AS TO THE ADMISSIBILITY OF

Application No. 27594/95
by Mauri SANTANIEMI
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 10 September 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA
A. ARABADJIEV

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 21 October 1994 by Mauri SANTANIEMI against Sweden and registered on 13 June 1995 under file No. 27594/95;

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 is a Finnish citizen, born in 1946 and resident in Lödöse, Sweden. He brings the application both in his own name and on behalf of his late daughter, born in 1970 and deceased in 1988.

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

The applicant's daughter was seriously disabled from birth, suffering from skeletal deformities and other illnesses. Inter alia, during 1971-1988 she was treated about 20 times at the children's hospital in Vänersborg, Sweden, for various illnesses.

On 18 January 1988 the applicant's daughter was brought to the children's clinic of Norra Älvsborg hospital in Trollhättan, Sweden, where she was diagnosed as having pneumonia. She died in the hospital on 22 January 1988.

The applicant reported his daughter's death to the Disciplinary Board of Health and Medical Care (Hälso- och sjukvårdens ansvarsnämnd). He argued that Dr BR who had tended to his daughter had failed to X-ray her lungs, to put her on a respirator, to call the physician in charge to see her, to transfer her to an intensive care unit and to make sure

that she was constantly looked after. The applicant maintained that the physician had made mistakes and been negligent in her duties and that this had caused his daughter's death.

The Disciplinary Board obtained a copy of the patient records as well as written submissions from the hospital staff and an expert. It also invited the applicant to comment on the submissions.

It appeared from the patient records, inter alia, that the applicant's daughter's lung problems had been caused by the deformities. She had been practically confined to a wheelchair since 1982 and was cared for by her parents in their home. In January 1988 she contracted a lung infection and came to the hospital on 18 January after consulting a doctor. The doctor on duty, W, decided against an X-ray examination of the lungs. During the night between 18 and 19 January 1988 her condition deteriorated.

Dr BR who treated the applicant's daughter submitted, inter alia, that she saw the applicant's daughter on 19 January 1988 together with the chief physician, MT, and another colleague. The diagnosis of pneumonia was clinically clear and therefore a lung X-ray was not needed. Since the patient's condition deteriorated on 19 January, the treatment, including the possibility of a respirator being used, was discussed with MT. The doctors decided to change the patient's medication. No request for respirator treatment was made by the parents. The mother of the patient accepted the treatment given to her daughter.

Dr MT submitted, inter alia, that the patient had had breathing problems which had been investigated since 1982. Also heart problems had been discovered. In 1983 she had been diagnosed as having a lung infection. She was treated but nevertheless continued to contract lung infections which during 1984-1987 demanded hospital care. Lung X-rays were taken but they were difficult to interpret because of the patient's severe scoliosis. On 18 January 1988 X-rays were not ordered since they had not proved helpful earlier. Respirator treatment was dismissed on the ground that the patient had a chronic breathing deficiency due to her scoliosis. On 21 January her condition was clearly better. On 22 January, however, a sudden deterioration set in and the patient died.

In his observations the applicant submitted that during his daughter's terminal illness he demanded that she be given respirator treatment but to no avail.

In his expert statement professor AL, a member of the Scientific Council of the National Board of Health and Social Welfare (Socialstyrelsens vetenskapliga råd), deemed it obvious that respirator treatment was not discussed with the parents although it should have been. The benefit of respirator treatment was the facilitation of breathing and the disadvantages were that the patient could become dependent on the treatment, lose her speech ability and need sedatives. It was impossible to judge whether the decision not to order respirator treatment was right or wrong. X-rays had not been necessary on 18 January but could have been resorted to when the patient's condition deteriorated. Judging from the patient records intensive care was not necessary.

In its decision of 20 February 1992 the Disciplinary Board considered that as to allegations concerning X-ray examination, respirator treatment, failure to call the chief physician, intensive care and constant observation, no cause for criticism was apparent. The Disciplinary Board noted that the patient records concerning the applicant's daughter were terse. The Disciplinary Board further noted that in this case it was excusable not to have informed the parents about the possibility of respirator treatment, since it was not planned to be given to their daughter. The Disciplinary Board decided to take

no action.

