



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

FIRST SECTION

CASE OF LINDELÖF v. SWEDEN

(Application no. 22771/93)

JUDGMENT

STRASBOURG

20 June 2000

In the case of Lindelöf v. Sweden,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mrs W. THOMASSEN, *President*,
Mrs E. PALM,
Mr Gaukur JÖRUNDSSON,
Mr R. TÜRMEŒ,
Mr C. BİRSAN,
Mr J. CASADEVALL,
Mr R. MARUSTE, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 15 June 2000,

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

PROCEDURE

1. The case originated in an application (no. 22771/93) against Sweden lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the Swedish nationals, Christina, Bernt, Ellinor and Hillevi Lindelöf, ("the applicants"), on 8 August 1993. The application was registered on 14 October 1993.

2. The applicants are represented by Mr Claes Borgström, a lawyer practising in Stockholm. The Swedish Government ("the Government") are represented by their Agent, Mrs Eva Jagander.

3. The applicants complained under Article 5 § 1, Article 6 § 2 and Article 8 of the Convention about Ellinor's committal to a child psychiatric department and the proceedings concerning Ellinor's care, its implementation and termination.

4. On 7 September 1999 the Court declared the applicants' complaints under Article 6 § 2 and Article 8 of the Convention admissible. The remainder of the application was declared inadmissible.

5. On 13 March 2000, after an exchange of correspondence, the Section Registrar proposed a meeting with the parties in order to discuss the possibilities of reaching a friendly settlement pursuant to Article 38 § 1(b) of the Convention. The meeting took place in Stockholm on 6 April 2000 during which agreement on the terms of a friendly settlement was reached. By letter of 15 May 2000 the Agent of the Government informed the Court that the Government had approved the agreement reached.

THE FACTS

6. According to medical and psychological examinations conducted between 1985 and 1989, Christina and Bernt Lindelöf's daughter, Ellinor, who was born in 1979, suffers from mental retardation and has contact disturbances of a child-psychotic nature. She has been undergoing child rehabilitation since 1986. At school, she has attended special classes for mentally retarded children.

7. In the autumn of 1991 and the spring of 1992 it was observed that she repeatedly played with toy animals in a manner which allegedly indicated that she had been sexually abused. The matter was brought to the attention of the Social Council (*socialnämnden*) of Tyresö on 9 June 1992. The Council immediately commenced an investigation, which resulted in the preliminary assessment that Ellinor ought to be placed away from her home during the further investigations. Moreover, on 17 June the Council reported the suspicion of sexual abuse of her to the police.

8. As the social authorities' prime suspect in regard to the allegations of sexual abuse was Bernt Lindelöf, who denied the allegations, the parents announced, on 3 July 1992, that they refused to co-operate further with the authorities. As a consequence, the president of the Social Council decided the same day, pursuant to Section 6 of the Act with Special Provisions on the Care of Young Persons (*Lagen med särskilda bestämmelser om vård av unga*, 1990:52 - hereinafter "the 1990 Act"), to take Ellinor into care immediately on a provisional basis. The decision was referred to the County Administrative Court (*länsrätten*) of the County of Stockholm for approval.

9. On 16 July 1992 the County Administrative Court confirmed the Social Council's decision to take Ellinor into provisional care. This decision was upheld by the Administrative Court of Appeal (*kammarrätten*) in Stockholm on 24 July 1992.

10. A subsequent medical report of September 1992 stated, *inter alia*, that Ellinor appeared to be suffering from the Rett's syndrome which manifested itself in serious mental retardation, progressive disablement and constipation and that she had hardly developed intellectually in the preceding four years. Her mental and physical abilities corresponded - depending on what skills were tested - to the level of a child between the age of 3 years and 6 months and the age of 5 years and 10 months. Her strong point was her verbal skills. Despite her mental disability, she was able to think and express herself in abstract terms and to use language in an adequate manner. The report also stated that in the course of the psychological examination Ellinor had conveyed, by words and gestures, that she had been subjected to sexual abuse. The report concluded that the psychiatric examination indicated that Ellinor had been subjected to sexual abuse, that her account of sexual abuse by her father could not be rejected with reference to her disablement, late mental development or contact

problems, and that the observations made during the forensic medical examination did not contradict the possibility of her account being a reasonable description of something she had experienced.

11. On 28 August 1992 the Social Council applied to the County Administrative Court for a care order committing Ellinor to care on a permanent basis in accordance with Sections 1 and 2 of the 1990 Act. The Council maintained, which was contested by Ellinor's parents, that she had been sexually abused. By judgment of 11 September 1992 the County Administrative Court ordered that Ellinor be taken into care. It found the evidence in the case - in particular the report of September 1992 - to indicate that Ellinor was likely to have been improperly exploited. Consequently, there was a clear risk that her health and development would be impaired.

12. On 17 September 1992 the public prosecutor notified Bernt Lindelöf that he was suspected of aggravated sexual abuse of a minor (*grovt sexuellt utnyttjande av underårig*).

13. On 10 November 1992 the public prosecutor decided, however, not to initiate proceedings against Bernt Lindelöf since the allegations of sexual abuse were found to be unsubstantiated (*brott kan ej styrkas*). The Social Council's request for a review of this decision was rejected by the Prosecutor General on 19 February 1993.

