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

COURT (PLENARY)

CASE OF LANGBORGER v. SWEDEN

(Application no. 11179/84)

JUDGMENT

STRASBOURG

22 June 1989

In the Langborger case*,

The European Court of Human Rights, taking its decision in plenary session pursuant to Rule 50 of the Rules of Court and composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr J. CREMONA,
Mr Thór VILHJÁLMSSON,
Mrs D. BINDSCHEDLER-ROBERT,
Mr F. GÖLCÜKLÜ,
Mr F. MATSCHER,
Mr J. PINHEIRO FARINHA,
Mr L.-E. PETTITI,
Mr B. WALSH,
Sir Vincent EVANS,
Mr R. MACDONALD,
Mr C. RUSSO,
Mr R. BERNHARDT,
Mr A. SPIELMANN,
Mr J. DE MEYER,
Mr J.A. CARRILLO SALCEDO,
Mr N. VALTICOS,
Mr S.K. MARTENS,
Mrs E. PALM,
Mr I. FOIGHEL,

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

Having deliberated in private on 23 February and 23 May 1989,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 18 December 1987, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention for the Protection of Human Rights and Fundamental

* Note by the registry: The case is numbered 20/1987/143/197. The second figure indicates the year in which the case was referred to the Court and the first figure indicates its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

Freedoms ("the Convention"). It originated in an application (no. 11179/84) against Sweden lodged with the Commission under Article 25 (art. 25) by a Swedish national, Mr Rolf Langborger, on 7 September 1984.

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 object of the request was to obtain a decision from the Court as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 6, 8, 11 and 13 (art. 6, art. 8, art. 11, art. 13) of the Convention and Article 1 of Protocol No. 1 (P1-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings pending before the Court and designated the person who would represent him (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 29 January 1988, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr J. Cremona, Mr Thór Vilhjámsson, Mr J. Pinheiro Farinha, Mr L.-E. Pettiti and Mr J. Gersing (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mrs D. Bindschedler-Robert, substitute judge, and the newly elected judge of Swedish nationality, Mrs E. Palm, who took up her duties before the hearing, replaced respectively Mr Gersing, who had died, and Mr Lagergren, who had resigned (Article 43 of the Convention and Rules 2 para. 3, 22 para. 1 and 24 para. 1) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Swedish Government ("the Government"), the Delegate of the Commission and the applicant's representative on the need for a written procedure (Rule 37 para. 1). In accordance with the order made in consequence, the registry received the applicant's memorial on 2 May 1988 and the Government's memorial on 5 May 1988.

In a letter which reached the registry on 21 June 1988, the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 12 December 1988 that the oral proceedings should open on 21 February 1989 (Rule 38).

5. On 27 January 1989 the Chamber decided under Rule 50 to relinquish jurisdiction forthwith in favour of the plenary Court.

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 at the
Ministry of Foreign Affairs, *Agent*,
Mrs L. MOORE, Legal Adviser
at the Ministry of Justice,
Mr H. JULIUS, Legal Adviser
at the Ministry of Housing and Town Planning,
Mr P. BOQVIST, Legal Adviser
at the Ministry of Foreign Affairs, *Counsel*;
- for the Commission
Sir Basil HALL, *Delegate*;
- for the Applicant
Mr B. GRENNBERG, Patent Agent, *Counsel*.

The Court heard addresses by Mr Corell for the Government, by Sir Basil Hall for the Commission and by Mr Grennberg for the applicant, as well as their replies to its questions.

The Commission and the Government lodged documents on 22 February and 20 March 1989 respectively.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

A. Introduction

7. Mr Rolf Langborger is a Swedish national born in 1922. He is a consultant engineer and resides at Solna, a town in the immediate vicinity of Stockholm.

On 1 October 1982 he rented an apartment. The lease contained a "negotiation clause" (förhandlingsklausul, see paragraph 16 below) which was worded as follows:

> "During the running of the lease the parties undertake to accept, without prior termination of the lease, the rent and other conditions agreed upon on the basis of the negotiation agreement (förhandlingsordning) in force between, on the one hand, a landlords' union affiliated to the Swedish Federation of Property Owners (Sveriges Fastighetsägareförbund) and a landlord, who with his property is affiliated to such a union, and, on the other hand, a tenants' union affiliated to the National Tenants' Union (Hyresgästernas riksförbund)."

An agreement between the two unions laid down the negotiating procedure. For conducting the negotiations the tenants' union in question received a commission of 0.3% of the rent (see paragraph 16 below).

8. The applicant was dissatisfied with the rent and with the fact that he was represented by the Tenants' Union of the Greater Stockholm Area (hyresgästföreningen i Stor-Stockholm, "the Tenants' Union"). He therefore gave notice of his intention to terminate the lease in accordance with Chapter 12, section 54 of the Land Act (jordabalken), with a view to having its terms altered. He proposed to the landlord the conclusion of a new agreement with a fixed rent and no negotiation clause. Following the rejection of his offer, he brought the dispute before the Rent Review Board (hyresnämnden) for Stockholm County on 23 June 1983.

B. Proceedings before the Rent Review Board

9. In accordance with the legislation in force (see paragraph 19 below), the section of the Rent Review Board which examined the case was composed of a chairman and two lay assessors (intresseledamöter). At the time of his appointment, the chairman, Mr Göran Hogebrandt, held a non-permanent judicial appointment as an associate judge in the Court of Appeal. The two assessors, who were nominated respectively by the Swedish Federation of Property Owners and the National Tenants' Union, were experts on the administration of apartment buildings and on the problems of tenants. One, Mr Jan Åke Hedin, the managing director of his own electricity business, was also the president of one of the district associations affiliated to the Stockholm Landlords' Union (Stockholms Fastighetsägareförening, "the Landlords' Union"). The other, Mr Gösta Gröndahl, a retired customs official, was a member of the Tenants' Union and had previously been the president of one of the district associations for nine years.

10. The applicant first challenged the two lay assessors because they had been nominated by a landlords' association and a tenants' organisation (see paragraph 19 below). He considered that they could not decide his case objectively and impartially because the Tenants' Union depended for its existence on the sums paid to it for conducting the rent negotiations (see paragraph 16, last sub-paragraph, below) and the Landlords' Union also derived a major part of its raison d'être from its participation in these negotiations. In addition he claimed that there was a risk of discrimination on political grounds because the Tenants' Union was socialist in outlook, whereas he was a local elected representative belonging to a moderate right wing grouping. As regards the merits, he sought the deletion of the negotiation clause from the lease and contested the amount of the rent.

11. On 17 November 1983 the Rent Review Board held a hearing at which the applicant and his representative and the landlord's representative were present.

The chairman dismissed the applicant's challenge because the rules governing the appointment of the lay assessors did not in themselves provide a ground for such a challenge and because there were no other grounds on which it could be based.

After having heard the views of the parties as to the merits of the case, the Rent Review Board went on to state that its decision would be available at its secretariat on 1 December 1983.

On that date it dismissed Mr Langborger's claims. Its decision, which was communicated to him through the post, referred, inter alia, to the declarations of the competent minister during the examination of the Rent Negotiation Bill (see paragraph 16 below) regarding the discretion conferred on rent review boards in deciding whether negotiation clauses should be retained.

C. The proceedings in the Housing and Tenancy Court

12. Mr Langborger appealed from this decision to the Housing and Tenancy Court (bostadsdomstolen). He relied on Articles 6, 11 and 13 (art. 6, art. 11, art. 13) of the Convention and sought a thorough examination of the challenge which he had submitted at first instance; he also challenged the lay assessors of this court. As to the merits, he repeated his claim that he should not be represented by the Tenants' Union and that he should be permitted to fix his rent in direct negotiations with the landlord.

13. The court which examined the applicant's appeal was composed of four members (see paragraph 23 below).

The President, Mr Hans Svahn, had, until his appointment to the Housing and Tenancy Court, presided over a Chamber of the Svea Court of Appeal and still retained this post, on a formal basis, while exercising his new function.

The other lawyer, who acted as rapporteur, Mr Hans Anderberg, remained a Rent Judge (see paragraph 19 below).

The two lay assessors had (like the assessors sitting on the Rent Review Board) been nominated by, respectively, the Swedish Federation of Property Owners and the National Tenants' Union (see paragraph 22 below). One was an expert on the administration of apartment buildings and the other on tenants' problems. The first, Mr Bertil Tullberg, was a titular lay assessor; before retiring he had worked for the Stockholm Landlords' Union as legal adviser from 1943 and then as its managing director. The second, Mrs Märta Kåremo, was a salaried official of the National Tenants' Union, where she was responsible for staff legal training. She sat on the Housing and Tenancy Court as a substitute lay assessor.

14. The landlord of the flat was represented by the same official of the Landlords' Union who had assisted him before the Rent Review Board (see paragraph 11 above).

