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

COURT (CHAMBER)

CASE OF TRE TRAKTÖRER AKTIEBOLAG v. SWEDEN

(Application no. 10873/84)

JUDGMENT

STRASBOURG

07 July 1989

In the Tre Traktörer Aktiebolag case*,

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

Mr R. RYSSDAL, *President*,
Mr . CREMONA,
Mr Thór VILHJÁLMSSON,
Mr J. PINHEIRO FARINHA,
Mr R. MACDONALD,
Mr R. BERNHARDT,
Mrs E. PALM,

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

Having deliberated in private on 30 March and 21 June 1989,

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

PROCEDURE

1. The present case was referred to the Court by the European Commission of Human Rights ("the Commission") on 14 March 1988, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. The case originated in an application (no. 10873/84) against the Kingdom of Sweden lodged with the Commission on 23 January 1984 under Article 25 (art. 25) by a Swedish limited company, Tre Traktörer Aktiebolag.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Sweden recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request was to obtain a decision as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1) of the Convention and Article 1 of Protocol No. 1 (P1-1).

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* Note by the Registrar: The case is numbered 4/1988/148/202. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

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

3. The Chamber to be constituted included ex officio Mr G. Lagergren, the elected judge of Swedish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 25 March 1988 the President drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr J. Cremona, Mr Thór Vilhjálmsson, Mr J. Pinheiro Farinha, Mr R. Bernhardt and Mr J.A. Carrillo Salcedo (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

Subsequently, the newly elected judge of Swedish nationality, Mrs E. Palm, who took up her duties before the hearing, replaced Mr Lagergren, who had resigned (Rule 2 para. 3) and Mr R. Macdonald, substitute judge, replaced Mr Carrillo Salcedo, who had withdrawn (Rule 22 para. 1 and Rule 24 para. 2).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Government of Sweden ("the Government"), the Delegate of the Commission and the applicant's lawyer on the need for a written procedure (Rule 37 para. 1). Thereafter, in accordance with the President's orders and directions, the registry received, on 5 and 14 September 1988 respectively, the Government's and the applicant's memorial.

By letter of 25 October 1988, the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing. On 23 March 1989 the Commission submitted certain documents the production of which had been requested by the President.

5. Having consulted, through the Registrar, the representatives who would be appearing before the Court, the President directed on 13 January 1989 that the oral proceedings should open on 29 March 1989 (Rule 38).

6. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

- for the Government

Mr H. CORELL, Ambassador,
Under-Secretary for Legal and Consular Affairs, *Agent*,
Mr L. LINDGREN, Legal Adviser,
Ministry of Health and Social Affairs,
Mr P. BOQVIST, Legal Adviser,

Ministry for Foreign Affairs, *Advisers*;
- for the Commission
Mr Gaukur JÖRUNDSSON, *Delegate*;
- for the applicant
Mr G. RAVNSBORG, Lecturer in Law
at the University of Lund, *Counsel*.

The Court heard addresses by Mr Corell for the Government, by Mr Gaukur Jörundsson for the Commission and by Mr Ravnsborg for the applicant, as well as their replies to certain of its questions. Replies by the Government and the applicant to the remaining questions, as well as their observations on the application of Article 50 (art. 50), were received at the registry on various dates between 10 April and 31 May 1989. The Delegate of the Commission made no comments on the Article 50 (art. 50) issue.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

7. The applicant, Tre Traktörer Aktiebolag ("TTA"), is a Swedish limited company with its seat at Helsingborg, Malmöhus County. Its sole shareholder is Mrs Olga Flenman.

A. Background to the case

8. On 30 July 1980 TTA took over the management of the restaurant Le Cardinal in Helsingborg and obtained on the same day a licence to serve beer, wine and miscellaneous alcoholic beverages.

9. Le Cardinal had been opened on 6 March 1980 by AB Citykällaren, which had obtained a licence on 29 February 1980. This company, which had been formed in 1960, had been bought on 1 July 1977 by Mrs Olga Flenman. She was also its sole shareholder until 1 June 1982. She retained the majority of the shares until 1987 and was a full or deputy member of the board until 19 December 1983. The company was apparently sold in 1987.

10. TTA's licence for Le Cardinal remained in force until 25 September 1981, when it was replaced by a new licence which was subject to the condition that the business retained the character of a restaurant. This in turn was replaced on 9 November 1981 by a fresh licence to which were attached new regulations with regard to the serving of young people.

1. Investigation by the tax authorities

11. In 1981 the Tax Department of the County Administrative Board (Länsstyrelsen) of Malmöhus County had carried out an inspection on AB Citykällaren's activities between 1 July 1979 and 30 June 1980. During this period Mrs Flenman had at various times managed three different establishments, including the restaurant Le Cardinal. The inspection, on the basis of which an audit report was drawn up on 17 September 1981, had revealed various inaccuracies in the book-keeping; the most significant discrepancy, estimated at 93,000 Swedish crowns (SEK), concerned the sale of beers, wines and spirits in that restaurant between March and June 1980. The total turnover of the company during this period was 770,000 SEK.

12. As a result of the audit report the assessment of Mrs Flenman's personal taxable income for 1980 was increased by 100,000 SEK.

