

In the Nyberg case*,

* Note by the Registrar: The case is numbered 31/1990/222/284. 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 corresponding originating applications to the Commission.

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:

Notes by the Registrar:

* As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

** The amendments to the Rules of Court which entered into force on 1 April 1989 are applicable to the present case.

Mr R. Ryssdal, President,
Mr J. Cremona,
Mr Thór Vilhjálmsson,
Mrs D. Bindschedler-Robert,
Mr L.-E. Pettiti,
Mr B. Walsh,
Mr R. Macdonald,
Mr S. K. Martens,
Mrs E. Palm,

and also of Mr M.-A. Eissen, Registrar,

Having deliberated in private on 29 August 1990,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 21 May 1990, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12574/86) against the Kingdom of Sweden lodged with the Commission under Article 25 (art. 25) by Birgitt and Lars Erik Nyberg, who are respectively German and Swedish citizens, on 9 June 1986.

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 as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 3, 6, 8 and 13 (art. 3, art. 6, art. 8, art. 13).

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

3. The Chamber to be constituted included ex officio Mrs E. Palm,

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 24 May 1990, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr J. Cremona, Mr Thór Vilhjálmsson, Mrs D. Bindschedler-Robert, Mr L.-E. Pettiti, Mr B. Walsh, Mr R. Macdonald and Mr S. K. Martens (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, after consulting, through the Registrar, the Agent of the Swedish Government ("the Government"), the Delegate of the Commission and the lawyer for the applicants, gave directions on 27 June 1990 concerning the written procedure.

5. On 19 July 1990, however, the Agent communicated to the Registrar the text of an agreement which had been signed on 4 July by himself and the representative of the applicants and formally approved by the Government on 12 July. Accordingly the Agent asked the Court to strike the case out of its list.

The Delegate of the Commission was consulted (Rule 49 para. 2) and replied on 9 August that he had no objection.

6. On 29 August 1990 the Court decided to dispense with a hearing in this case, having established that the conditions for this derogation from its usual procedure were met (Rules 26 and 38).

AS TO THE FACTS

7. Mr and Mrs Nyberg reside in Neukirchen-Vluyn, Federal Republic of Germany, with their two sons.

Shortly after his birth in 1981, their elder son, Björn, was taken into public care in Stockholm and was later placed in a foster home. The applicants, who were living in Sweden at the time, subsequently took various steps with a view to reuniting the family (see paragraphs 17 and 19-25 of the Commission's report).

8. In particular, as from October 1982 they requested the relevant Social District Council (sociala distriktsnämnden - "Social Council") to terminate the public care. Their first request was unsuccessful, but the second, filed on 19 October 1984, led to the termination of Björn's care on 6 February 1986.

However, the Social Council at the same time prohibited the applicants, until further notice, from removing the child from the foster home. Proceedings brought by them before the administrative courts to challenge this measure were concluded on 7 October 1986 with a decision of the Stockholm Administrative Court of Appeal (kammarrätten) that the prohibition was to remain in force but only until 1 March 1987 at the latest.

9. On 18 December 1986, however, the Social Council instituted civil proceedings before the Stockholm District Court (tingsrätt) to have the legal custody of Björn transferred to the foster parents. The Council later also issued a new prohibition on removal.

The applicants, for their part, applied to the relevant County Administrative Court (länsrätten) for the enforcement of the decision to return their son to them. After they had obtained a favourable judgment at first instance in March 1987, the case was settled on appeal and the Social Council withdrew both the custody action and the prohibition.

10. On 23 April 1987 the foster parents returned Björn to the applicants in Germany and the family has since been reunited.

11. In two decisions, taken in June 1986 and in May 1988, the Parliamentary Ombudsman (justitieombudsmannen) criticised, *inter alia*, the length of the care proceedings before the Social Council and the latter's handling of the case after June 1986 (see paragraphs 34-35 and 64-71 of the Commission's report).

PROCEEDINGS BEFORE THE COMMISSION

12. In their application of 9 June 1986 to the Commission (no. 12574/86), Mr and Mrs Nyberg alleged violations of Article 8 (art. 8) of the Convention, by reason of the refusal until April 1987 to allow them to take their son back home, and of Article 6 (art. 6), in relation to the length and fairness of the relevant proceedings. They also maintained that there had been a breach of Article 3 (art. 3) on account of an incident involving the child's compulsory removal from them in Germany. Finally, they claimed that, contrary to Article 13 (art. 13), they had no effective remedy before a Swedish "authority" in respect of their foregoing allegations.

13. The Commission declared the application admissible on 4 October 1988.

In its report of 15 March 1990 (Article 31) (art. 31), it expressed the opinion that there had been a violation of Article 8 (art. 8) (unanimously), but not of Articles 3 (art. 3) or 13 (art. 13) (unanimously), and that no separate issue arose under Article 6 para. 1 (art. 6-1) (eleven votes to two). The full text of its opinion and of the separate opinions contained in the report is annexed to the present judgment*.

* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 181-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

14. The agreement concluded on 4 July 1990 (see paragraph 5 above) refers to the Commission's opinion in this case and then states that the parties have reached the following settlement:

"(a) The Government accepts the conclusions to which the Commission has arrived and which to a large extent are in line with the opinions expressed by the Swedish Parliamentary Ombudsman after her examination of the matter.

(b) The Government will pay the sum of 225,000 Swedish crowns to Mr and Mrs Nyberg.

(c) The Government will pay the applicants' legal costs in the amount of 160,000 Swedish crowns.

Mr and Mrs Nyberg declare that they have no further claims in the matter."

15. The Court takes formal note of the friendly settlement reached by the Government and the applicants. In view of its responsibilities under Article 19 (art. 19) of the Convention, it would be open to it to disregard this settlement and proceed with the consideration of the case if a reason of public policy ("ordre public") appeared to necessitate such a course (Rule 49 para. 4). However, the Court sees no call to do so, having regard to the final reunification of the family and to its case-law on the matter (see the Olsson judgment of 24 March 1988, Series A no. 130, and the Eriksson judgment of 22 June 1989, Series A no. 156).

Accordingly, the Court finds it appropriate to strike the case out of the list pursuant to Rule 49 para. 2.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing under Rule 55 para. 2, second sub-paragraph, of the Rules of Court on 31 August 1990.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar