CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 34952/97
by A.T.
against Finland

The European Court of Human Rights (Fourth Section) sitting on 14 October 1999 as a Chamber composed of

Mr G. Ress, *President*,
Mr M. Pellonpää,
Mr I. Cabral Barreto,
Mr V. Butkevych,
Mrs N. Vajić,
Mr J. Hedigan,
Mrs S. Botoucharova, *Judges*,

and Mr V. Berger, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 22 November 1996 by A.T. against Finland and registered on 18 February 1997 under file no. 34952/97;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Finnish national, born in 1961 and living in the Helsinki area.

A. Particular circumstances of the case

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

In 1987 a daughter, J., was born to the applicant and M. In 1989 the parents divorced. In 1990 the applicant was awarded sole custody of J. During the court proceedings J. was occasionally placed in a children's home and with substitute parents, following the applicant's consent.

In 1994 a second daughter, A., was born to the applicant, the father being P. In 1994 P. brought proceedings before the Turku District Court, seeking to obtain sole custody of A. The applicant also requested sole custody.

On 30 May 1995 an official acting on behalf of the Turku Social Welfare Board (*sosiaalilautakunta, socialnämnden*) placed both children in immediate public care in a children's home in pursuance of Section 18 of the Child Welfare Act (*lastensuojelulaki, barnskyddslag* 683/1983 as amended by Act 13/1990). The applicant had left the children on the premises of the Turku District Court, objecting to its processing of P.'s action for sole custody of A. The applicant had told J. she no longer had the strength to care for the children and that they "no longer had a mother". After the incident the applicant could not be reached. A few days later she had telephoned a social welfare official to say she had "bid farewell to her children" and "had stopped being a mother".

By decisions of 28 June 1995 the Social Welfare Board, in pursuance of Section 16 of the Child Welfare Act, maintained the public care of the children after having heard the applicant and the respective fathers. The applicant had opposed the public care. On 31 August 1995 the Turku and Pori County Administrative Court (*lääninoikeus, länsrätten)* heard the applicant, a social welfare official, the applicant's psychologist and a nurse of the children's home. In its decisions of 21 September 1995 the County Administrative Court upheld the care orders, essentially considering that the applicant's uncontrolled and unforeseeable behaviour had seriously jeopardised the children's health and development. Although the applicant had previously availed herself of support measures for herself and the children, she was no longer willing to co-operate with the social welfare officials, being of the opinion that there was no need for such measures. The applicant appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*). On 23 February 1996, however, she withdrew her appeals, considering that the she could not expect an impartial examination thereof. On 9 May 1996 the cases were struck out.

For the follow-up of its care orders the Social Welfare Board, on 21 July 1995, requested the Tampere University Hospital to disclose information of significance to the applicant's children's growth and development. The request was made pursuant to Section 56 of the Social Welfare Act (*sosiaalihuoltolaki, socialvårdslag* 710/1982).

On 16 June 1995 the District Court refused the applicant's request for the appointment of a guardian *ad litem* for herself and her children. The applicant had argued that a guardian was needed to protect them "against the arbitrary acts of the Social Welfare

Office" until the custody proceedings had come to an end. The applicant's extraordinary appeal was rejected by the Turku Court of Appeal (*hovioikeus, hovrätten*; "the Court of Appeal") on 28 February 1996. Her extraordinary appeal to the Supreme Court (*korkein oikeus, högsta domstolen*) was rejected on 19 June 1996.

On 24 August 1995 the District Court, at P.'s request, appointed a guardian *ad litem* for A. for the purposes of the custody proceedings. The applicant's appeal was rejected by the Court of Appeal on 28 February 1996. Leave to appeal was refused by the Supreme Court on 19 June 1996.

On 27 October 1995 the District Court granted P. sole custody of A. The applicant had not requested access to A. in the event of her not being awarded sole custody. Her request for an order regarding access arrangements solely between her two daughters was refused as not being based on law. The applicant's appeal was refused by the Court of Appeal on 11 March 1996 after a re-hearing. On 12 September 1996 she was refused leave to appeal to the Supreme Court.