On 1 February 1988, however, the County Court (Länsrätten) reduced this amount to approximately one half and the local tax department in Helsingborg issued the corresponding reassessment notice (omräkningsbesked).

2. Criminal proceedings against Mrs Flenman

13. As a further result of the audit report, criminal proceedings were also instituted against Mrs Flenman under section 10 of the Act on Tax Offences (skattebrottslagen) for having, as a representative of AB Citykällaren, deliberately or through gross negligence disregarded her book-keeping obligations and thereby seriously hindered control by the fiscal authorities (försvårande av skattekontroll). In the course of the hearing and in the light of the evidence presented, the prosecution reduced the scope of the charges it had originally brought on 23 February 1983.

On 27 May 1983 the District Court (Tingsrätten) of Helsingborg acquitted her on the following grounds: it was not established either that the result of the calculations concerning alcohol and tobacco could be explained by book-keeping mistakes, or that the discrepancies regarding the period from 6 to 17 March 1980, which were due to the absence of a cash register, had been caused deliberately or through gross negligence; and the other alleged discrepancies could not be considered to be of such a nature and extent as seriously to hinder control, within the meaning of the said section 10.

B. Proceedings concerning the withdrawal of the licence

1. Introduction

14. In April 1982 TTA requested from the County Administrative Board an extension of the serving hours at Le Cardinal from 1.00 a.m. until 3.00 a.m. The request was forwarded on 3 May 1982 to the Social Council (socialnämnden) and to the Police Board (polisstyrelsen) of Helsingborg for their observations.

On 10 June 1982 the Police Board submitted a negative opinion, on the basis of a complaint filed against Mrs Flenman by the tax authority (see paragraphs 11 and 12 above); in its opinion, her capacity to deal with the serving of alcoholic beverages was open to doubt. The Social Council likewise expressed a negative opinion on 5 July.

After TTA had been given the opportunity to file its own observations, the County Administrative Board decided on 29 October 1982 to postpone its ruling on the request until it had finally determined whether the company could be considered fit to hold a licence to serve alcoholic beverages.

2. Proceedings before the County Administrative Board

15. The audit report of 17 September 1981 (see paragraph 11 above) had been communicated to the competent section of the County Administrative Board and, on 4 November 1982, it informed TTA of its contents. The Board stated that it was considering withdrawing the licence to serve alcoholic beverages under section 64(2) of the 1977 Act on the Sale of Beverages (lagen om handel med drycker - "the 1977 Act"; see paragraph 27 below) and invited observations before 15 November 1982.

After TTA had filed observations, its representatives produced the current books of the company to the County Administrative Board. They stated that the discrepancies as regards the sale of alcoholic beverages were due to thefts.

16. On 7 January 1983 the County Administrative Board decided to issue an admonition under section 64 of the 1977 Act (see paragraph 27 below). The decision stated, inter alia:

> "In view of what was established during the audit and as the company has not been able to explain the discrepancies satisfactorily, the County Administrative Board finds that there are reasons to revoke the licence under section 64 of the 1977 Act. Accordingly, it ought to be revoked now. The only argument against a revocation is that the negligence took place in the spring of 1980, that is almost three years ago. As far as has been ascertained, no criticism has been levelled against the management of the restaurant thereafter. Against this background, the County Administrative Board has not found it necessary to revoke the licence. Instead it issues a serious admonition against the company pursuant to section 64 of the 1977 Act."

17. On 14 January 1983 the County Administrative Board renewed until further notice TTA's previous licence, dated 9 November 1981. The renewed licence contained, on its reverse side, the following special conditions:

"REGULATIONS

1. This licence is not transferable.

2. There must be a person responsible for serving ....

3. Alcoholic beverages may not be served unless the person responsible or his or her substitute is present ....

4. Any change of activity should be reported to the County Administrative Board ....

5. This licence or a copy thereof shall be exhibited in the restaurant.

6. The activities shall be carried on in such a way as not to be aimed at a young public, i.e. under 22 years of age. The licence-holder is therefore obliged to take this into account, inter alia when advertising.

The County Administrative Board recalls that the licence has been granted on the assumption that the provision of cooked food will be a major part of the business and that the company, in accordance with its 'programme', does not intend to run a discotheque. It is further noted that the company has undertaken to discourage too young a clientele by its choice of music and by not playing recorded music.

The County Administrative Board orders that serving shall end at 2 a.m."

18. On 18 January 1983 the Social Council of Helsingborg appealed to the National Board of Health and Welfare (socialstyrelsen) against this decision and requested that the licence be revoked. The Council referred to the results of the audit and to the fact that the special conditions accompanying the licence had not been complied with.

In the latter respect the Council relied on the report of an inspection carried out at the restaurant on 13 February 1982. This revealed, inter alia, that the restaurant was then overcrowded, many customers not having seats; that most of the customers, whose ages ranged from 18 to 25, were 18 years old; and that in the upper part of the premises there was a discotheque which was open all evening. According to the conditions of the licence, there was to be live dance-music and activities were to be aimed at young people above the age of 22.

On 10 February 1983 the applicant company was given an opportunity to file observations on the appeal. It did so on 22 March 1983.

19. On 13 July 1983 the National Board of Health and Welfare quashed the County Administrative Board's decision of 7 January 1983 (see paragraph 16 above). After reciting the contents of section 64(1) and of section 64(2) (as amended in 1982) of the 1977 Act (see paragraphs 27-28 below), it gave the following reasons:

"The provisions of section 64(2) of the 1977 Act are connected, inter alia, with the requirement in section 40 of the 1977 Act that a new holder of a licence must be suitable. This requirement of suitability has in practice been considered to include a requirement of personal suitability to sell alcoholic beverages, an activity involving great social responsibility. As regards companies, this requirement is applicable to those individuals who have a considerable influence on the business.

The unsuitability of the licence-holder which constitutes a reason for revoking the licence may be of many different types. In the Bill 1981/1982: 143, page 82, economic mismanagement, even if it is not criminal, is given as one example of personal unsuitability.

According to section 70 of the 1977 Act, the book-keeping of a business involved in the sale of alcoholic beverages must be such as to permit control of the business.

In the instant case the County Administrative Board referred to an audit report as the basis for its decision. From this report it appears that the book-keeping of AB Citykällaren was deficient in several respects. For instance, there are differences to be found concerning the recorded sale of beverages. The explanations given by the company regarding, inter alia, thefts of such beverages show, in the opinion of the National Board of Health and Welfare, that those who have had a decisive influence on the business have failed to demonstrate sufficient competence regarding both book-keeping and internal control. Section 64 of the 1977 Act is therefore applicable in this case.

The National Board of Health and Welfare finds that the deficiencies concern compliance with section 70 of the 1977 Act and, as far as suitability is concerned, are of such a nature that a measure other than revocation of the licence cannot be considered. The fact that in the instant case the District Court has rejected the charges of hindering a tax investigation does not affect this assessment.

In view of the above the appeal is allowed.

The National Board of Health and Welfare quashes the decision under appeal and refers the matter back for further action."

This decision was not open to appeal.

20. On 18 July 1983 the County Administrative Board of Malmöhus County decided to revoke, with immediate effect, TTA's licence to serve alcoholic beverages. The company states that, as a result, the restaurant had to be closed down on the following day. However, this was disputed by the Government.

21. TTA appealed to the National Board of Health and Welfare, requesting that the decision to revoke the licence should take effect as from 1 March 1984. The company stated that it would otherwise be faced with financial problems on account of the applicable periods of notice for the staff.

On 15 August 1983 the National Board of Health and Welfare rejected the appeal. It considered that, having regard to its previous decision, there were no reasons to depart from the general rule in section 67 of the 1977 Act that decisions under that Act should take effect immediately. This decision was not open to appeal.

22. By letter of 23 January 1984, the applicant company submitted to the Government a claim for compensation based on the decision to revoke the licence. It requested the Government to find that the decision of the County Administrative Board violated the company's rights under the European Convention on Human Rights. It further alleged that Swedish law had been incorrectly applied.

On 16 February 1984 the Government decided to refer the claim for compensation to the Chancellor of Justice (justitiekanslern) and not to take any measures in the matter as regards the other issues. On 5 March 1984 the Chancellor of Justice expressed the opinion that the claim for compensation should be rejected; he found no indication that any authority had committed any error which could make the State liable under the Tort Liability Act 1972 (skadeståndslagen; see paragraph 32 below).

23. In June 1984 Le Cardinal was sold for 1,500,000 SEK.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. The aim of Swedish policy as regards alcohol is to limit its total consumption and to counteract its abuse and the resultant damage to health. Restrictions on alcohol in Sweden are of long standing. Since 1895 restaurants and bars serving alcoholic beverages have had to be licensed, and in the early 1900's a State monopoly was introduced for wholesale and retail trading in alcohol. These restrictions remain in force.

The present Act on the Sale of Beverages was adopted in 1977 and regulates trading in beer, wine and liquor. It also lays down rules on the serving of these beverages for consumption on the premises of restaurants and bars as well as on the issuing of licences for and inspection of these premises. The Act is supplemented by an Ordinance on the Sale of Beverages (förordning om handel med drycker).

25. Alcoholic beverages may be served only if a licence has been issued (section 34 of the 1977 Act). In this respect, section 40 provides:

> "In examining whether to issue a licence special regard should be had to the need for the restaurant, the applicant's suitability and the suitability of the premises for the purpose."

Licences are issued by the County Administrative Board in the county where the premises are situated. When the application concerns a new establishment for the serving of alcoholic beverages, the County Administrative Board has to consult the local municipal council (kommunfullmäktige) and the local police authority before a decision is taken. Even in cases concerning the transfer of licences to new owners,

extended serving-hours and the revocation of licences the County Administrative Board may consult these local authorities.

The County Administrative Board has to inform the local Social Council of its decisions concerning the serving of alcoholic beverages. For their part, the Social Council and the police have to inform the County Administrative Board of such circumstances as may be relevant in connection with the application of the 1977 Act.

26. Both the local authorities and the persons concerned may appeal to the National Board of Health and Welfare against decisions taken by the County Administrative Board under the 1977 Act. The decisions of the National Board of Health and Welfare in these matters are final (section 68 of the Act). Furthermore, the National Board of Health and Welfare supervises the implementation of the Act and the Ordinance at national level.

