AS TO THE ADMISSIBILITY OF

Application No. 12963/87
by Margareta and Roger ANDERSSON
against Sweden

The European Commission of Human Rights sitting in private on 13 October 1989, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
J. CAMPINOS
Mrs. G.H. THUNE
Sir Basil HALL

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 13 February 1987 by Margareta and Roger ANDERSSON against Sweden and registered on 25 May 1987 under file No. 12963/87;

Having regard to the written observations submitted by the Government on 8 February 1989 and the applicants on 31 March 1989 as well as the parties' submissions at the hearing held on 10 October 1989;

Having deliberated;

Decides as follows:

THE FACTS

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

The first applicant is a Swedish citizen, born in 1951. She is a nurse. The second applicant, Roger, is the first applicant's son and a Swedish citizen. He was born on 23 July 1974. Both applicants are resident at Nybro, Sweden. The applicants are represented before the Commission by Mrs. Siv Westerberg, a lawyer practising at Gothenburg.

Particular circumstances of the case

On 5 June 1985 the chairman of the Social Committee No. I of the Social Council (socialnämndens socialutskott I) of Växjö decided that Roger should be taken into public care on a provisional basis under Section 6 of the 1980 Act with Special Provisions on the Care of Young Persons (lagen med särskilda bestämmelser om vård av unga, hereinafter referred to as "the 1980 Act") and that during the period of investigation he should be placed at the Children's and Juveniles' Psychiatric Clinic at Växjö. The provisional care decision was based on a report of 5 June 1985 made by the social authority of Växjö. From the report it appears that the applicants were under observation by the social authorities since Roger was born. When he started

school in 1981 it was observed that his general adjustment and social maturity were insufficient. He was shy, inhibited and insecure. The first applicant refused to accept the measures proposed by the social authorities to help Roger. She moved from Växjö to Nybro. It is concluded in the report that the serious disturbances in Roger's state of health and in his development, in connection with the first applicant's behaviour, indicated that he had been treated in a mentally harmful manner for a considerable period of time. He was considered to be in immediate need of care on account of an increasingly serious risk for his health and development. It was moreover feared that the first applicant would seriously impede the continued investigation.

On 11 June 1985 the social authorities decided to prohibit contact between the applicants awaiting the decision of the County Administrative Court (länsrätten) of Kronoberg County on the care issue. The prohibition was to be reconsidered as soon as it could be considered not to be harmful to Roger to have contact with his mother. The first applicant appealed against the decision to the County Administrative Court.

The provisional care order was submitted for confirmation to the County Administrative Court, which upheld it on 14 June 1985, giving inter alia the following reasons:

> "From the investigation in the case it appears inter alia that Roger's behaviour in school has been reserved and inhibited and that he has isolated himself from his schoolmates. During the spring term 1985 he has been absent from school to a great extent and from 3 May he has completely failed to attend. Extensive help and support have for a long time been offered to Margareta Andersson. She has refused to accept it. When the social authorities of Växjö contacted the Children's and Juveniles' Psychiatric Clinic at Växjö, Roger and Margareta Andersson moved to Nybro. The schools of Växjö and Nybro have expressed strong concern about Roger's mental health. Considering this and the statement made by Deputy Chief Doctor Mauri Rautavuori, the County Administrative Court finds that there are such deficiencies in the care of Roger that it is probable that care will be provided for him under Section 1 second paragraph 1 of the 1980 Act and that a court decision on public care cannot be awaited considering the risk for Roger's health and development as well as the fact that the continued investigation may be seriously obstructed."

In a judgment given on the same day the County Administrative Court upheld the decision of 11 June 1985 to prohibit contact between the applicants. The Court's judgment was based on a statement made by the expert witness Deputy Chief Doctor Mauri Rautavuori of the Children's and Juveniles' Psychiatric Clinic. He stated that Margareta Andersson felt more agony and anxiety than Roger in the situation they were in. He considered it necessary to control her contact with Roger as it would be too dramatic for Roger if she was allowed to visit him. It was so painful for Margareta Andersson to be separated from Roger that she could not handle the situation. She needed as much help as Roger and he must not be given the task of taking care of his mother. Doctor Mauri Rautavuori concluded that a prohibition of access was necessary as long as the first applicant was in such a bad condition.

The first applicant appealed to the Administrative Court of Appeal (kammarrätten) of Jönköping against the judgment and the decision whereby the County Administrative Court had confirmed the provisional care order and the prohibition on access. The Administrative Court of Appeal rejected the appeal in a judgment of 27 June 1985. The first applicant made a further appeal to the

Supreme Administrative Court (regeringsrätten), which on 26 July 1985 decided not to grant leave to appeal.