15. On 28 December 1983 the Housing and Tenancy Court informed Mr Langborger by letter that it considered that it might "determine the case as it was constituted at present and without a hearing".

On 23 February 1984 the rapporteur rejected the application challenging the two lay assessors. The rules governing their appointment could not in themselves constitute valid grounds for their disqualification.

On 2 April 1984 the Housing and Tenancy Court dismissed the remainder of Mr Langborger's appeal and upheld the Rent Review Board's decision. It gave its ruling in private, in the absence of the parties and without having held a hearing. Its decision was final.

The applicant received a photocopy of this decision through the post. On 17 April 1984 he obtained a copy of the decision of 23 February which, by error, had not yet been sent to him.

II. DOMESTIC LEGISLATION AND CASE-LAW

A. The negotiation clause

16. Section 2 of the 1978 Rent Negotiation Act (hyresförhandlingslagen, "the 1978 Act") defines the negotiation clause as a provision in a lease whereby the tenant agrees to be bound by the terms of the lease, in particular regarding the rent, as accepted by the association conducting the negotiations. It provides that this clause is introduced or retained if this is not unreasonable, having regard to the tenant's standard of living and his opinion and to the opinion of other tenants affected by the clause.

A dispute regarding the insertion or retention of a negotiation clause may be submitted to a rent review board. According to the preparatory documents, this possibility was introduced to provide legal protection for private individuals, in particular those who were not members of the organisations which participated in the negotiations. The board may exempt the party concerned from the obligation to accept a negotiation clause; in deciding whether to do so, it must, inter alia, weigh the interest in adopting a rational approach to rent negotiations against the fundamental need for the greatest possible contractual freedom for the individual (Government Bill No. 1977/78:175, p. 130 et seq.).

Section 1 provides that these conditions are to be negotiated between, on the one hand, the landlord or the landlord and a landlords' organisation and, on the other hand, a tenants' organisation. The tenant - who therefore has no right to negotiate - need not be a member of the organisation. Under section

3, the system applies in principle to all the flats in a building. These negotiations, which must be conducted in the manner laid down in the Act, are not compulsory but depend on the desiderata of the parties. If one of them refuses to conclude an agreement, the dispute may be referred to the Rent Review Board.

Under section 20, the rent may incorporate the amount - a percentage of the rent agreed in the negotiations - payable to the tenants' organisation for its role in these negotiations.

17. The principal advantage which the landlords' associations derive from the system is that they only have to negotiate rents with the tenants' organisations and not with the individual tenants. For their part the tenants' organisations can exert, through their right to represent the tenants, a continuous and durable influence on the conditions of the market in rental accommodation.

At present this system applies to all accommodation owned by public organisations and to 80% of privately owned buildings comprising more than two flats.

B. The Rent Review Boards

18. Rent review boards were set up by the 1973 Lease Review Boards and Rent Review Boards Act (lag 1973:188 om arrendenämnder och hyresnämnder, the "1973 Act"). They hear, inter alia, disputes on rents arising in connection with the provisions of Chapter 12 of the Land Act.

19. Under section 5, each rent review board is composed of a chairman - referred to as a Rent Judge - and two lay assessors, one of whom must be familiar with the problems of the administration of property and the other with those of tenants.

The chairman is appointed by the Government or by an authority delegated by them, on the recommendation - which is always requested, except in three specific cases - of the Judicial Appointments Recommendation Board (tjänsteförslagsnämnd). He must have legal training and his post is full-time.

The lay assessors are appointed by the National Board of the Judiciary (Domstolsverket) for a term of office of three years, which is generally renewed. Under section 6 para. 2 of the 1973 Act, the representative organisations of the housing sector (essentially the Swedish Federation of Property Owners and the National Tenants' Union) must be able to put forward candidates when the appointment to be made concerns their interest group. The persons selected sit in a personal capacity and not as the representatives of their organisations.

The lay assessors are not designated in advance for each case, but carry out their functions in accordance with a prepared schedule; their duties are

not full-time. In addition, if a board has several sections, cases are, in practice, allocated on a geographical basis.

20. In principle, proceedings before a rent review board are oral. They are governed by the general provisions of the Administrative Act (förvaltningslagen), although the Code of Judicial Procedure applies for certain formalities.

The board's decisions must contain a statement of reasons and be given in public. They are pronounced on the day of the hearing or within two weeks thereof at the latest. A copy is sent to the parties.