27. Until 1 July 1982, section 64 of the 1977 Act provided as follows:

> "1. The licensing authority shall revoke the licence or limit it to certain beverages where such sale of alcoholic beverages as takes place under a licence according to this Act causes annoyance relating to public order, drunkenness or disturbance of the peace or where the provisions of this Act or the conditions imposed under it are not complied with. If it may be assumed that a satisfactory situation can be achieved without such a severe measure, the licence-holder may instead be given an admonition or special instructions.
>
> 2. The first paragraph also applies, mutatis mutandis, if the conditions for granting a licence are no longer satisfied.
>
> 3. In cases covered by the first or the second paragraph the approval of a director or a substitute director may be withdrawn."

28. The second paragraph of section 64 was amended in 1982 (SFS 1982:289); as from 1 July 1982, it has read as follows:

> "The first paragraph also applies when the licence-holder can no longer be considered suitable to sell alcoholic beverages or when for other reasons the conditions for granting a licence are no longer satisfied."

In this connection, the Government's Bill (p. 82) referred to recent complaints filed before the National Board of Health and Welfare concerning revocation of licences on account of economic mismanagement by the licensee. The Bill also stated (p. 87) that the amendment would make it clearer that economic mismanagement may be a reason for considering the licence-holder unsuitable, even if the sale of alcoholic beverages has been carried out in conformity with the applicable legislation. Only considerable economic mismanagement is relevant in this connection. Anyone who systematically mismanages the payment of taxes and contributions or seriously disregards his obligations regarding book-keeping

or the supplying of information shall be considered unsuitable to hold a licence. It is, however, not a condition that the mismanagement is criminal or even intentional. A considerable degree of negligence in the performance of these obligations can also constitute sufficient reason for intervention.

29. With regard to book-keeping, section 70 of the 1977 Act provides as follows:

> "The book-keeping of an establishment which carries on the sale of alcoholic beverages shall be so organised as to permit control of the activities. The manager of the establishment is obliged to produce the books of the establishment at the request of the licensing authority. He is also obliged to produce statistical information pursuant to the regulations issued by the Government or, after the Government's decision, by the National Board of Health and Welfare."

The travaux préparatoires of section 70 state that unsatisfactory book-keeping is in itself proof of unsuitability to conduct a business involving the sale of alcoholic beverages.

30. In 1985 a report on the Swedish legislation on the sale of beverages was drawn up under terms of reference issued by the Government (SOU 1985:15). Its author proposed that decisions in this area by the County Administrative Boards should be open to appeal to the Administrative Courts of Appeal. He considered that it was not appropriate for the National Board of Health and Welfare, which was vested with supervisory functions under the 1977 Act, to fulfil an appellate role, such a task being more suitably performed by the administrative courts. This proposal was subsequently submitted for examination to the competent Ministry.

31. On 21 April 1988 the Swedish Parliament adopted an Act concerning appeals against administrative decisions. This Act came into effect on 1 June 1988 and will remain in force until 1991. It entitles individuals to have certain decisions of administrative authorities brought before the Supreme Administrative Court in order to establish whether the decisions were in accordance with the law.

32. Under Chapter 3, section 2, of the Tort Liability Act 1972, the State is liable to pay compensation in the event of fault or negligence in the exercise of authority (myndighetsutövning).

PROCEEDINGS BEFORE THE COMMISSION

33. In its application of 23 January 1984 to the Commission (no. 10873/84), TTA complained that the revocation of its licence to serve beer, wine and alcoholic beverages in a restaurant it ran violated Article 1 of Protocol No. 1 (P1-1). It further alleged that there had been a breach of

Article 6 para. 1 (art. 6-1) of the Convention since it could not have the revocation of the licence reviewed by a court.

34. On 10 October 1985 the Commission declared the application admissible.

In its report of 10 November 1987 (Article 31) (art. 31), the Commission expressed the opinion:

(a) by ten votes to one, that there had been no violation of Article 1 of Protocol No. 1 (P1-1);

(b) by nine votes to two, that there had been a violation of Article 6 para. 1 (art. 6-1) of the Convention.

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

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 (art. 6) OF THE CONVENTION

35. The applicant company complained that, under Swedish law, it did not have the possibility of having the revocation of its licence to serve alcoholic beverages in Le Cardinal reviewed by a court. It alleged a violation of Article 6 paras. 1 and 2 (art. 6-1, art. 6-2) which, as far as is relevant, provide:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing by [a] ... tribunal ....
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The first issue to be resolved is the applicability of Article 6 para. 1 (art. 6-1) and, in particular, whether the case involved a "determination" either of a "civil right" or of a "criminal charge".

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

1. Determination of "civil rights and obligations"

36. Article 6 para. 1 (art. 6-1) extends only to disputes ("contestations") over "civil rights and obligations" which can be said, at least on arguable grounds, to be recognised under domestic law (see, inter alia, the Neves e Silva judgment of 27 April 1989, Series A no. 153, p. 14, para. 37). The two

questions to be answered by the Court are thus: whether there was a dispute over a "right" and whether this "right" was of a "civil" nature.

(a) Existence of a dispute ("contestation") over a "right"

37. As to the existence of a dispute over a right within the meaning of Article 6 para. 1 (art. 6-1), the Court refers to the principles enunciated in its case-law (see, inter alia, the Benthem judgment of 23 October 1985, Series A no. 97, pp. 14-15, para. 32, and the Pudas judgment of 27 October 1987, Series A no. 125-A, p. 14, para. 31). In particular, the dispute must be genuine and of a serious nature; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise and, finally, the result of the proceedings concerning the dispute at issue must be directly decisive for such a right.

