AS TO THE ADMISSIBILITY OF

Application No. 26565/95
by Maria FORSÉN
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 27 June 1996, the following members being present:

Mrs. G.H. THUNE, Acting President
MM. G. JÖRUNDSSON
J.-C. SOYER
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 17 August 1994 by Maria FORSÉN against Sweden and registered on 21 January 1995 under file No. 26565/95;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Swedish citizen born in 1961, resides at Hässelby. Before the Commission she is represented by Mr. Lennart Hane, a lawyer practising in Stockholm.

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant has five children, A, born in 1979, P, born in 1984, M, born in 1989, C, born in 1991, and J, born on 1 July 1994. Since 27 July 1994 she is married to U.F., with whom she has been cohabiting for many years. U.F. is the father of M, C and J.

After A, in July 1993, had accused U.F. of having sexually abused her and M, criminal proceedings were instituted against U.F. On 11 November 1993 the District Court (Tingsrätten) of Stockholm found U.F. guilty of sexual abuse of A but not M. He was sentenced to one and a half year's imprisonment. On appeal, the Svea Court of Appeal (Svea hovrätt), by judgment of 11 February 1994, found U.F. guilty of sexual abuse also in respect of M and raised the sentence to two years' imprisonment. On 30 March 1994 the Supreme Court (Högsta domstolen) refused leave to appeal.

On 1 September 1993, as a consequence of the accusations against U.F., the Social District Council (Sociala distriktsnämnden; hereinafter "the Council") No. 15 in Stockholm decided, 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"), immediately to take A, P, M and C into public care on a provisional basis. The decision was confirmed by the County Administrative Court (Länsrätten) of the County of Stockholm and the Administrative Court of Appeal (Kammarrätten) in Stockholm on 10 and 17 September 1993 respectively.

The Council, claiming that the children were insufficiently cared for, later applied to the County Administrative Court for a care order concerning A, P, M and C under Section 1, subsection 2 and Section 2 of the 1990 Act. These provisions state that compulsory care is to be provided if there is a clear risk of impairment of the health and development of a person under 18 years of age due to ill-treatment, exploitation, lack of care or any other condition in the home and if the necessary care cannot be provided with the consent of the young person's custodian.

The County Administrative Court held a hearing at which the applicant and U.F., their respective counsel, the children's counsel and representatives of the Council were heard. The court also heard evidence from two witnesses.

By judgment of 22 November 1993, the County Administrative Court granted the application and ordered that the children be taken into public care. The court found the investigation in the case to show that A, P and M had psychological problems. It took into account that U.F. was suspected of sexual abuse of two of the children and had further regard to the Council's report which, inter alia, stated that the applicant was emotionally unstable and aggressive. The court considered that the children's health and development had already been impaired as a result of the conditions in their home. It further noted that the parents had not consented to the care proposed by the Council.

The applicant appealed against the care order to the Administrative Court of Appeal in so far as it concerned P, M and C. The appellate court held a further hearing in the case and heard the applicant, her counsel, the children's counsel, representatives of the Council and four new witnesses.

On 12 April 1994 the appellate court, noting that U.F. had been convicted of sexual abuse and agreeing with the reasoning of the County Administrative Court, rejected the appeal.

On 2 February 1995 the Supreme Administrative Court (Regeringsrätten) refused leave to appeal.

The applicant also requested that the public care of P, M and C be terminated. Her request was rejected by the Council on 2 June 1994 and, on appeal, by the County Administrative Court on 21 September 1994 and the Administrative Court of Appeal on 10 January 1995. Both courts held hearings before taking their decisions. On 10 April 1996 the Supreme Administrative Court refused leave to appeal. The public care of A was terminated by the Council on 5 October 1995 after A had run away from her foster parents.

On 25 July 1994 the Council decided also to take J, at the time three weeks old, into public care on a provisional basis. The case was then referred to the County Administrative Court, which held a hearing on 3 August 1994. After having heard the applicant, U.F., their respective counsel, the children's counsel, representatives of the Council and three witnesses, the court, by decision of 5 August 1994, confirmed the Council's decision. The applicant's appeal was rejected by the Administrative Court of Appeal on 15 August 1994. On 31 January 1995 the Supreme Administrative Court refused leave to appeal.

On 22 August 1994 the Council applied to the County

Administrative Court for a care order concerning J under the 1990 Act. The court held hearings on 5 and 9 September 1994 at which it heard the same persons as at the hearing on 3 August 1994 with the exception of the witnesses. In addition, it heard evidence from two new witnesses.

By judgment of 21 September 1994, the County Administrative Court ordered that J be taken into public care. The court found that the applicant's and U.F.'s care of J was deficient, that the conditions in the home were unsatisfactory and that there was a clear risk that J's health and development would be impaired as a result thereof. It took into account the reasons underlying the care order concerning the applicant's other children and further noted, inter alia, that the applicant had refused to undergo a Council investigation into her and J's situation which would have required the applicant and J to be admitted to a children's home for some time. This had caused the Council to take J into care provisionally. Moreover, the court considered that the necessary care of J could not be provided on a voluntary basis.

The applicant and U.F. appealed to the Administrative Court of Appeal. The appellate court held a hearing on 13 December 1994. It heard the applicant, U.F., their respective counsel, the children's counsel, representatives of the Council and four witnesses, including two of the witnesses heard by the County Administrative Court on 3 August 1994 and two new witnesses.

On 10 January 1995 the appellate court rejected the appeal. It considered that the unsatisfactory home conditions which had led to the taking into care of the applicant's other children still existed. Although J had not been subjected to any form of ill-treatment by her parents, the court found, in view of U.F.'s conviction for sexual abuse of A and M, that J could not be guaranteed a safe environment in her parents' home. Also the other conditions in the home jeopardised J's health and development.

U.F. was released on probation on 25 December 1994. At the end of 1994, A retracted her accusations against U.F. and claimed that she and M had not been sexually abused by him. U.F. therefore petitioned the Supreme Court for a new trial. However, on 22 December 1994 his request was dismissed. In February 1995 U.F. made a new petition, which is presently pending before the Supreme Court.

On 10 April 1996 the Supreme Administrative Court refused leave to appeal against the Adminstrative Court of Appeal's judgment of 10 January 1995 to take J into care. The applicant has since requested that the public care of P and J be terminated. The Council rejected the request on 30 April 1996 and the case is presently pending before the County Administrative Court.

COMPLAINTS

1. The applicant complains that the public care of J violates Article 8 of the Convention.

2. Under Article 3 of the Convention, she further claims that her separation from J constituted inhuman and degrading treatment, as she was breast-feeding at the time.

3. The applicant contends that the Council first threatened to commit her and J to an institution to carry out an investigation and then, as a consequence of her refusal to undergo the investigation, took J into care provisionally. She alleges that the Council used this measure in an attempt to deprive her illegally of her liberty. In this respect, she invokes Article 5 of the Convention.

4. She also maintains that the courts deciding in the case were not impartial as required by Article 6 of the Convention.

5. Finally, the applicant claims that the taking into care of J violated her and U.F.'s right to marry and found a family under Article 12 of the Convention.

THE LAW

1. The applicant complains that the public care of J violates Article 8 (Art. 8) of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others."

The applicant maintains that the taking into care of J was not necessary. She is convinced that U.F. has been wrongfully convicted of sexual abuse. Moreover, the applicant is an experienced mother and is able to take good care of J.

The Commission finds that the taking into public care of J interfered with the applicant's right to respect for her family life as ensured by Article 8 para. 1 (Art. 8-1) of the Convention. It must therefore be examined whether this interference was justified under the terms of Article 8 para. 2 (Art. 8-2). In this respect, the Commission recalls that three conditions must be satisfied: the interference must be "in accordance with the law", it must pursue one or more of the legitimate aims enumerated in para. 2 and it must be "necessary in a democratic society" for that or those aims.

As regards the first condition, the Commission finds that the relevant decisions were in conformity with Swedish law, namely Section 1, subsection 2 and Section 2 of the 1990 Act.

The Commission further finds that the interference had a legitimate aim under Article 8 para. 2 (Art. 8-2), namely the interests of the child, which in this case fall under the expressions "for the protection of health or morals" and "for the protection of the rights and freedoms of others".

It thus remains to be determined whether the interference was "necessary in a democratic society" in the interests of the children.

According to the established case-law of the Commission and the European Court of Human Rights, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society", the Commission furthermore has to take into account that a margin of appreciation is left to the Contracting States. However, the Commission's review is not limited to ascertaining whether the respondent State has exercised its discretion reasonably, carefully and in good faith. Furthermore, it cannot confine itself to considering the relevant decisions in isolation but must look at them in the light of the case as a whole. It must determine whether the reasons adduced to justify the interference at issue are "relevant and sufficient" (cf. Eur. Court H.R., Olsson judgment of 24 March 1988, Series A no. 130, pp. 31-32, paras. 67-68).

In the present case, the Commission recalls that the Administrative Court of Appeal, in its judgment of 10 January 1995, found that J could not be guaranteed a safe environment in her parents' home in view of the fact that U.F., J's father, had been convicted of sexual abuse of two of J's siblings. In this connection, the Commission notes that U.F. was convicted by the Court of Appeal on 11 February 1994. Moreover, U.F.'s petition for a new trial was rejected by the Supreme Court on 22 December 1994. The Commission further recalls that, in taking J into care, the administrative courts considered that there were other unsatisfactory conditions in J's home which jeopardised J's health and development.

The Commission also takes into account that the County Administrative Court and the Administrative Court of Appeal, before giving their judgments, had held hearings at which the parents, their counsel, the children's counsel, representatives of the Council and several witnesses were heard. Moreover, the same courts had previously decided on the taking into care of the applicant's other children, during which proceedings they had also held hearings. Thus, the courts cannot be said to have intervened without adequate knowledge of the case.

In the light of the foregoing the Commission finds that the taking into care of J was supported by relevant and sufficient reasons and that, having regard to their margin of appreciation, the Swedish authorities were reasonably entitled to think that it was necessary to take J into care. Accordingly, the Commission concludes that the relevant decisions can reasonably be regarded as "necessary in a democratic society" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant claims that her separation from J constituted inhuman and degrading treatment, as she was breast-feeding at the time. She invokes Article 3 (Art. 3) of the Convention.

The Commission, however, considers that the applicant's submissions fail to disclose any appearance of treatment attaining the minimum level of severity required for the application of Article 3 (Art. 3).

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant contends that the Council first threatened to commit her and J to an institution to carry out an investigation and then, as a consequence of her refusal to undergo the investigation, took J into care provisionally. She alleges that the Council used this measure in an attempt to deprive her illegally of her liberty. In this respect, she invokes Article 5 (Art. 5) of the Convention.

The Commission notes that the applicant has not been deprived of her liberty as a result of any measures taken by the Council. Accordingly, an examination of this complaint does not disclose any appearance of a violation of Article 5 (Art. 5).

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant maintains that the courts deciding in the case were not impartial as required by Article 6 (Art. 6) of the Convention. She states that the courts' reasoning reveals that J was taken into care

solely on account of U.F.'s conviction for sexual abuse. In view of A's lack of credibility, the courts have allegedly been unreasonable in attaching too great importance to A's accusations.

The Commission, recalling that its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention and that, in particular, it is not competent to deal with a complaint concerning errors of law and fact allegedly committed by domestic courts, finds that an examination of the applicant's submissions in respect of the present complaint fail to disclose any lack of impartiality on the part of the courts deciding in the case in question.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicant claims that the taking into care of J violated her and U.F.'s right to marry and found a family under Article 12 (Art. 12) of the Convention.

The Commission, recalling its above finding under Article 8 (Art. 8) of the Convention that the decision to take J into care can reasonably be regarded as "necessary in a democratic society", finds that an examination of this complaint does not disclose any appearance of a violation of Article 12 (Art. 12).

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber	Acting President of the Second Chamber
(M.-T. SCHOEPFER)	(G.H. THUNE)