On 28 June 1985 the Social Council applied to the County Administrative Court for a decision that Roger be taken into public care pursuant to Section 1 second paragraph 1 of the 1980 Act. The application was based on a report of 20 June 1985 made by the social authority. The Court held a hearing in the case. By a judgment of 17 July 1985 the Court decided in favour of the Social Council's application, giving inter alia the following reasons:

> "From the investigation in the case it does not appear that Margareta Andersson's way of keeping her home can be criticised. As far as it can be assessed, the material conditions are satisfactory. However, the investigation shows that the conditions in the home are likely to jeopardise a young person's emotional and social development. Before the County Administrative Court Margareta Andersson has expressed the view that the information in the Social Council's application is essentially incorrect. In view of the investigation of the case, Margareta Andersson must hereby be considered to confirm the allegation that she is unable to understand Roger's situation. It has clearly appeared from Roger's behaviour that his social and emotional development is deranged. It is therefore essential for Roger that he receives help and support to overcome his problems. In view of Margareta Andersson's attitude it is not likely that the necessary measures can be taken by her or with her approval. The task of rehabilitating Roger must therefore be entrusted to the social authorities. The Social Council's application shall therefore be granted."

The first applicant appealed against the judgment to the Administrative Court of Appeal.

On 15 July 1985 Roger ran away from the Children's and Juveniles' Psychiatric Clinic at Växjö where he had been placed when provisionally taken into care. He returned to the Clinic on 27 August 1985 and was brought home on 3 September 1985 after the first applicant had made a written agreement of 26 August 1985 with the Social Council that the public care of Roger should be carried out in her home. The agreement contained provisions concerning the care of Roger and the social authority's measures of assistance to the applicants. As a result of this agreement, the first applicant withdrew her appeal to the Administrative Court of Appeal.

As from March 1986 Roger did not attend school and on 28 April 1986 the Chairman of the Social Committee No. I of the Social Council of Växjö decided to place him at the Children's and Juveniles' Psychiatric Clinic awaiting a transfer to a foster home. The Social Committee decided on 22 May 1986 to place Roger in a foster home at Glimåkra.

On 29 April 1986 Roger was taken to the Clinic and on 13 May 1986 he ran away. He was brought back to the Clinic by the police on 5 August 1986.

The first applicant appealed to the County Administrative Court against the decision to place Roger in a foster home. The Court held a hearing at which she was present and assisted by counsel under the Legal Aid Act (rättshjälpslagen) and the second applicant was represented by official counsel (offentligt biträde). The Court rejected the appeal by a judgment of 19 August 1986, in which it stated:

> "Margareta Andersson has inter alia stated the following: She has now realised that Roger's development could be at risk. The risk is not as serious as to warrant placing

him in a foster family. The deficiencies are not only due to her. She has endeavoured to make Roger go to school but he has not received enough support from the school. Kristina Wintler, the home therapist, has not succeeded in establishing any contact with Roger. She and Roger have felt that Kristina Wintler was more controlling them than helping. Roger's needs would be satisfied in a better way with a male home therapist with technical interests. After having been fetched by the police Roger is upset and angry with the authorities. Roger will not remain in the foster home. Most of what is stated in the investigation report made by the social secretary, Rolf Olsson, is untrue. This summer she has rented a summer-house and has been out camping with Roger, after he absconded from the Children's and Juveniles' Psychiatric Clinic. Roger has been calm and harmonious and has been seeing two children of his own age. The reason why she and Roger have stayed away during the summer is that Roger needs his summer holiday. If he had not had it he would have made up for it by not attending school in the autumn. The Social Council states that the home where it is intended that Roger should be placed is a private home for care and residence. It is a very qualified home where the spouses professionally take care of children. The wife is a trained social pedagogue and the husband has general practical experience. They get support from the Children's Psychiatric Clinic at Kristianstad and from the officials of the social authority at Broby. The home is situated at Glimåkra where the spouses live in an old farm.

The Deputy Chief Doctor of the Children's and Juveniles' Psychiatric Clinic at Växjö, Mauri Rautavuori, heard as an expert witness, has inter alia stated the following: Roger is very reserved and careful in his contacts with the personnel at the Clinic. However, it is easier for the personnel to get their questions answered now than it was when Roger stayed at the Clinic one year ago. Roger has not developed like a normal twelve-year-old boy. He has very little experience of close social contact with children of his own age. He has not got a profound basis for further developing his personality. There is a considerable risk that Roger develops feelings of inferiority and also a risk of anti-social behaviour and of symptoms of dependence that can lead to psychotic behaviour. Margareta Andersson is tied by Roger's demands and Roger is the one who decides. Roger has got a potential for development in another home. It is not a solution that Roger returns home. Margareta Andersson has tried to manage Roger but has not succeeded in spite of the help she has received. The only way to help Roger, so that he can take the responsibility for his own life and his own behaviour, is to place him in another family.

Kristina Wintler, heard as a witness, has inter alia stated the following: She has worked as a home therapist in the Andersson family since autumn 1985. On average she has spent approximately four hours a day from Monday to Friday in the home. Her main task was to ensure that Roger went to school by taking him there. However, this did not work and her contribution became directed to what she could do in the home. Margareta and Roger Andersson were reserved towards everyone and it was difficult to engage them in any activity. She never got any real contact with Roger. Sometimes she could come close to him when he was interested in something. Maybe it would have been better to have a male home therapist. Roger had the power at home. When she intervened against Roger, Margareta Andersson interfered. Margareta Andersson cannot cope with the situation when she is alone with Roger. She tried but did not succeed. The school declares that

nothing more can be done about Roger's situation. Although there was a conference concerning Roger every week during the autumn term 1985 and the beginning of the spring term 1986 nothing could be done to help him.