38. The Government argued that no serious dispute ("contestation") of fact or law had arisen concerning a right. They observed that, in Sweden, there was no right to obtain or retain a licence of the kind at issue here, in view of the wide discretion enjoyed by the competent authorities; furthermore, the licence itself could not be considered to confer any right. They also contended that reasons existed for not submitting to civil or administrative courts questions relating to the revocation of licences to serve alcoholic beverages: such matters formed part of the implementation of the Swedish policy concerning alcoholic beverages.

39. The Court, like the Commission, cannot share this view.

First of all, subject to the possibility of its being revoked, the licence conferred a "right" on the applicant company in the form of an authorisation to sell alcoholic beverages in the restaurant Le Cardinal in accordance with the conditions set out in the licence and with the provisions of the 1977 Act (see, mutatis mutandis, the above-mentioned Pudas judgment, Series A no. 125-A, p. 15, para. 34). Section 64 of this Act prescribes the conditions under which a licence to serve alcoholic beverages may be revoked (see paragraphs 27-28 above), that is to say, where the sale of alcoholic beverages causes annoyance relating to public order, drunkenness or disturbance of the peace or where the conditions of the licence or the provisions of the 1977 Act, including the requirement of suitability of the licensee, are not complied with. The last condition allows the competent administrative authorities a certain discretion; decisions revoking licences of this kind must, however, be taken within the framework of the 1977 Act. In the instant case, the National Board of Health and Welfare, in giving its decision of 13 July 1983 as to the suitability of TTA, interpreted section 64 in conjunction with sections 40 and 70 of the Act, and arrived at the

conclusion that the only possible action was the revocation of the licence (see paragraph 19 above).

In assessing the circumstances of the case in accordance with the 1977 Act, the competent authorities could have taken, under section 64(1), measures less severe than revocation, such as limiting the licence to certain alcoholic beverages, an admonition or special instructions (see paragraph 27 above). In this connection reference may in fact be made to the first decision of the County Administrative Board, dated 7 January 1983, in which it considered it sufficient to issue a serious admonition against the applicant company (see paragraph 16 above).

40. Bearing these circumstances in mind, the Court considers that the applicant company could maintain, on arguable grounds, that under Swedish law it was entitled to continue to run its restaurant business under the licence unless it contravened the conditions laid down therein or gave rise to any of the statutory grounds for revocation (section 64 of the 1977 Act). TTA also argued that the revocation of the licence was illegal and was not based on any arguable public interest so that there was an abuse of power (détournement de pouvoir) on the part of the competent authorities. It was thus challenging the lawfulness of the revocation.

Furthermore, the proceedings in question led to the withdrawal by the County Administrative Board on 18 July 1983 of the applicant company's licence (see paragraph 20 above), and were thus directly decisive for the right at issue.

(b) "Civil" character of the right at issue

41. According to the Court's case-law, the concept of "civil rights and obligations" is not to be interpreted solely by reference to the respondent State's domestic law. Article 6 para. 1 (art. 6-1) applies irrespective of the status of the parties, of the nature of the legislation which governs the manner in which the dispute is to be determined and of the character of the authority which has jurisdiction in the matter; it is enough that the outcome of the proceedings should be decisive for private rights and obligations (see notably the above-mentioned Benthem judgment, Series A no. 97, p. 16, para. 34, and the above-mentioned Pudas judgment, Series A no. 125-A, p. 15, para. 35).

42. According to the Government, a licence of the kind here at issue cannot be considered to confer a civil right within the meaning of Article 6 para. 1 (art. 6-1). They pointed to the non-transferable character of the licence and to the fact that it constituted one of the means of implementing the social policy regarding alcoholic beverages. In this context the

Government stressed the paramount importance from a public policy point of view attached to questions related to the regulations concerning alcoholic beverages and their implementation. This was shown by the fact that distribution of alcoholic beverages is a State monopoly and by the licence system here at issue. They recalled that what is at stake is an important part of Swedish social policy and that the granting or withdrawal of a licence of this kind may even be said to fall within an essential field of public law.

Finally, the Government argued that it had not been established that the licence in question was essential to the applicant's entire activity and that, therefore, the effect of its revocation on TTA's business had in fact been only "indirect or tenuous".

43. Like the Commission, the Court notes that the withdrawal of the licence had adverse effects on the goodwill and the value of the restaurant business run by TTA. Accordingly, it is satisfied that the maintenance in force of the licence to which the applicant claimed to be entitled was one of the principal conditions for carrying on its business activities in Le Cardinal.

It is true that in Sweden the wholesale distribution of alcohol is a State monopoly; however, the serving of alcoholic beverages in restaurants and bars is entrusted mainly to private persons and companies through the issuing of licences (see paragraph 24 above). In such a case, the persons and companies concerned carry on a private commercial activity, which has the object of earning profits and is based on a contractual relationship between the licence-holder and the customers (see the above-mentioned Pudas judgment, Series A no. 125-A, p. 16, para. 37).

Taking into account these circumstances, the Court is of the view that the features of public law mentioned by the Government do not suffice to exclude from the category of "civil rights" within the meaning of Article 6 para. 1 (art. 6-1) the rights conferred on TTA by virtue of the licence.

(c) Conclusion

44. The dispute in question did therefore concern a "civil right" of the applicant company and Article 6 para. 1 (art. 6-1) is thus applicable in the present case.

2. Determination of a "criminal charge"

45. According to the applicant company, section 64 of the 1977 Act provides for sanctions against licensees, which must be considered to be of a criminal character. Furthermore, in its decision of 13 July 1983 the National Board of Health and Welfare had applied section 64(2) as amended

in 1982 (see paragraph 19 above), whereas the facts which underlay the decision went back to 1980-1981 (see paragraph 11 above). There was thus, in TTA's opinion, a retroactive application of criminal provisions and, in consequence, also a violation of Article 6 para. 2 and Article 7 (art. 6-2, art. 7) of the Convention.

46. The Court considers that the withdrawal of TTA's licence did not constitute the determination of a criminal charge against it. Although the revocation may be regarded as a severe measure, it cannot be characterised as a penal sanction; even if it was linked with the licensee's behaviour, what was decisive was suitability to sell alcoholic beverages.

It follows that Article 6 para. 1 (art. 6-1) is not applicable to the case in this respect; nor are Article 6 para. 2 and Article 7 (art. 6-2, art. 7).

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

47. According to the Court's case-law, Article 6 (art. 6) secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal (see the Golder judgment of 21 February 1975, Series A no. 18, p. 18, para. 36). Having regard to its conclusion at paragraph 44 above, the Court must thus ascertain whether TTA had the possibility of submitting its claim concerning the lawfulness of the revocation of the licence in question to a tribunal meeting the requirements of Article 6 para. 1 (art. 6-1).

48. The dispute in question was determined by the County Administrative Board, in its decisions of 7 January and 18 July 1983 (see paragraphs 16 and 20 above), and on appeal by the National Board of Health and Welfare on 13 July and 15 August 1983 (see paragraphs 19 and 21 above). The latter's decision rejecting TTA's appeal for a stay of execution (see paragraph 21 above) was not open to review as to its lawfulness by either the ordinary or the administrative courts or by another body which could be considered a "tribunal" for the purposes of Article 6 para. 1 (art. 6-1). Furthermore, the Government did not seem to contest that none of the above-mentioned administrative bodies met the requirements of a "tribunal", and the Court agrees with the Commission and the applicant that they did not.

49. The Government also contended that persons who considered themselves to be victims of an administrative error or a decision contrary to Swedish law might bring an action against the State before the ordinary courts and claim compensation under the Tort Liability Act (see paragraph 32 above). The Court, however, points out that the dispute at issue here

concerned the question whether TTA's licence should be revoked and not the authorities' liability for fault or negligence. In this latter connection, the Chancellor of Justice had expressed the opinion on 5 March 1984 that such liability did not exist (see paragraph 22 above).

In these circumstances, this remedy does not meet the requirements of Article 6 (art. 6).

C. Conclusion

50. The Court thus concludes that there has been a violation of Article 6 para. 1 (art. 6-1) of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 (art. 13) OF THE CONVENTION

51. The applicant company contended that, contrary to Article 13 (art. 13) of the Convention, no "effective remedy before a national authority" existed in respect of the matters of which it complained. This allegation was based on the same facts as that under Article 6 para. 1 (art. 6-1).

Taking into account that the requirements of Article 13 (art. 13) are less strict than, and are here absorbed by, those of Article 6 para. 1 (art. 6-1), and that it has already found a violation of the latter Article (art. 6-1) (see paragraph 50 above), the Court does not find it necessary to consider the matter further (see, inter alia, the above-mentioned Pudas judgment, Series A no. 125-A, p. 17, para. 43).

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 (P1-1)

52. The applicant company further submitted that there had been in its case a violation of Article 1 of Protocol No. 1 (P1-1) ("the Protocol"), which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Applicability of Article 1 of the Protocol (P1-1)

53. The Government argued that a licence to serve alcoholic beverages could not be considered to be a "possession" within the meaning of Article 1 of the Protocol (P1-1). This provision was therefore, in their opinion, not applicable to the case.

Like the Commission, however, the Court takes the view that the economic interests connected with the running of Le Cardinal were "possessions" for the purposes of Article 1 of the Protocol (P1-1). Indeed, the Court has already found that the maintenance of the licence was one of the principal conditions for the carrying on of the applicant company's business, and that its withdrawal had adverse effects on the goodwill and value of the restaurant (see paragraph 43 above).

Such withdrawal thus constitutes, in the circumstances of the case, an interference with TTA's right to the "peaceful enjoyment of [its] possessions".

B. The Article 1 (P1-1) rule applicable to the case

54. Article 1 (P1-1) in substance guarantees the right of property (see the Marckx judgment of 13 June 1979, Series A no. 31, pp. 27-28, para. 63). It comprises "three distinct rules": the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property by enforcing such laws as they deem necessary in the general interest (see the Sporrong and Lönnroth judgment of 23 September 1982, Series A no. 52, p. 24, para. 61). However, the three rules are not "distinct" in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, inter alia, the Lithgow and Others judgment of 8 July 1986, Series A no. 102, p. 46, para. 106).