On 1 November 1995 P. requested that the public care of A. be revoked. On 13 December 1995 the Social Welfare Board considered that although the original grounds for the public care of A. were no longer at hand, its termination at that moment would run counter to the child's best interest. The Board decided to revert to the matter within three months but allowed the public care to be implemented in P.'s home. On 12 January 1996 the County Administrative Court declined to examine the applicant's various petitions in which she objected, *inter alia*, to the implementation of the public care in P.'s home. The applicant's respective appeals were rejected by the Supreme Administrative Court on 12 February 1997. Her extraordinary appeals were rejected on 30 December 1997.

On 20 December 1995 an official of the Social Welfare Board refused to disclose to the applicant an assessment of P.'s parental abilities which she had requested for the purpose of the pending custody and public care proceedings concerning A. The refusal was upheld by the Social Welfare Board on 17 January 1996. On 29 February 1996 the County Administrative Court quashed the Board's decision, referred the matter back to the Board and directed it to disclose the assessment to the applicant. On 6 June 1996 P.'s appeal was rejected by the Supreme Administrative Court.

On 27 March 1996 the Social Welfare Board terminated the public care of A. pursuant to Section 20 of the Child Welfare Act. The Board noted that P. had now been awarded sole custody of A. and had assumed and organised her care in an adequate manner. The applicant appealed, requesting that she and A. immediately be reunited or, in the alternative, that the public care be continued but implemented in her home until she had again been awarded custody of her children. The applicant's appeal was rejected by the County Administrative Court on 12 July 1996 and her further appeal was rejected by the Supreme Administrative Court on 12 February 1997.

On 13 December 1995 an official of the Social Welfare Board authorised the implementation of J.'s public care in M.'s home in Austria, where he had founded a new family. On 19 June 1996 the Social Welfare Board decided to maintain the public care of J. but directed that she should continue to live with the father M. The applicant had requested that the public care be terminated and that J. be returned to her. Her appeal was rejected by the County Administrative Court on 12 November 1996.

On 13 May 1996 the Helsinki Court of Appeal rejected the applicant's application to have J. returned to Finland in accordance with the Hague Convention on the Civil Aspects of International Child Abduction. The Helsinki Court of Appeal noted, *inter alia*, that J. had not been removed from Finland in contravention of the Hague Convention, given the Social Welfare Board's competence to order the implementation of her public care in Austria. On 5 September 1996 the Supreme Court rejected the applicant's appeal. The Social Welfare Board and the administrative courts declined to examine the applicant's requests and appeals related to J.'s placement in M.'s home in Austria.

On 15 August 1995 M. filed a civil action seeking sole custody of J. The applicant opposed the action but stated, on 31 October 1995, that she would not participate in the further proceedings, considering that the District Court would not be independent and impartial in the case. On 2 November 1995 the District Court, without holding an oral hearing, awarded M. custody of J., as the applicant could no longer be considered opposed to the action. On the applicant's appeal the Court of Appeal on 26 January 1996 returned the case to the District Court, directing it to hold an oral hearing and to ascertain the child's best interest in the matter. The applicant was refused leave to appeal to the Supreme Court on 23 May 1996. In the ensuing proceedings before the District Court the Social Welfare Board stated that the applicant had consistently declined to attend meetings whereby her current conditions for assuming custody of J. could be assessed. In its fresh decision of 11 September 1997 the District Court again awarded M. sole custody of J., considering, *inter alia*, the opinions of the Social Welfare Board and the social welfare authorities in Austria.

On 24 July 1996 the Social Welfare Board refused various requests made by the applicant, *inter alia* to the effect that J. be returned to Finland, where the applicant should be entitled to see her every night and weekend. The applicant appealed, requesting, *inter alia*, that the results of a lie detector test of the judges and referendary of the County Administrative Court be attached to its decision. On 12 November 1996 the applicant's appeals were rejected except in so far as her access request had been refused. As this refusal had amounted to an access restriction, the Social Welfare Board was directed to issue a formal decision to this end. The applicant's further appeals were rejected by the Supreme Administrative Court on 9 May 1997.