The County Administrative Court makes the following assessment. During the time Roger has stayed at home he has been the object of extensive care measures which have not led to the intended result. Margareta Andersson has not, with the help she has received, managed to give Roger the care he needs. In order to let Roger develop favourably he must be placed in another home. The change in the care of Roger that has been decided by the Social Council must be considered to be in Roger's best interest. The appeal shall therefore be rejected."

On 23 August 1986 Roger was transferred to the foster home at Glimåkra.

The first applicant appealed to the Administrative Court of Appeal of Jönköping. The Court held a hearing in the case on 16 September 1986, at which the first applicant was present and the applicants were represented in the same way as in the County Administrative Court. The Administrative Court of Appeal in its judgment of 17 October 1986 rejected the appeal while making the following assessment:

"According to Section 11 paragraph 2 of the 1980 Act the Social Council can let the child stay in his own home, if this is considered to promote his care. Roger has been taken into care according to the Act because the conditions in Margareta Andersson's home were unsuitable for him and because of Margareta Andersson's inability to give him the care and security he needed. In spite of this the Social Council let Roger return to Margareta Andersson's home after only a short stay at the Children's and Juveniles' Psychiatric Clinic, be it with intensive measures of support. He was thereafter permitted to stay there for approximately one year. During this time Margareta Andersson has had the opportunity of showing that Roger could be given the support he needed for his development at home. However, no change has occurred, which has been shown particularly by the school situation.

It is evident that Roger must be given the opportunity of developing under other conditions. Care in a qualified foster home should be envisaged in the first place, as Roger would then have better possibilities to develop normal social relations and build up his own identity. The Social Council therefore had good reasons for their decision to transfer Roger from Margareta Andersson's home."

The first applicant appealed against the judgment to the Supreme Administrative Court which, by a decision of 19 December 1986, refused to grant leave to appeal.

As a result of the fact that Roger had twice run away from the Children's and Juveniles' Psychiatric Clinic the social welfare officers in charge of his case decided on 6 August 1986 to prohibit contact between him and the first applicant. The decision was taken under Section 16 paragraph 1 of the 1980 Act and was confirmed by the Social Council on 21 August 1986. As a result of the decision, the first applicant was prohibited from contacting Roger by telephone and from corresponding with him. The decision was to be in force until further notice, awaiting that the first applicant's access could be arranged without any harm being caused to Roger. The basis for the decision was a report of 15 August 1986 made by the social

authorities of Växjö. From the report it appears that the first applicant's own behaviour and Roger's reactions with regard to her behaviour were decisive when the prohibition of access was issued. It was noted that she had taken part in Roger's previous escapes and that she had made statements about leaving the country or moving away to some place unknown to the authorities to avoid being persecuted. It was deemed necessary, for the time being, to prevent the first applicant from seeing Roger. It was found that she had not been co-operative in any way while Roger stayed at the Clinic. When she was refused contact with him she had instead given him money and written messages telling him that she would soon help him to escape from the Clinic or, if this did not succeed, from the foster home at Glimåkra. Money and such messages were hidden among clothes and other things she brought to Roger.

The first applicant appealed to the County Administrative Court requesting that the decision to prohibit access be revoked and claiming the right to speak to Roger on the telephone.

The Court held a hearing in the case at which Margareta Andersson was present and assisted by counsel. By a judgment of 12 September 1986, the Court decided not to examine the appeal insofar as it concerned the prohibition of telephone communications and to reject the remainder of the appeal. The reasons of the Court read as follows:

> "Margareta Andersson has stated inter alia the following: The prohibition of access decided by the Social Committee goes beyond what is needed to carry out the care. The decision was taken before Roger was transferred to Glimåkra. The conditions have changed now that Roger is living at Glimåkra. There is nothing to indicate that she has a negative influence on Roger. She has not interfered with the present care and she has not tried to sabotage the measures now taken. The resentment she has shown is based on the fact that she does not understand why there has to be any care. It is true that the bags with clothes that she gave Roger when he stayed at the Children's and Juveniles' Psychiatric Clinic contained money and a card with a message that she would help him to leave the place. This does not mean that she encouraged him to run away. It was her way of telling Roger that by appealing against the care decision she would try to get him home. Roger has a lot of difficulties in the foster home at Glimåkra. When speaking with the foster home over the telephone she has been informed that Roger sits alone in his room crying. He wants to go home. Moreover he is being used as domestic help there. He has to wash up and clean.
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> The Social Council has stated that, bearing in mind what has happened in the case, it has been necessary to prohibit access. This includes a prohibition for Margareta Andersson to speak to Roger on the telephone. The Council has done a lot to get closer to Margareta Andersson and to create an effective co-operation with her. This has not been successful. They do not wish to risk that the new efforts turn into a failure. The Children's and Juveniles' Psychiatric Clinic has emphasised that a failure could involve a considerable risk to Roger. Statements made by Margareta Andersson show that she is prepared to take Roger away. Roger is developing well in the foster home. The Council's aim is to improve the co-operation with Margareta Andersson. The intention is that at least one month should pass after the transfer before there is any contact between Margareta Andersson and Roger. If a suitable agreement can be made with Margareta Andersson the Council intends to let her see Roger at the forthcoming turn of the months September/October.