C. The Housing and Tenancy Court

21. The Housing and Tenancy Court was set up by an Act of 1974 (lag 1974:1081 om bostadsdomstol, "the 1974 Act") and has jurisdiction for the whole of Sweden. It hears appeals lodged against the decisions of the rent review boards. Its judgments are final.

22. The court is composed of at least three lawyers ("Housing Judges"), a technical assessor - who in certain cases replaces one of the lawyers - and a maximum of twelve lay assessors. All the members are appointed by the Government for a term of office of three years which is renewable. The lawyer members are, in general, judges, while the lay assessors are experts on the housing market. An identical nomination procedure to that operating for the appointment of lay assessors to rent review boards (see paragraph 19 above) applies.

23. The court is always presided over by a lawyer. It can sit with seven members or, as in this instance, with four. In the latter case, there must be two housing judges and two lay assessors. If they are unable to reach a majority decision, the president has a casting vote.

The proceedings are written, but a hearing may be held if that appears to be necessary for the purposes of the investigation. In some cases argument is taken on a specific point, while in others it concerns the case as a whole.

The Housing and Tenancy Court applies the general provisions of the Code of Judicial Procedure. Except in certain cases - which are not relevant here - its judgments are given in public. If the court cannot give a decision at a hearing, it makes the text thereof available to the parties at the registry and communicates to them a copy by post.

24. The Supreme Court (Högsta domstolen) has had occasion to rule on the independence and impartiality of a lay assessor who had to sit in a case involving the association which had nominated him (judgment of 21 September 1982, case no. Ö 600/81, Hyresgästföreningen Kroken, in Nytt Juridiskt Arkiv (NJA), 1982, p. 564). It held that there was no ground for allowing the challenge.

The Supreme Court first considered the lay assessors' position in general. It pointed out that their presence was "designed to ensure that there were

persons on the court who are well acquainted with the questions with which the court has to deal and who can, in an authoritative way, express the ideas of the interest groups concerned."

It held that:

> "... the fact that a member, generally speaking, represents a certain interest group does not mean that he is biased when dealing with a case where one of the parties belongs to this interest group. As was stressed in the preparatory documents (NJA II 1974, p. 546), it is not intended that the lay assessors in their capacity as judges should feel bound by the interests which they can be said to represent. They should, like the other members, carry out their duties as independent judges and not as representatives of party interests."

Turning then to the case at hand, it rejected the challenge which was based on "the viewpoint that every member who is closely linked to the tenants' movement, for that reason alone, is biased when dealing with such a case".

In setting out its reasoning the Supreme Court said inter alia:

> "... it should first be pointed out that it is not the task of the lay assessors of the Housing and Tenancy Court to represent their organisations. They should represent the whole interest group in question without regard to their involvement in a particular organisation. The legislation is obviously based on the assumption that the lay assessors will be able to deal impartially with disputes even where the interests of their organisation are directly at issue, and it is not compatible with the provisions of the Act generally to regard members attached to an organisation as biased in such disputes."

The Court added however:

> "there may of course be grounds for challenging a member of the court if he has been involved in the dispute before the court."

PROCEEDINGS BEFORE THE COMMISSION

25. Mr Langborger's application to the Commission (no. 11179/84) was lodged on 7 September 1984. He alleged that he had not been given a public hearing by an independent and impartial tribunal. He also complained of a breach of his rights to respect for his home, his freedom of association and enjoyment of his possessions and of the lack of an effective remedy before a national "authority". He relied on Articles 6 para. 1, 8, 11 and 13 (art. 6-1, art. 8, art. 11, art. 13) of the Convention and Article 1 of Protocol No. 1 (P1-1).

26. The Commission found the application admissible on 9 July 1986. In its report of 8 October 1987 (Article 31) (art. 31), it expressed the unanimous opinion that:

- there had been a failure to comply with the requirements of Article 6 para. 1 (art. 6-1) of the Convention regarding impartiality;

- there had been no violation of Articles 8 and 11 (art. 8, art. 11) of the Convention and Article 1 of Protocol No. 1 (P1-1);

- it was not necessary to consider separately the complaint based on Article 13 (art. 13) of the Convention, nor to determine whether there had been a failure to observe Article 6 para. 1 (art. 6-1) as regards the requirement of a public hearing and a public pronouncement of the judgment.

The full text of the Commission's opinion is reproduced as an annex to the present judgment.

FINAL SUBMISSIONS MADE TO THE COURT BY THE GOVERNMENT

27. At the hearing on 21 February 1989, the Government confirmed their submission made in their memorial inviting the Court "to hold that there has been no violation of the Convention in the present case".