On 8 January 1997 the Social Welfare Board refused the applicant's request for access to J. but granted the applicant the right to visit J. in the children's home in Turku up to three times a year when J. would visit Finland at the Board's expense. No restriction was issued in respect of correspondence and telephone calls. The applicant's appeal was rejected by the County Administrative Court on 13 March 1997. The said court noted that since J. was living in Austria the access as requested by the applicant could not be implemented already for practical reasons and would in any case manifestly jeopardise the child's development and safety. On 9 May 1997 the Supreme Administrative Court declined to examine the applicant's further appeal as no such appeal was allowed. The applicant was invited to meet J. in August 1997 but did not show up.

On 4 February 1998 the Social Welfare Board revoked the public care of J. The applicant's appeal was rejected by the County Administrative Court on 22 May 1998. Her further appeal was rejected by the Supreme Administrative Court on 3 December 1998.

In decisions of 18, 19 and 20 October 1995 the Public Prosecutor of Turku declined to bring charges against P. or any official of the Social Welfare Board or the Tampere University Hospital. In contrast with the applicant's accusations the Prosecutor found no evidence showing that P. or any of the officials had committed a criminal offence during their involvement in the applicant's matters. Moreover, the University Hospital had certified not having received any written request for disclosure of the applicant's medical records. Moreover, any such request would have had to include the applicant's consent.

On 26 August 1997 the Häme County Administrative Board (*lääninhallitus, länsstyrelsen*) found that the Deputy Chief Physician of the Tampere University Hospital had failed to ensure, in response to the Social Welfare Board's request of 21 July 1995, that only relevant parts of the applicant's care records were disclosed to the Board.

In decisions of 9 and 10 July 1997 the Public Prosecutor, for want of evidence, declined to bring charges against the lawyer of the Social Welfare Board or A.'s guardian *ad litem*, whom the applicant had accused of offences in office.

On 27 November 1998 the Deputy Chancellor of Justice (*apulaisoikeuskansleri, justitiekanslersadjointen*) found no grounds for taking action against any of the judges whom the applicant had accused of offences in office.

On 28 March 1997 the applicant gave birth to a third child, whose father has apparently not been identified. It appears that the applicant and this child continue to live together.

B. Relevant domestic law

1. Access to documents

Section 40 of the Social Welfare Act provides for the right of a social welfare client and the client's guardian to obtain information concerning the client. According to Section 40 (3), a social welfare client shall have access to documented information and other data which relate to the matter concerned and are in the possession of social welfare personnel or a Social Welfare Board.

The Act on Publicity of Official Documents (*laki yleisten asiakirjain julkisuudesta, lag om allmänna handlingars offentlighet* 83/1951) stipulates that even information in a non-public document shall be disclosed to an applicant, appellant or other person whose interest, right or obligation the matter concerns, if the information may influence or may have influenced the consideration of the case (Section 19 (1)).

In accordance with Section 56 of the Social Welfare Act social welfare authorities are entitled to obtain the necessary information from other authorities in the performance of their work, without prejudice to the obligation of confidentiality.

2. Remedies against public officials

According to the Penal Code (*rikoslaki, strafflag* 1889), a civil servant who, by intent or neglect or carelessness, acts or omits to act in breach of his or her professional duties as provided for in statute or regulation is liable to punishment, if the act or omission is not

insignificant, having regard to the damage caused and other circumstances (chapter 40, sections 10 and 11). In accordance with Section 57 of the Social Welfare Act public officials and members of, for instance, a municipal board must maintain secrecy in respect of information of a confidential nature which has been disclosed to them for the performance of their duties. Various provisions in the Penal Code may become applicable if this obligation of secrecy is not respected (Section 58 of the Social Welfare Act).

Under the Constitution (*Suomen Hallitusmuoto, Regeringsform för Finland*) anyone whose rights have been infringed and who has suffered damage as a result of an illegal act, or by the negligence of a civil servant, is entitled to prosecute the civil servant, or demand that he or she be prosecuted, and to claim damages (Article 93). Under the Damage Compensation Act (*vahingonkorvauslaki, skadeståndslag* 412/1974) proceedings may also be brought against the State in respect of damage resulting from fault or neglect by its employees in the performance of their duties (chapters 3 and 4).

COMPLAINTS

1. The applicant complains that she has been subjected to treatment contrary to Article 3 of the Convention.

2. The applicant complains that her children have been threatened with deprivation of their liberty in contravention of Article 5 of the Convention.

3. The applicant further complains under Article 6 of the Convention about the unfairness and excessive length of the various proceedings which were, moreover, conducted by partial tribunals.

4. The applicant complains that her right, under Article 8 of the Convention, to her family life has not been respected. She refers, in particular, to the placement of her children in public care, the subsequent restrictions on the applicant's access and the children's "*de facto* adoption" by their fathers.

5. The applicant complains that her right, under Article 8 of the Convention, to her private life has not been respected due to the disclosure to the social authorities of her medical records at the Tampere University Hospital.

6. The applicant complains that she was deprived of her possessions in violation of Article 1 of Protocol No. 1.

7. The applicant further complains that her child J. was smuggled abroad, contrary to Article 3 of Protocol No. 4.

8. The applicant further complains under Article 5 of Protocol No. 7 that the fathers of her children as well as the authorities have systematically sought to destroy her and her children's life.

9. The applicant complains under Article 13 of the Convention that she had no effective domestic remedy at her disposal.

10. The applicant complains that she was discriminated against, contrary to Article 14 of the Convention. The applicant also invokes Article 17 of the Convention.

PROCEDURE

The application was introduced on 22 November 1996 before the European Commission of Human Rights and registered on 18 February 1997.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

1. The applicant complains that she has been subjected to treatment contrary to Article 3 of the Convention. This provision prohibits torture or inhuman or degrading treatment or punishment.

The Court recalls that in order to fall within the scope of Article 3, the alleged treatment must attain a minimum level of severity, the assessment of which depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc. In the present case the Court cannot find that the treatment to which the applicant has been subjected attains the threshold of treatment proscribed by Article 3.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

2. The applicant complains that her children have been "threatened with" deprivation of their liberty in contravention of Article 5 of the Convention. This provision guarantees the right to liberty and security of person.

The Court notes that the applicant is no longer the custodian of her children. It can nonetheless, for the reasons below, leave open the question whether the applicant can, in these circumstances, lodge a complaint on behalf of her children in accordance with Article 34 of the Convention. Even assuming that the threats referred to by the applicant would fall within the ambit of Article 5, the Court finds no indication that the applicant's children have at any stage been deprived of their liberty or security in contravention of this provision.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

3. The applicant further complains under Article 6 of the Convention about the unfairness and excessive length of the various proceedings which were, moreover, conducted by partial tribunals.

Commented [Note1]: In your reasoning specify: Complaint / Article of the Convention [/ Succinct summary of Government's submissions / Succinct summary of applicant's submissions in communicated case] / Court's [Commission's] case-law, if any / Application of case-law to facts of particular case or considerations for specific facts of case.

Remember to use automatic paragraph numbering (Alt+N) followed by a tab.

Article 6 § 1 of the Convention, insofar as relevant, provides:

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

The Court first recalls that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except when it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Court refers, on this point, to the Convention organs' established case-law (see, e.g., no. 25062/94, Dec. 18.10.1995, D.R. 83, p. 77).

The Court notes that the applicant, considering that the Supreme Administrative Court would not examine her appeals impartially, withdrew her appeals against the decisions of 21 September 1995 to maintain the public care orders. The Court need not determine whether the applicant, for the aforementioned reason, failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. At any rate, the Court finds no indication that any of the courts involved in the various proceedings lacked independence or impartiality within the meaning of Article 6 § 1. Nor does the Court find any indication that the proceedings were in any way unfair or excessively lengthy so as to amount to a breach of this provision.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

4. The applicant complains that her right, under Article 8 of the Convention, to family life has not been respected. She refers, in particular, to the placement of her children in public care, the subsequent restrictions on the applicant's access and the children's "*de facto* adoption" by their fathers.

Article 8 of the Convention reads, as far as relevant, as follows:

"1. Everyone has the right to respect for his private and family life ...

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 or morals, or for the protection of the rights and freedoms of others."