The County Administrative Court makes the following assessment. The decision to take Roger into public care under the 1980 Act and his transfer to Glimåkra are based on the fact that Margareta Andersson has been unable to give Roger the care he needs. On two occasions, when Roger has been staying at the Children's and Juveniles' Psychiatric Clinic at Växjö, he has run away and with the help of Margareta Andersson managed to stay away for long periods of time. During Roger's last stay at the Children's and Juveniles' Psychiatric Clinic Margareta Andersson tried to give him a message which, in his eyes, must have implied that she would take him away from the Clinic. Considering what has been mentioned above and that the care that has just started should continue without interruptions and that Margareta Andersson should not influence Roger, the County Administrative Court finds that the Social Committee has good reasons for its decision to prohibit access. However, if a functioning co-operation with Margareta Andersson can be achieved, a meeting should take place between Margareta Andersson and Roger as planned by the Social Council.

According to Section 20 paragraph 3 of the 1980 Act a decision of the Social Council may be appealed to the County Administrative Court when the Council has decided about access to the child under Section 16. The County Administrative Court finds that the Social Committee, by prohibiting telephone contact with Roger, has limited Margareta Andersson's access according to Section 11 of the Act. According to Section 20 of the Act such a decision cannot be appealed."

The first applicant appealed against the judgment to the Administrative Court of Appeal, which rejected the appeal in a judgment of 11 November 1986 on the following grounds:

"According to Section 16 of the 1980 Act, the Social Council may restrict the guardian's right of access to the child, when it is necessary in order to carry out the care. Such a restriction may concern a prohibition of correspondence or telephone communications between the parent and the child as well as keeping the place of residence of the child secret. When the provision is applied the aim should be not to restrict the right of access more than is absolutely necessary.

The appealed decision to prohibit access includes, according to the Social Council's statement at the hearing before the County Administrative Court, a prohibition of correspondence and of telephone communications. The entire decision is based on Section 16 of the Act. The County Administrative Court should therefore have examined those parts of the decision which concerned prohibition of correspondence and of telephone communications. Margareta Andersson's appeal should accordingly be examined with respect to the restriction as a whole.

In the judgment of the County Administrative Court, which was upheld by the Administrative Court of Appeal, it was decided that Roger should be transferred from his mother's home to a foster home. The care outside the parental home is aimed at solving Roger's problems and at removing the deficiencies which prevailed at Margareta Andersson's home. During the care period the Social Council shall in principle try to maintain contact between Roger and Margareta Andersson, but it can be forced by the circumstances to restrict contact under the above-mentioned Section of the Act.

From the documents and from the investigation in the case,

carried out before the judgment of the Administrative Court of Appeal mentioned above, it appears that Margareta Andersson lacks understanding for Roger's need of care and that she is opposed to Roger being placed outside her home. Margareta Andersson has prevented earlier attempts to place Roger away from home by fetching Roger and by staying with him in a place unknown to the authorities. What happened during her last meeting with Roger as well as what she has stated before the Administrative Court of Appeal give reason to presume that she will not accept that Roger remain in the foster home.

It is an absolute condition for the success of the care in the foster home that Roger feels secure when staying there. The foster parents must furthermore be given the possibility to deal peacefully with Roger's problems. As soon as Margareta Andersson is able to accept the care that is being provided and the transfer to the foster home and is able to participate in the care, she should have the opportunity of seeing Roger. However, Margareta Andersson has shown that for the time being she is not prepared to take part in the care in this way. In these circumstances there are good reasons for the decision of the Social Council to prohibit access, including the prohibition of correspondance and of telephone communications."

The first applicant appealed to the Supreme Administrative Court, which refused to grant leave to appeal in a decision of 19 December 1986.

Roger fell ill with diabetes in the beginning of 1987 and was placed in a hospital for care. He stayed in the hospital from 3 until 25 February 1987. The circumstances concerning his stay in the hospital are disputed by the parties. The applicants allege that the first applicant wrote letters to Roger which were seized by the hospital personnel and handed over to the foster father who never forwarded them to Roger. They further allege that on 19 February 1987, when the first applicant after several requests finally obtained the right to visit Roger in the hospital, she was thrown out from the hospital by force by the foster father who had arrived while she was there. This happened when she tried to help Roger who was being assaulted by the foster father.

The applicants have further pointed out that their representative, Mrs. Westerberg, tried to convince the hospital personnel not to send Roger back to the foster home. Because of Roger's expressed fear to go back, she considered that there was a great risk that he would attempt an escape which could seriously endanger his health, considering his disease. However, Roger was sent back to the foster home.

The Government submit that during Roger's stay in hospital, much effort was put into making the first applicant visit him. She was very upset and seemed to screen herself off from the contacts taken to agree on the form for such visits. On 19 February 1987 she came to the hospital to visit Roger. She then tried to take Roger with her, which was prevented by a doctor. The foster father was also present on this occasion. When he arrived at the hospital there was a row.

The first applicant reported the above-mentioned incidents, including what she considered to be theft of letters she had sent to Roger and the money enclosed in them, to the police, but the public prosecutor decided on 8 May 1987 to discontinue the criminal investigation against the foster father and the hospital personnel. The first applicant's appeal against the decision was rejected by the Director of the Malmö Public Prosecution Authority (åklagar-myndigheten) on 13 August 1987. In the criminal investigation a

statement by a doctor, who witnessed the scene between the first applicant and the foster father, is included. He states that when the first applicant arrived at the hospital the hospital personnel contacted the foster father as they had been instructed that the first applicant was not allowed to be alone with Roger. When the foster father arrived the first applicant stated that she did not wish to be in the same room as the foster father. She then attacked him, she hit him on his chest and arms with her fists. At the same time Roger grabbed a clothes-hanger and started hitting the foster father over the back. The doctor stopped Roger from hitting the foster father. He saw the foster father grab the first applicant's wrists and force her out of the room.

From a medical certificate dated 24 February 1987 it appears that the first applicant had bruises on her arms and legs that could have been caused when the foster father forced her out from the hospital ward.

The first applicant submitted a request to the Social Committee in 1987 that, in the first place, the care of Roger be terminated and, in the second place, there be no restriction of the right of access. The Social Council's Social Committee No. I rejected the request on 9 April 1987. Subsequently, in a decision of 14 May 1987 the Social Committee decided that the meetings between the applicants should be planned and carried out with the assistance of the social authority in Växjö. The meetings should take place at the spouses Helgesson's home at Sibbhult, which was an extra foster home, and the foster father should be present at the meetings. This decision was an explanation of their previous decision, which was not meant as an absolute prohibition of access.

The Social Council's decisions were based on a report by the social authority of 30 March 1987. According to the report, the extra foster home which was linked to Roger's foster home should function as support and as a supplementary family and enable Margareta Andersson and Roger to meet there without disturbing the work of the regular foster family. A special assistant was employed to work in the foster home. Furthermore, a supervisory contact was established with the Children's and Juveniles' Psychiatric Clinic at Kristianstad. Roger was initially taught in the foster home but was gradually transferred to school. Margareta Andersson met Roger in the extra foster home on a few occasions during the autumn of 1986. Immediately after one of these meetings Roger tried to run away.

The first applicant appealed against the decisions of 9 April and 14 May 1987 to the County Administrative Court, requesting, in the first place, that the public care be terminated and, in the second place, that there be no restriction of the right of access.

The County Administrative Court held a hearing in the case on 21 May 1987 at which the first applicant was present and assisted by counsel and the second applicant was represented by official counsel. At the request of the Social Council the foster father, Henry Meijer, was heard as a witness and, at the first applicant's request, Mats Eriksson, the home therapist in the foster home, was also heard. The Court gave judgment on 1 June 1987, in which it rejected the appeal. It amended the Social Committee's decision by providing that only the spouses Helgesson were to be present at the meetings between Roger and the first applicant. The following reasons were given:

> "Roger has been in public care under the 1980 Act since 17 July 1985. After an initial stay at a Child Psychiatric Clinic Roger was allowed to stay at home for almost eight months. Since 23 August 1986 he has been staying in the foster home at Glimåkra. The decision on public care as well as the subsequent decision to transfer Roger are based on Margareta Andersson's inability to provide the care and security

that Roger needed. During Roger's stay at home he was the object of qualified supportive measures without any change being accomplished. Roger now stays in a qualified foster home. During his stay there he has changed in a noticeable and favourable way. He has become considerably more open. He takes part in the school teaching and travels to school and back on his own. He visits the kindergarten and takes part in its activities. He has a friend with whom he associates. All this confirms the previous assessments that Margareta Andersson has been unable to give Roger the care he needed and that public care under the Act was necessary. Apparently Margareta Andersson has not wanted to realise Roger's favourable development. The picture she gives of the foster home and the way Roger is treated there is completely without nuances and in the County Administrative Court's view incorrect. Nothing has appeared in the case which shows that Margareta Andersson is more capable of taking care of Roger now than at the time when he was taken into care or at the time when he was transferred to the foster home. To interrupt the care and Roger's favourable development would be directly harmful to him. The conditions are not such that the care can be terminated.

Concerning the restriction of the right of access the Social Council has stated that there is no restriction as to how many meetings can be arranged. The restriction also includes a prohibition of contact by letters or telephone.
According to Section 16 of the 1980 Act the Social Council may restrict the guardian's right of access, when it is necessary in order to carry out the care of the child. When applying this provision the aim should be not to restrict the right to access more than is absolutely necessary.
Margareta Andersson has shown at the hearing before the County Administrative Court that she does not understand Roger's need for care. Her only aim is Roger's return home.
Her conduct creates a conflict of loyalties for Roger. Margareta Andersson's actions when Roger ran away from the Child Clinic at Växjö, Roger's attempt to run away after her visit to the foster home, and Roger's behaviour when she visited the hospital at Kristianstad, show that a restriction of access is necessary for the successful care of Roger. The County Administrative Court finds that the Social Council had good reasons to restrict the right of access including contact by letters or telephone. Margareta Andersson has stated that she does not intend to visit Roger if Henry Meijer (the foster father) is present during the visits. The County Administrative Court finds it important that the Social Committee's decision be modified so as to make Margareta Andersson visit Roger. This can initially only be done if Henry Meijer is not present during the visits. In order to facilitate the establishing of contact no one else appointed by the Social Council should be present. During the visit, which is to take place in the spouses Helgesson's home, it is enough if the spouses Helgesson are present. No other change should be made in the decision on restriction of access."

The first applicant appealed against the judgment to the Administrative Court of Appeal. The Court held a hearing on 2 July 1987 at which the first applicant was present and the applicants were represented in the same way as in the County Administrative Court. In a judgment of 10 July 1987 the Administrative Court of Appeal confirmed the judgment of the County Administrative Court. The Court stated inter alia the following:

"Public care under the 1980 Act has been provided for Roger in a judgment that has acquired legal force. The issue in this case is firstly whether the care should be terminated.

According to Section 5 of the Act the care should be terminated when it is no longer necessary. In support of her request Margareta Andersson has, through her counsel, mainly alleged that the public care interferes with the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and accused the social authorities of false motives and misuse of power. There is nothing in the case which indicates that public care is no longer necessary. Margareta Andersson's first claim must be rejected. It should be added that the Administrative Court of Appeal can only apply Swedish law in force. The extensive criticism of the system, on which the appellant, through her counsel, has mainly based her claim, cannot be decisive for the Administrative Court of Appeal's assessment of whether the public care should be terminated. The possibilities for Margareta Andersson to regain the actual care of her son, which should be the obvious aim, depend on whether she, in the present situation, can co-operate with the social authorities and the family with whom Roger is staying.

At the hearing it was said that Margareta Andersson had visited Roger on 24 June at the spouses Helgesson's home at Sibbhult. The visit was the first meeting between the two since February and turned out well. The exact conditions for the future contacts - as well as the future care - depend to a great extent on Margareta Andersson's attitude and conduct. The Administrative Court of Appeal considers that further successful contact must be established at the home of the Helgessons before other kinds of contact can be allowed. Margareta Andersson's second claim is therefore also rejected.

The Administrative Court of Appeal has no legal competence to decide where Roger should stay. Since Margareta Andersson has made serious - although essentially unsubstantiated - accusations against the foster home at Glimåkra, the Administrative Court of Appeal considers that the degree of truth in the accusations should be investigated by the social authorities as well as the possibility of placing Roger in a foster home in which Margareta Andersson might have more confidence."

The first applicant appealed to the Supreme Administrative Court. In her appeal she pointed out inter alia that Roger had been refused the right to receive correspondence from other persons as well as from her. She mentioned specially that a letter inviting Roger to his cousin's confirmation and letters from a civil rights association informing him of his rights and freedoms according to the Swedish Constitution had not been forwarded to him. She alleged that this was unlawful. She also pointed out that, although she and Roger were Christian believers, the Social Council and the foster father had prohibited Roger from visiting the vicar at Glimåkra. The Supreme Administrative Court refused to grant leave to appeal in a decision of 20 August 1987.

The applicants' representative, Mrs. Westerberg, applied for permission to visit Roger in the foster home as his representative before the Commission. The social authority refused to grant the request by a decision of 17 August 1987.

The first applicant requested legal aid for her and the second applicant in order to bring their case to the Commission. On 4 June 1987 their request was refused by the Legal Aid Committee (rättshjälpsnämnden) of Malmö. The first applicant appealed against the decision to the Appeal Council for Legal Aid (besvärsnämnden för rättshjälpen) which in a decision of 21 September 1987 rejected the appeal.

In November 1987 the first applicant again requested, in the first place, that the care of Roger be terminated and, in the second place, that there be no restriction of her right of access. The Social Council rejected the request. Subsequently, on 5 February 1988, the Social Council's Social Committee No. I made a new decision on the first applicant's right of access to Roger. According to the decision Roger would visit the first applicant once a month with the spouses Helgesson and between these visits the first applicant could meet Roger in the home of the spouses Helgesson. There was to be no restriction of correspondence between the first applicant and Roger. It was added that telephone communications ought to be initiated by Roger.

The first applicant appealed against the decisions to the County Administrative Court requesting, in the first place, that the care be terminated, in the second place, that it be carried out in her home and, in the third place, that there be no restrictions on her right of access. The Court held a hearing on 10 February 1988 at which the first applicant was represented by counsel and the second applicant by official counsel. In a judgment of 17 February 1988 the Court decided to reject the appeal insofar as it concerned the termination of the public care, not to examine the request that the care be carried out in the first applicant's home and to add to the Social Council's decision on the right of access that the first applicant should have the right to meet Roger at least twice a month in the spouses Helgesson's home.

The Court made the following assessment:

"The County Administrative Court has previously decided not to hear Roger as a witness. There are no reasons to depart from that decision.

The decision on care under the 1980 Act was based on Margareta Andersson's inability to provide Roger with the care and security he needed. The issue in this case is in the first place whether the care should be terminated. Decisive for this issue is Margareta Andersson's ability to provide the necessary care for Roger so as to eliminate the risk that he will relapse into his previous behaviour. During Roger's stay at Glimåkra a positive change has occurred while Margareta Andersson's situation as well as her opinion of the social authorities apparently have not changed. If the care is discontinued there is a great risk that Roger will relapse into his previous behaviour, even though he now seems to be mentally stronger. In view of this the conditions are not such that the care should be discontinued.