In his appeal to the Stockholm Administrative Court of Appeal (kammarrätten) the applicant referred to the above-mentioned arguments. He also maintained that his daughter had not received medication for poor circulation nor had certain operations been performed which he considered should have been.

On 17 December 1993 the Administrative Court of Appeal dismissed the appeal as regards complaints concerning medication and operations since they were new allegations which had not been examined previously by the Disciplinary Board and otherwise upheld the Board's decision.

On 8 September 1994 the Supreme Administrative Court (Regeringsrätten) refused the applicant leave to appeal.

COMPLAINTS

1. Without invoking any Articles of the Convention the applicant complains both in his own name and on behalf of his deceased daughter that his daughter was not afforded the medical treatment she needed. He maintains that proper treatment would have relieved her heart problems, poor circulation and lung problems. Furthermore he claims that a necessary operation was not performed. He also contends that she was not put on a respirator even though such treatment was necessary and that intensive care was not given to her. The applicant submits that the right to life includes the right to proper treatment.

2. Moreover, the applicant complains that a thorough investigation was not performed by the Disciplinary Board, whose decision was upheld.

THE LAW

1. The applicant complains both in his own name and on behalf of his deceased daughter of an alleged failure to give his daughter correct medical treatment. The applicant does not invoke any Articles of the Convention.

The Commission notes that the applicant did not raise before the Disciplinary Board some of the allegations of lack of treatment which he now brings before the Commission. However, the Commission does not find it necessary to consider whether this would raise any issues under Article 26 (Art. 26) of the Convention as to the exhaustion of domestic remedies since the application is in any event manifestly ill-founded for the following reasons.

The Commission has examined the applicant's complaints under Article 2 (Art. 2) of the Convention which protects the right to life. The applicant submits that the right to life includes the right to proper treatment.

The Commission recalls that the first sentence of Article 2 para. 1 (Art. 2-1) of the Convention imposes an obligation on the Contracting State not only to refrain from taking life "intentionally" but also to take appropriate steps to safeguard life. The State's positive obligation to protect life implies regulatory measures for hospitals and an effective judicial system permitting the cause of death in a hospital and the possible liability of the doctors or the hospital to be established. If there is no indication that the authorities arbitrarily assessed the evidence before them, the Commission must rely on the facts established by those authorities (see No. 21236/93, Dec. 25.10.96, unpublished, No. 20948/92, Dec. 22.5.95, D.R. 81-B, pp. 35, 39-40 and the further reference therein; cf. also No. 23412/94, Dec. 30.8.94, D.R. 79-A, pp. 127, 135-137).

The Commission notes that the applicant's daughter's death was investigated by the Disciplinary Board of Health and Medical Care. The Disciplinary Board had regard to an expert opinion. It also heard the hospital staff either directly involved in, or ultimately responsible for, the applicant's daughter's treatment on 18-22 January 1988.

The Commission considers that there is no indication that the authorities assessed the evidence before them arbitrarily. Given that no fresh evidence has been brought before the Commission, it must rely on the facts established on the domestic level. In the circumstances of the present case it cannot find any appearance of negligence on the part of hospital staff. Accordingly, there is no appearance of a violation of Article 2 para. 1 (Art. 2-1) of the Convention.

On the basis of the application the Commission does not find any indication that the medical treatment at issue violated any other provision of the Convention or of its Protocols.

It follows that this part of the applicant's complaints must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains, without invoking any Articles of the Convention, that the matter was not thoroughly investigated.

The Commission notes that the matter was examined by the Disciplinary Board, the Administrative Court of Appeal and, as regards leave to appeal, by the Supreme Administrative Court. The applicant has not presented any evidence to support his allegation. Therefore the Commission considers that the complaint is unsubstantiated.

This part of the application must therefore be rejected as being 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.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber