photograph of the property Närtuna-Ubby 2:15
3. Decision of the Building and Environmental Board of 17 January 2014
4. Decision of the County Administrative Board of Stockholm of 16 September 2014