In a decision of 26 October 1987, the County Administrative Board of Kristianstad County, in view of previous complaints about the foster home, found no reason to criticise the foster father's way of running the activities. The County Administrative Board decided not to take any further action. In this case it is the Social Council's task to provide the care for Roger and it is responsible for the care he receives and the County Administrative Court may not review it.

The Social Council has not decided on Margareta Andersson's request that the care continue in her home. The County Administrative Court cannot legally decide where Roger shall stay. Margareta Andersson's request cannot be examined.

Concerning the issue of restriction of access the Social Council has stated that it intends to assess generously Margareta Andersson's request to meet Roger at Glimåkra.

Furthermore, the Social Council has stated that the restriction does not include a prohibition for Margareta Andersson and Roger to meet in private, but it does mean that someone from the Helgesson family must be present in the home where they meet.

In view of Margareta Andersson's previous actions and her attitude as concerns the care issue, the County Administrative Court finds that the restriction of access should continue. Such a restriction should be designed so as not to prevent a successful contact from being established. The County Administrative Court finds that the restriction decided by the Social Committee has been so designed. In order to avoid any possible uncertainty the County Administrative Court considers it suitable to state that the meetings in the Helgesson family's home at Glimåkra can take place at least twice a month. Apart from that, the County Administrative Court confirms the Social Committee's decision on the right of access. What has thus been mentioned shall apply until the end of the school term in the spring of 1988. Thereafter a new assessment should be made."

On 26 February 1988 Roger was taken to hospital after having alleged that he had injected an overdose of insulin.

The first applicant appealed against the judgment of 17 February 1988 to the Administrative Court of Appeal. The Court held a hearing on 20 April 1988 and in a judgment of 27 April 1988 decided to terminate the care of Roger. The Court considered that, although the main reason for Roger's previous behaviour - Margareta Andersson's inability to provide him with the care and security he needed - had not been removed, an important part of the aim sought when he was taken into care had been achieved. Roger now had good social relations and a certain self-esteem.

Roger returned directly from hospital to his mother at Nybro where he has been living since. He has been attending school and has worked well according to his teacher.

Relevant domestic law

Section 16 of the 1980 Act, which was applied by the Social Council and by the courts when restricting the first applicant's right of access, reads as follows:

(Swedish)

"Om det är nödvändigt med hänsyn till ändamålet med vård eller omhändertagande med stöd av denna lag, får socialnämnden

1. bestämma hur den rätt till umgänge med den unge som kan tillkomma en förälder eller någon annan som har vårdnaden om honom skall utövas eller

2. bestämma att den unges vistelseort inte skall röjas för föräldern eller vårdnadshavaren."

(English translation)

"If it is necessary with regard to the purpose of the care provided under this Act, the Social Council may

1. decide how the right of access to the young person which may be enjoyed by a parent or other person who has custody of him shall be exercised, or

2. decide that the young person's whereabouts may not be disclosed to the parent or custodian."

The following is an extract from the Minister's statement in the Government Bill concerning Section 16 of the 1980 Act (Government Bill No. 1979/80:1, Part A, p. 601):

> "The Social Council should, when carrying out the care, as far as possible co-operate with the parents and assist in maintaining contacts between the parents and the child. As stated previously, a care decision should not give rise to other restrictions of the parents' right of access to the child than are necessary in order to carry out the care. The circumstances might, however, be such that the parents during the care period ought not to meet the child. There might for example be a risk that the parents without authorisation interfere with the care. The parents' personal circumstances might also, for example after severe abuse of alcohol or drugs or if they are mentally ill, be such that they should not at all meet the child.
>
> ....
>
> The proposed provisions concerning restrictions of the right of access should be applied restrictively. The Social Council should only in exceptional cases keep the child's residence secret to the parents."

It is further stated in the Government Bill (p. 503) that when the County Administrative Court has decided that a child should be taken into care the responsibility for the care is passed on to the Social Council. If the child has been taken into care due to lack of care for him the Social Council takes over the responsibility for the care that otherwise falls upon the parents according to the Parental Code. As concerns the competence accrued to a doctor if a child in care is taken into hospital, the Minister states that the doctor ought not to have a wider competence to exercise the care in the hospital than the child's parents would have had if the child had not been in public care. The doctor can accordingly, to the same extent as the parents, prevent the child from leaving the hospital.

COMPLAINTS

1. The applicants complain that they have been victims of a breach of Article 8 of the Convention as Roger was placed in a foster home without relevant reasons and as their right of contact was restricted.

The second applicant also complains of an interference with his right to correspondence because of the Social Council's decision to restrict his right to receive correspondence. He alleges that the decision was unlawful since such restrictions may only be imposed on children taken into care under Section 1 second paragraph 2 and third paragraph of the 1980 Act and only under special circumstances, whereas Roger was taken into care under Section 1 second paragraph 1 of the 1980 Act.

2. The applicants further complain that sending Roger back from the hospital to the foster home, in spite of the risk of an escape which could endanger his life because of his diabetes, was a breach of Roger's right to protection of his life as set forth in Article 2 of the Convention.