55. Severe though it may have been, the interference at issue did not fall within the ambit of the second sentence of the first paragraph. The applicant company, although it could no longer operate Le Cardinal as a restaurant business, kept some economic interests represented by the leasing of the

premises and the property assets contained therein, which it finally sold in June 1984 (see paragraph 23 above). There was accordingly no deprivation of property in terms of Article 1 of the Protocol (P1-1).

The Court finds, however, that the withdrawal of TTA's licence to serve alcoholic beverages in Le Cardinal constituted a measure of control of the use of property, which falls to be considered under the second paragraph of Article 1 of the Protocol (P1-1).

C. Compliance with the requirements of the second paragraph

1. Lawfulness and purpose of the interference

56. The applicant company did not contest the legitimacy of the aim of the 1977 Act, and agreed with the Government that it was to implement the long-standing Swedish policy of restricting the consumption and abuse of alcohol. However, it criticised the actual measures of implementation taken by the National Board of Health and Welfare and the County Administrative Board. It complained, first, that they were adopted on the basis of section 64(2), as amended with effect from 1 July 1982, and therefore represented a retroactive application of this section to facts which had taken place in 1980-1981; and secondly, that they did not pursue the aforesaid aim, but sought to obtain the payment of taxes, thus constituting an abuse of power (détournement de pouvoir).

57. By subjecting the sale of alcoholic beverages to a system of licences, the Swedish legislature took measures to implement the national policy in this field. This was in line with Swedish social policy generally and the Court does not doubt that the aim so pursued was the control of the use of property in accordance with the general interest.

58. As to the actual measure of withdrawal in question, the Court notes that the National Board of Health and Welfare relied in its decision of 13 July 1983 on section 64(2) of the 1977 Act taken together with sections 40 and 70.

The Court's power to review compliance with domestic law is limited. It is in the first place for the national authorities to interpret and apply that law (see the Chappell judgment of 30 March 1989, Series A no. 152-A, p. 23, para. 54), and nothing in the above-mentioned decision suggests that it was contrary to Swedish law.

Neither is there anything in the facts to support the applicant company's contention that the revocation of its licence did not seek the same purpose as the 1977 Act. In the said decision, the National Board of Health and Welfare had referred to the "great social responsibility" involved in the selling of

alcoholic beverages, and had concluded, taking into account the explanations given by TTA as to the thefts of such beverages, that "those who have had a decisive influence on the business have failed to demonstrate sufficient competence regarding both book-keeping and internal control" (see paragraph 19 above).

Thus, the withdrawal of TTA's licence was lawful and pursued the general interest.

2. Proportionality of the interference

59. As was pointed out in the James and Others judgment of 21 February 1986 (Series A no. 98, p. 30, para. 37), the second paragraph of Article 1 of the Protocol (P1-1) has to be construed in the light of the general principle set out in the first sentence of this Article (P1-1). This sentence has been interpreted by the Court as including the requirement that a measure of interference should 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 (see, inter alia, the above-mentioned Sporrong and Lönnroth judgment, Series A no. 52, p. 26, para. 69). The search for this balance is reflected in the structure of Article 1 (P1-1) as a whole (ibid.) and hence also in the second paragraph. There must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see the above-mentioned James and Others judgment, p. 34, para. 50).

60. The Government submitted that for the purposes of applying Article 1 (P1-1) of the Protocol the competent authorities enjoy a wide margin of appreciation. That margin was particularly wide with regard to Parliament, whose assessment as to the need for legislation, its aims and its effects should be accepted by the Convention institutions unless it was manifestly unreasonable and imposed an "excessive burden" on the person concerned (see, inter alia, the above-mentioned James and Others judgment, Series A no. 98, pp. 32 and 34, paras. 46 and 50). However, the applicant company had not shown that the closing of Le Cardinal was a consequence of the withdrawal of the licence; thus no economic damage flowed therefrom.

61. In respect of this latter point, the Court refers to its statement in paragraph 53 above. It sees no reason to exclude that the restaurant Le Cardinal closed on 19 July 1983 as a result of the County Administrative Board's decision of 18 July to revoke, with immediate effect, the licence to serve alcoholic beverages. Furthermore, no stay of execution having been granted by the National Board of Health and Welfare (see paragraph 21 above), the financial repercussions of the revocation were serious. The

Court thus agrees with the Commission that this was a severe measure in the circumstances.

It is true that the measure in question could have been foreseen, especially after the County Administrative Board had informed TTA on 4 November 1982 that it was considering taking this course of action (see paragraph 15 above). But it must be borne in mind that, after that date, the competent authorities took three positive decisions in respect of the applicant company: on 7 January 1983 the County Administrative Board decided in the same proceedings to issue only an admonition against TTA under section 64, having regard to the considerable time which had elapsed - almost three years - since the discrepancies in the book-keeping of AB Citykällaren had occurred and to the fact that in the meantime there had been no further deficiencies (see paragraph 16 above); on 14 January the same Board renewed the applicant company's licence for Le Cardinal, extending the serving hours until 2.00 a.m. (see paragraph 17 above); and on 27 May the District Court of Helsingborg acquitted Mrs Flenman of the offence of hindering control by the fiscal authorities (see paragraph 13 above).