For the reasons below, the Court will leave open the question whether the applicant has exhausted all domestic remedies as required by Article 35 § 1 of the Convention in respect of this complaint.

The Court recalls that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life and that domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 (see, amongst others, the McMichael v. the United Kingdom judgment of 24 February 1995,

Series A no. 307-B, p. 55, § 86). Such interference constitutes a violation of this Article unless it is "in accordance with the law", pursues an aim or aims that are legitimate under paragraph 2 of Article 8 and can be regarded as "necessary in a democratic society".

In the present case the placement of the applicant's children in public care and the subsequent restrictions on access between her and them no doubt interfered with the applicant's right to respect for her family life. The Court finds no indication, however, that these forms of interference were not based on the Child Welfare Act or did not aim at protecting the health and rights of the applicant's children. Neither can the Court find that the social welfare authorities or the civil or administrative courts overstepped their margin of appreciation in placing the children in public care, maintaining that care, restricting access between the children and the applicant and eventually revoking the public care after the fathers had been awarded custody of their respective children. Accordingly, the interference with the applicant's rights can reasonably be considered proportionate to the legitimate aim pursued and thereby "necessary in a democratic society". To sum up, the interference has been justified under Article 8 § 2 of the Convention.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

5. The applicant complains that her right, under the aforementioned Article 8 of the Convention, to her private life has not been respected due to the disclosure to the social authorities of her medical records of the Tampere University Hospital.

The Court notes at the outset that the applicant has not availed herself of her right to bring either private prosecution proceedings or a civil action for damages against the officials she considers responsible for the disclosure of her medical records. For the reasons below, however, the Court need not determine whether the applicant has thereby failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention.

The Court will assume that the disclosure of the medical records to the Social Welfare Board amounted to an interference with the applicant's right to respect for her private life within the meaning of Article 8 (see the M.S. v. Sweden judgment of 27 August 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1447, § 35). The Court notes, however, that this disclosure was based on Section 56 of the Social Welfare Act and must be considered to have served the legitimate aim of protecting the applicant's children's health and rights. As for the proportionality of the interference, the Court finds that the officials of the relevant hospital could reasonably consider this disclosure necessary for the purpose stated by the Social Welfare Board in its request, namely for the follow-up to the public care orders regarding the applicant's children. The Court furthermore notes that under domestic law the officials and members of the Social Welfare Board were under a duty to treat the received records confidentially and could incur civil and/or criminal liability for any failure in this respect. The impugned disclosure was thus subject to adequate safeguards against abuse. In the overall circumstances the Court finds therefore that the interference fulfilled the requirements of Article 8 § 2 of the Convention (see *ibid*., pp. 1449-1450, §§ 42-44).

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

6. The applicant complains that she was deprived of her possessions in violation of Article 1 of Protocol No. 1.

The Court finds no indication that the applicant has been deprived of her possessions in contravention of this provision.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

7. The applicant further complains that her child J. was smuggled abroad, contrary to Article 3 of Protocol No. 4 which prohibits the expulsion of nationals.

The Court, leaving open whether the applicant can complain under this heading in the name of her daughter, finds no indication of any violation of the aforementioned provision.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

8. The applicant further complains under Article 5 of Protocol No. 7 that the fathers of her children as well as the authorities have systematically sought to destroy her and her children's life. Article 5 of Protocol No. 7 stipulates as follows:

> "Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children."

The Court finds no indication of any violation of the aforementioned provision.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

9. The applicant complains under Article 13 of the Convention that she had no effective domestic remedy at her disposal. Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in this 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."

The Court finds no separate issue arising under Article 13 of the Convention.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

10. The applicant complains that she was discriminated against, contrary to Article 14 of the Convention. The applicant also invokes Article 17 of the Convention which prohibits any act aimed at the destruction of any of the rights and freedoms set forth in the Convention or at their limitation to a greater extent than is provided for therein.

The Court finds no indication of discrimination against the applicant in her enjoyment of any of the rights guaranteed by the Convention or any its Protocols. Nor does it find that there has been any abuse, contrary to Article 17, of any of the rights guaranteed by the Convention or any of its Protocols.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Vincent Berger
Registrar

Georg Ress
President