AS TO THE LAW

I. PRELIMINARY OBSERVATION

28. The applicant argued that his various complaints were to be "taken together" and had "a common cause".

The Court considers it necessary first to take separately the different articles relied upon. It will then appraise the case in the light of the complaints viewed together.

II. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION

29. Mr Langborger alleged the violation of paragraph 1 of Article 6 (art. 6-1) of the Convention, which is worded as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ... ".

A. "Independent and impartial" tribunal

30. In the applicant's submission, his claim for a fixed rent and no negotiation clause was not examined by an independent and impartial

tribunal. His true opponents, he argued, were the landlords' association and tenants' organisation inasmuch as his proposal to delete the negotiation clause from the lease threatened the interests of both organisations since they derived their very existence from rent negotiations. As the lay assessors sitting on the Rent Review Board and the Housing and Tenancy Court were committed to the defence of those interests, they could not assess his claim with the necessary independence and impartiality.

This view was contested by the Government.

Like the Commission, the Court will limit its examination to the Housing and Tenancy Court. This body was the last national organ to determine both the questions of fact and the legal issues in dispute (the Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 23, para. 51).

31. When it decided the applicant's case, the Housing and Tenancy Court was composed of two professional judges and two lay assessors nominated respectively by the Swedish Federation of Property Owners and the National Tenants' Union, and then appointed by the Government (see paragraphs 13 and 22 above). The independence and impartiality of the professional judges are not at issue. It remains to consider the position of the two lay assessors.

32. In order to establish whether a body can be considered "independent", regard must be had, inter alia, to the manner of appointment of its members and their term of office, to the existence of guarantees against outside pressures and to the question whether the body presents an appearance of independence (see, inter alia, the Campbell and Fell judgment of 28 June 1984, Series A no. 80, pp. 39-40, para. 78).

As to the question of impartiality, a distinction must be drawn between a subjective test, whereby it sought to establish the personal conviction of a given judge in a given case, and an objective test, aimed at ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see, amongst other authorities, the De Cubber judgment of 26 October 1984, Series A no. 86, pp. 13-14, para. 24).

In this case it appears difficult to dissociate the question of impartiality from that of independence.

33. The proceedings instituted in the Housing and Tenancy Court concerned essentially the question whether the negotiation clause was to be retained (see paragraphs 10 and 12 above) and not how it was to be applied (the fixing of the rent payable by Mr Langborger).

34. Because of their specialised experience, the lay assessors, who sit on the Housing and Tenancy Court with professional judges, appear in principle to be extremely well qualified to participate in the adjudication of disputes between landlords and tenants and the specific questions which may arise in such disputes. This does not, however, exclude the possibility

that their independence and impartiality may be open to doubt in a particular case.

35. In the present case there is no reason to doubt the personal impartiality of the lay assessors in the absence of any proof.

As regards their objective impartiality and the question whether they presented an appearance of independence, however, the Court notes that they had been nominated by, and had close links with, two associations which both had an interest in the continued existence of the negotiation clause. As the applicant sought the deletion from the lease of this clause, he could legitimately fear that the lay assessors had a common interest contrary to his own and therefore that the balance of interests, inherent in the Housing and Tenancy Court's composition in other cases, was liable to be upset when the court came to decide his own claim.

The fact that the Housing and Tenancy Court also included two professional judges, whose independence and impartiality are not in question, makes no difference in this respect.

36. Accordingly, there has been a violation of Article 6 para. 1 (art. 6-1).

B. Lack of a public hearing and public pronouncement

37. Mr Langborger also complained of a lack of a public hearing and of the fact that there was no public pronouncement of the Housing and Tenancy Court's decision.

In accordance with the Commission's opinion and in the light of the conclusion reached in the preceding paragraph, the Court does not consider it necessary to rule on a complaint which, moreover, the applicant has not pursued before it.

III. ALLEGED VIOLATION OF ARTICLES 8 AND 11 (art. 8, art. 11) OF THE CONVENTION

38. Mr Langborger further alleged a breach of his right to respect for his "home" within the meaning of Article 8 (art. 8). He considered that the power, conferred on the Tenants' Union, to negotiate on his behalf the amount of the rent for the flat in which he lived was incompatible with the requirements of this provision because the rights and obligations deriving from the lease were, in his view, rooted in the notion of "home".

He also complained of a violation of his freedom of association guaranteed under Article 11 (art. 11), on the ground that he had to accept, against his will, the services of the Tenants' Union in the negotiations, for which services he also had to pay.