14. As regards the care proceedings Christina and Bernt Lindelöf appealed against the County Administrative Court's judgment of 11 September 1992. They submitted evidence which called into question the findings and the conclusion of the medical report of September 1992 and maintained in particular that Ellinor's behaviour was caused by her mental retardation which had been wrongly assessed.

15. By judgment of 1 June 1993 the Administrative Court of Appeal upheld the judgment. The court concluded that Ellinor had probably been subjected to improper exploitation. Hence, there was a clear risk of impairment to her health and development.

16. Christina and Bernt Lindelöf appealed to the Supreme Administrative Court (*Regeringsrätten*) which, however, on 16 July 1993 refused to grant leave to appeal.

17. While in care Ellinor stayed with her maternal grandparents. She had regular contacts with her mother and other relatives and supervised contacts with her father. On 14 March 1994 the County Administrative Court decided that Bernt Lindelöf could meet her without the grandparents provided that the meetings took place outside the family's home and that both parents were present. Subsequently, Ellinor's parents applied for further access to her. Following the Social Council's rejection of their request on 14 June 1994, they appealed to the County Administrative Court.

18. In its judgment of 3 August 1994 partly accepting the parents' request the court made, *inter alia*, the following remarks:

“[...] The County Administrative Court as well as the Administrative Court of Appeal concluded in judgments of 11 September 1992 and 1 June 1993, respectively, that Ellinor had probably been subjected to improper exploitation by her father....

In the opinion of the County Administrative Court, the Social Council has had good reasons for its decision to restrict access between Ellinor and her father in order to protect her from being improperly exploited by him again. However, access should not be restricted more than is necessary to accomplish the purpose of the care.”

19. In the meantime Christina and Bernt Lindelöf had requested a termination of the public care. On 15 February 1994 the Social Council rejected the request, again referring to the medical report of September 1992 which indicated that it was reasonable to assume that Ellinor had been sexually abused.

20. Ellinor’s parents appealed to the County Administrative Court. They referred to studies made after the Administrative Court of Appeal’s judgment of 1 June 1993 by a professor in child psychiatry and a professor emeritus in paediatrics. These studies indicated that, due to the fact that Ellinor was suffering from the Rett’s syndrome, very little - if any - importance could be attached to her statements. Thus, it could no longer be considered likely that she had been sexually abused. Furthermore, in an opinion from the National Board of Health it was stated that on account of information about Ellinor’s handicap which had emerged after the September 1992 report, there were reasons to call into question those conclusions which had been based on Ellinor’s statements.

21. By judgment of 15 December 1994 the court decided - by two votes against two with the casting vote of the president - nevertheless to reject the appeal.

22. Ellinor’s parents appealed to the Administrative Court of Appeal and submitted further evidence in support of their view that the examination made in September 1992 was too unreliable to serve as the basis for future care decisions. By judgment of 31 May 1995, the court concluded as follows:

“It is undisputed that Ellinor suffers from the Rett’s syndrome. It has been thoroughly explained in the present case what characteristics a child suffering from this syndrome has in regard to, *inter alia*, word and symbol comprehension. In the light of what has emerged in the case, in particular the evidence [submitted to] the Administrative Court of Appeal, the court does not consider it particularly likely that Ellinor connects ‘the serious thing’ with sexual abuse, regardless of whether or not she has been subjected to such abuse.

Neither the Social Council nor [Ellinor’s counsel] has alleged that there is now a plausible risk that [she] will be subjected to improper exploitation. However, both the Council and [Ellinor’s counsel] have alleged that there is still a risk that her health and development will be impaired if the care is terminated. Partly differing opinions have

been submitted in the case as regards her development since she was taken into care three years ago. However, today nothing unequivocally suggests that her development would be disrupted if she returned to her parents....

The Administrative Court of Appeal concludes that the case does not disclose such circumstances that could justify that the care of Ellinor pursuant to the 1990 Act should continue. The care pursuant to the 1990 Act shall accordingly be terminated.”

23. The Social Council did not appeal against the appellate court’s judgment. Ellinor now lives with her parents. Bernt Lindelöf is her legal guardian.

THE LAW

24. On 6 April 2000 the following settlement was reached between the parties:

“SETTLEMENT

On 7 September 1999 the European Court of Human Rights declared partly admissible and partly inadmissible application no. 22771/93 lodged by Christina Lindelöf, Bernt Lindelöf, Ellinor Lindelöf and Hillevi Lindelöf (the applicants) against Sweden.

The Swedish Government regrets the distress caused to the applicants.

The Swedish Government and the applicants have now reached the following friendly settlement, on the basis of respect for human rights as defined in the European Convention for the Protection of Human Rights and Fundamental Freedoms, in order to terminate the proceedings before the Court.

- a) The Government will pay, *ex gratia*, the sum of SEK 2,100,000 to the applicants.
- b) The applicants declare that they have no further claims on the Swedish State based on the facts of the above application.
- c) The Swedish Government and the applicants undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court’s judgment.

This settlement is dependent upon the formal approval of the Swedish Government at a Cabinet meeting.

Stockholm, 6 April 2000

Eva Jagander
Agent of Swedish Government

Stockholm, 6 April 2000

Claes Borgström
Counsel for the applicants”

25. The above settlement was approved by the Government on 11 May 2000.

26. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention and the Protocols thereto (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

27. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 20 June 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Wilhelmina THOMASSEN
President