On the other hand, the discrepancies in the book-keeping of AB Citykällaren concerning the sale of alcoholic beverages were very significant in relation to the total turnover of the company (see paragraph 11 above). The fact that, according to TTA's representatives, these discrepancies were due to thefts does not invalidate the conclusion of the National Board of Health and Welfare that this showed inadequate book-keeping and internal control (see paragraphs 15 and 19 above), though the District Court had found that the existence of intent or gross negligence had not been established (see paragraph 13 above).

62. The "burden" placed on TTA as a result of the contested decisions, though heavy, must be weighed against the general interest of the community. In this context, the States enjoy a wide margin of appreciation.

Even though the County Administrative Board and the National Board of Health and Welfare could have taken less severe measures under section 64 of the 1977 Act (see paragraph 27 above), the Court, having regard to the legitimate aim of Swedish social policy concerning the consumption of alcohol, finds that the respondent State did not fail to strike a "fair balance" between the economic interests of the applicant company and the general interest of Swedish society.

3. Conclusion

63. The Court thus concludes that there has been no violation of Article 1 of the Protocol (P1-1).

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

64. Article 50 (art. 50) provides:

> "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 applicant company sought compensation for pecuniary damage and reimbursement of its costs and expenses.

A. Pecuniary damage

65. The applicant company claimed that the proceedings leading to the revocation of its licence caused it losses amounting to 3,996,000 SEK; to this amount had to be added an allowance for inflation at the annual rate of 5% and interest at 16% per annum. Furthermore, because of the audit report, Mrs Flenman's taxable income had been increased by 100,000 SEK (see paragraph 12 above); although eventually the County Court reduced this amount and the authorities made a refund of tax, this did not reflect the annual inflation rate and the claim also extended to this aspect of the case.

66. The Court agrees, however, with the Government's contention that there is no causal link between any of the alleged pecuniary damage and the violation of Article 6 para. 1 (art. 6-1) found in this judgment. The withdrawal of the licence admittedly had adverse effects on the goodwill and the value of the restaurant Le Cardinal (see paragraph 43 above). Nevertheless, the Court cannot speculate as to what the result of the proceedings might have been if the applicant company had been able to bring this question before a court. The increase in Mrs Flenman's taxable income, for its part, had no direct relationship with the revocation of the licence.

No award can therefore be made in respect of pecuniary damage.

B. Costs and expenses

67. The applicant company claimed, as costs and expenses:

(a) the fees of Mr Bergkrans, TTA's counsel during the initial phase of the domestic proceedings (16,000 SEK);

(b) Mr Ravnsborg's fees - 65 hours' work at 1,400 SEK per hour (91,000 SEK);

(c) the expenses in connection with Mr Ravnsborg's journeys to Strasbourg for the proceedings before the Commission and the Court (11,000 SEK).

68. The Government, while agreeing to item (c), expressed doubts as to the necessity of item (a). As to item (b), they considered the hourly rate excessive and proposed instead a rate of 700 SEK.

69. Taking into account all relevant circumstances, including the fact that the sole aspect of the case on which the present judgment has found a violation of the Convention is the claim under Article 6 para. 1 (art. 6-1), and making an assessment on an equitable basis, as is required by Article 50 (art. 50), the Court considers that the applicant company is entitled to be reimbursed, for legal costs and expenses, the sum of 60,000 SEK.

FOR THESE REASONS, THE COURT

1. Holds by six votes to one that Article 6 para. 1 (art. 6-1) of the Convention is applicable in the present case in its civil aspect but not in its criminal aspect;

2. Holds by six votes to one that there has been a violation of Article 6 para. 1 (art. 6-1);

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

4. Holds unanimously that Article 1 of Protocol No. 1 (P1-1) is applicable in the present case;

5. Holds unanimously that there has been no violation of Article 1 (P1-1);

6. Holds by six votes to one that Sweden is to pay to the applicant company, for costs and expenses, 60,000 (sixty thousand) Swedish crowns;

7. Rejects unanimously the remainder of the claim for just satisfaction.

Done in English*, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 7 July 1989.

Rolv RYSSDAL
President

For the Registrar
Herbert PETZOLD
Deputy Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 52 para. 2 of the Rules of Court, the separate opinion of Mr Pinheiro Farinha is annexed to the present judgment.

R.R.
H.P.

* Note by the Registrar: As a derogation from the usual practice (Rules 26 and 27 para. 5 of the Rules of Court), the French text was not available until August 1989, but it too is authentic.

DISSENTING OPINION OF JUDGE PINHEIRO FARINHA

(Translation)

1. I voted against finding a violation of Article 6 para. 1 (art. 6-1) of the European Convention on Human Rights because I considered that this provision was not applicable.

2. The right in question was not a civil right, but the right to carry on an activity - serving alcoholic drinks in a restaurant - whose exercise is subject to the grant by the authorities of a licence, which is not transferable (see paragraph 17 of the judgment) and which may be revoked. If the manager of the premises does not provide the necessary guarantees or if he fails to satisfy the conditions laid down, the licence may lawfully be withdrawn from him (see paragraphs 27 and 28).

The grounds on which a licence may be revoked fall exclusively within the administrative sphere and relate to the achievement of social policy objectives, so that disputes arising from such a measure are not covered by Article 6 para. 1 (art. 6-1) of the Convention.