The Government disputed these views.

39. The Court finds that the questions raised under these heads do not come within the scope of the Articles relied upon.

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

40. According to Mr Langborger, the legal obligation to make financial contributions to the Tenants' Union (see paragraphs 7 and 16 above) also entails a deprivation of possessions contrary to Article 1 of Protocol No. 1 (P1-1), according to which:

> "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."

41. In the Court's view, the obligation to pay the small sums involved cannot be regarded as inconsistent with this Article (P1-1).

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

42. Finally, the applicant relied on Article 13 (art. 13) of the Convention, which provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

He claimed that he did not have any effective remedy against the various breaches of the Convention of which he complained.

43. With regard to the alleged violations of Article 6 (art. 6) of the Convention, the Court, like the Commission, does not find it necessary to examine the case under Article 13 (art. 13), whose requirements are less strict than, and are here absorbed by, those of Article 6 (art. 6) (see, inter alia, the Pudas judgment of 27 October 1987, Series A no. 125-A, p. 17, para. 43).

Moreover, Article 13 cannot here be taken in conjunction with Articles 8 and 11 (art. 13+8, art. 13+11) of the Convention, which are themselves inapplicable (see paragraphs 38-39 above), or with Article 1 of Protocol No. 1 (art. 13+P1-1) because the complaint based on that provision has not given rise to an "arguable" claim (see paragraph 41 above).

VI. EXAMINATION OF THE COMPLAINTS VIEWED TOGETHER

44. After having considered the different Articles separately, the Court examined the case in the light of all the complaints viewed together. This appraisal did not lead it to alter the various conclusions set out above.

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

45. Mr Langborger sought just satisfaction under Article 50 (art. 50), according to which

> "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."

A. Work carried out by the applicant

46. He claimed in the first place 30,000 Swedish crowns (SEK) for his work on the case. On this question he referred to a rule which was said to exist in Swedish law, but did not state whether his claim related to the proceedings in the national courts, the proceedings before the Convention organs, or both.

The Government disputed the claim, while the Commission left the matter to be decided by the Court.

47. The Court affords "just satisfaction" only "if necessary", and without being bound by domestic rules. Moreover the applicant, who was assisted by counsel both in Sweden and in Strasbourg, has not established why it is necessary to compensate him for his own work.

B. Pecuniary damage

48. Mr Langborger also claimed 50,000 SEK for the pecuniary damage which he allegedly sustained as a result of the unfavourable method used to calculate his rent.

49. It is not for the Court to speculate as to what the outcome of the contested proceedings would have been if the violation which it has found had not occurred, and there is nothing to show that a decision taken by a court of a different composition would have been in the applicant’s favour.

C. Non-pecuniary damage

50. The applicant requested in addition 100,000 SEK in respect of non-pecuniary damage. He argued that a purely nominal award could not suffice.

51. The Court considers that the finding of a breach of Article 6 (art. 6) constitutes in itself adequate just satisfaction in this respect.

D. Costs and expenses

52. Finally, Mr Langborger requested reimbursement of 104,000 SEK in lawyer's fees and 13,475 SEK in general and travelling expenses.

As regards the first claim, the Government did not dispute the hourly rate of 500 SEK, but considered excessive the total number of hours (208) which Mr Grennberg was said to have devoted to preparing the file. For his part, the Commission's Delegate stressed that much time had been spent studying questions of secondary importance.

53. The Court notes that it has declared only one of the applicant's complaints founded and, making an assessment on equitable grounds, considers it appropriate to award the applicant, by way of reimbursement of the fees in question, 50,000 SEK, to which should be added 13,475 SEK in respect of general and travelling expenses.

FOR THESE REASONS, THE COURT

1. Holds by seventeen votes to three that there has been a violation of Article 6 para. 1 (art. 6-1) of the Convention;

2. Holds unanimously that there has been no violation of Articles 8 and 11 (art. 8, art. 11) of the Convention and of Article 1 of Protocol No. 1 (P1-1);

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

4. Holds by nineteen votes to one that the respondent State is to pay to the applicant, in respect of costs and expenses, the sum of 63,475 (sixty-three thousand four hundred and seventy-five) Swedish crowns;

5. Dismisses unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 22 June 1989.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 52 para. 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) dissenting opinion of Mr Pinheiro Farinha;

(b) dissenting opinion of Mr Pettiti and Mr Valticos;

(c) concurring opinion of Mr Martens.

R. R.
M.-A. E.

DISSENTING OPINION OF JUDGE PINHEIRO FARINHA

(Translation)

1. In my view there has been no violation of Article 6 para. 1 (art. 6-1) of the Convention:

(a) The Housing and Tenancy Court is composed of lawyers, generally judges, and lay assessors. All its members are appointed by the Government for a term of office of three years (see paragraph 22 of the judgment).

The Court is always presided over by a lawyer (see paragraph 23) and, if there is no majority, he has a casting vote.

The lay assessors, who are appointed by the Government on the recommendation of the Swedish Federation of Property Owners and the National Tenants' Union, represent the whole interest group (see paragraph 24). They sit in a personal capacity and not as representatives of their associations (see paragraph 19).

The proceedings are written but a hearing may be held if it is necessary for the purposes of the investigation (see paragraph 23) and the judgments are delivered in public. The court informed Mr Langborger that it considered it possible to give its decision without holding a hearing (see paragraph 15).

(b) It is common practice to provide for the participation of lay judges having wide experience and extensive knowledge of the field in which the dispute arises.

In this case the decisions could not go against the views of the professional judges, so that the independence and impartiality of the court were guaranteed.

It was open to Mr Langborger to request a public hearing.

2. Since I consider that there has been no violation, I cannot vote for the award in this judgment of a sum in respect of costs and expenses.

I would, however, have agreed with point 4 of the operative provisions had I voted in favour of finding a violation.

DISSENTING OPINION OF JUDGES PETTITI AND VALTICOS

(Translation)

Contrary to the view taken by the majority, we do not think that it is possible to find a violation of Article 6 para. 1 (art. 6-1) of the Convention in this case. Clearly it is a borderline case in terms of conformity with the Convention, but one in which too inflexible a position might fail to take account of the needs of the judiciary arising from its dual role of seeking after justice and at the same time maintaining social harmony.

Article 6 para. 1 (art. 6-1) requires "an independent and impartial tribunal".

The present case concerns organs composed partly of professional judges and partly of lay assessors nominated by the Swedish Federation of Property Owners and the National Tenants' Union. These lay assessors must, it is stressed, sit in a personal capacity and not as representatives of the organisations which nominated them.

The participation in a judicial body of persons nominated by the interested parties is nowadays fairly common in various fields which require specialised knowledge and experience. Apart from the necessary expertise, this participation is aimed at gaining the confidence of groups whose interests are opposed and at securing a fair and balanced settlement of the disputes arising between them. This approach is particularly relevant to industrial and social conflicts.

Of course under Article 6 para. 1 (art. 6-1) independence and impartiality are required; it is therefore essential that the court in which the persons nominated by the interested parties participate should also include members satisfying this condition and having a decisive vote. That is exactly what happened in the present case. The rent review boards are composed of a chairman (a judge) and two lay assessors and the Housing and Tenancy Court, a court in the strict sense, whose composition varies, always has judges among its members - including the president, who has a casting vote. In this case, the court was composed of four members, two judges and two lay assessors. Moreover, the latter are not appointed for a specific case, do not know in advance to which files they will be assigned and take a judicial oath. In any event, in this case no decision could be taken which went against the views of the professional judges - even supposing that there was agreement between the lay assessors.

In these circumstances, it cannot be found that there was ultimately a failure to comply with the requirements of independence and impartiality and, accordingly, a violation of Article 6 para. 1 (art. 6-1). The opposing view, as well as being unjustified, would run the risk of entailing serious consequences and giving rise to disputes concerning various courts

composed partly of members appointed from the relevant technical or professional fields, where an individual chooses to contest the system. Such an approach would scarcely be realistic.

CONCURRING OPINION OF JUDGE MARTENS

1. Although I share the opinion of the Court that in this case there has been a violation of Article 6 para. 1 (art. 6-1), I cannot subscribe to its reasoning.

2. In the first place I fail to see why "it appears difficult to dissociate the question of impartiality from that of independence" (see paragraph 32 of the Court's judgment). I think, for various reasons, that the Court should not have dealt with the independence issue at all. One reason is that, before the Court, Mr Langborger has not attacked or tried to refute the Commission's finding that there was no reason to doubt the independence of the Housing and Tenancy Court vis-à-vis the executive and the parties (see paragraphs 128 and 133 of the Commission's report). For a Court which is already overburdened, that should, in my opinion, have been decisive.

3. Consequently I will confine myself to the question of impartiality under the objective test.

Application of that test involves a double task. Firstly, it has to be ascertained whether Mr Langborger had legitimate reasons to fear that the chamber of the Housing and Tenancy Court which tried his case lacked impartiality as a consequence of the presence in that chamber of the two lay assessors. Secondly, it has to be assessed whether these fears can be held objectively justified (see the Hauschildt judgment of 24 May 1989, para. 48). This assessment will frequently include a weighing of interests. This is because what is at stake is often not only the confidence which the courts in a democratic society must inspire in the parties, but also the interest in having a judicial organisation that is rational and operates smoothly.

4. When applying the objective test, the Court found that Mr Langborger could legitimately fear that the lay assessors had a common interest contrary to his own and therefore that the balance of interests, inherent in the Housing and Tenancy Court's composition in other cases, was liable to be upset when it came to decide his own claim (see paragraph 35 of the Court's judgment).

My objection to this approach is that it seems to imply that the Court assumes that "in other cases" there is a "balance of interests". The Court appears to base its reasoning on the assumption that it is an essential feature of the Housing and Tenancy Court's composition that the lay assessors are there to defend the interests of the landlord or the tenant, respectively, with the result that they will almost always take different sides - one endorsing the case of the landlord and the other that of the tenant - and will thus create a "balance of interests". If this assumption were correct, then the lay assessors could hardly be considered impartial at all! There is, however, no factual basis for the assumption: as the Swedish Supreme Court has pointed out, the lay assessors should not feel bound by the interests which they can be said to represent; they should carry out their duties as independent judges

and not as representatives of party interests (see paragraph 24 of the European Court's judgment). There is nothing in the file from which it could be inferred that the lay assessors do not act accordingly.

5. In my view, there are better arguments for finding, under the objective test, that the chamber of the Housing and Tenancy Court lacked the necessary impartiality in the sense of Article 6 (art. 6) of the Convention.

6. As the Court has noted (see paragraph 33 of its judgment), the proceedings instituted by Mr Langborger were aimed essentially at release from the negotiation clause. He thus relied on section 2 of the 1978 Act (see paragraph 16 of the Court's judgment), under which an exemption can be granted from the compulsory system of collective bargaining on rents and other tenancy conditions.

Under section 2 of the 1978 Act, those who seek exemption have to satisfy the Housing and Tenancy Court that in the special circumstances of their case it would be unreasonable to have the negotiation clause inserted in their tenancy agreement. When applying this provision, that court must, inter alia, weigh the interest in adopting a rational approach to rent negotiations against the fundamental need for the greatest possible contractual freedom for the individual (see the travaux préparatoires and paragraph 16 of the European Court's judgment). Both the wording and the drafting history of section 2 of the 1978 Act make it clear that the Swedish legislature intended that exemption from the compulsory system of collective bargaining should be granted only exceptionally: the test it laid down in section 2 is a narrow one and, moreover, leaves considerable discretion to the Housing and Tenancy Court.

It is therefore quite understandable that those who invoke section 2 - especially if (like Mr Langborger) they do so not so much for objective reasons but mainly because they simply cannot accept their not being free to negotiate their own rent - will resent the fact that the weighing of their interests against those of the system is entrusted to a court some of whose members may be feared to be deeply convinced of the system's benefits and, consequently, to be likely to hold that its interests weigh very heavily indeed. This is all the more so because those members form the majority if the court sits with seven members, and at least an important minority if it sits with four.

7. From this analysis of section 2 of the 1978 Act I conclude that Mr Langborger had legitimate reasons to fear that the chamber of the Housing and Tenancy Court which tried his claim for exemption from the compulsory system of collective bargaining lacked impartiality as a consequence of the presence in that chamber of the two lay assessors.

As to whether those fears can be said to be objectively justified, I would recall that in this context even appearances have a certain importance: the

very fact that section 2 makes it rather difficult to obtain exemption renders it essential to exclude any doubt as to the fairness of its application.

In this context I further note that there seems to be no good reason for not having cases under section 2 tried by a special chamber of the Housing and Tenancy Court, composed entirely, or having a strong majority, of professional judges.

Taking these factors also into account, I come to the conclusion that one can consider objectively justified Mr Langborger's fears that, as a consequence of the presence of the two lay assessors, the chamber of the Housing and Tenancy Court that tried his claim for exemption under section 2 of the 1978 Act lacked the necessary impartiality. The fact that this particular chamber also included two professional judges, whose impartiality is not in question and who, as a consequence of the President's having the casting vote, could form a majority, does not change this view.

Like the Court, I therefore conclude that there has been a violation of Article 6 para. 1 (art. 6-1).