3. The second applicant alleges that, by being forced to live with his foster father, whom he hates and who maltreated him by punching him, and by using him for forced labour, he was subjected to inhuman and

degrading treatment. He invokes Articles 3 and 4 of the Convention.

4. The second applicant also complains of an interference with his right to freedom of religion and of his right to receive information. He invokes Articles 9 and 10 of the Convention. He maintains that he has been prohibited from visiting the vicar at Glimåkra and that a letter inviting him to a religious confirmation as well as letters informing him of his rights and freedoms according to the Swedish Constitution and other letters have not been forwarded to him.

5. The applicants allege that they had no effective remedy against the decision to restrict the second applicant's right to receive correspondence, against the refusal to let the first applicant visit the second applicant in hospital and against the decision of the prosecutor not to bring action against the hospital personnel for sending Roger back to the foster home or against the foster father for assault and, finally, against the decision not to let Roger visit the vicar. They complain that their right under Article 13 of the Convention has been violated.

6. Finally, the second applicant complains that his right to petition the Commission has been interfered with by the refusal of the Swedish Legal Aid Appeals Board to grant him legal aid for this purpose and by the refusal of the social welfare authorities to permit his representative, Mrs. Westerberg, to see him. He claims that this constitutes a violation of Article 25 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced with the Commission on 13 February 1987 and registered on 25 May 1987.

On 12 October 1988 the Commission decided to invite the Government to submit written observations on the admissibility and merits of the part of the application which relates to Article 8 of the Convention except for the justification of the care order as such.

The Government's observations were dated 8 February 1989 and the applicants' observations in reply were dated 31 March 1989.

On 10 July 1989 the Commission decided to invite the parties to a hearing on the admissibility and merits of the application.

The hearing was held on 10 October 1989. The parties were represented as follows:

The Government

Mr. Carl Henrik EHRENKRONA	Legal Adviser, Ministry for Foreign Affairs, Agent
Mrs. Birgitta GANTING	Legal Adviser, Ministry of Health and Social Affairs, Adviser

The applicants

Mrs. Siv WESTERBERG	Lawyer
Mrs. Birgitta HELLWIG	Assistant to the lawyer

The applicants were also present.

THE LAW

1. The applicants complain that the placement of Roger in public care without relevant reasons and the restriction on access applied while he was in care 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 or morals, or for the protection of the rights and freedoms of others."

The Commission has first examined whether the placement of Roger in public care and the maintenance in force of the care order was in conformity with Article 8 (Art. 8).

The Commission considers that it follows from the case law of the Convention organs that the maintenance in force of a public care order constitutes an interference with the parents' and the child's right to respect for their family life (cf. Eur. Court H.R., Olsson judgment of 24 March 1988, Series A No. 130, p. 29, para. 59, and Eriksson judgment of 22 June 1989, Series A No. 156, para. 89). Consequently, the measures taken in the present case interfered with the applicants' right to respect for their family life as guaranteed by Article 8 para. 1 (Art. 8-1) of the Convention.

This interference was justified under Article 8 (Art. 8) if it was "in accordance with the law", had a legitimate aim under Article 8 para. 2 (Art. 8-2) and was "necessary in a democratic society" for the said aim.

The Commission is satisfied that the maintenance in force of the care order until 27 April 1988 was "in accordance with law" and pursued the legitimate aim under Article 8 para. 2 (Art. 8-2) of protecting the health and interests of Roger (cf. Olsson judgment, loc. cit., pp. 30-31, paras. 60-65).

As regards the question of whether the maintenance in force of the public care was "necessary in a democratic society", the Commission recalls that this condition requires that the interference corresponds to a pressing social need and that it is proportionate to the legitimate aim pursued. In determining whether an interference is "necessary" the Commission will take into account that a margin of appreciation is left to the Contracting States. It must determine whether the reasons adduced to justify the interference are "relevant and sufficient" (cf. Olsson judgment, loc. cit., pp. 31-32, paras. 67-68). When examining these questions the Commission will take into account that Article 8 (Art. 8) includes a procedural requirement that in child-care cases the parents must have been involved in the decision-making process (see Eur. Court H.R., W. v. the United Kingdom judgment of 8 July 1987, Series A No. 121, p. 29, para 64).

The Commission recalls that the initial care order acquired legal force after the first applicant had withdrawn her appeal against the care order on the ground that she had concluded an agreement with the Social Council according to which Roger was to be cared for in her home. Subsequently, it was decided that Roger should be transferred to a foster home. This decision was appealed by the first applicant to the County Administrative Court, the Administrative Court of Appeal and finally to the Supreme Administrative Court which refused leave to appeal on 19 December 1986. Following a request from the first applicant that the care of Roger be terminated the case was again

examined by the administrative courts up to the Supreme Administrative Court which refused leave to appeal on 20 August 1987. A further request that the care be terminated was rejected by the County Administrative Court on 17 February 1988 but on 27 April 1988 the Administrative Court of Appeal ordered that the care should terminate.

The Commission, noting that the applicants have been represented by legal counsel, considers that there can be no doubt that they have been sufficiently involved in the decision-making process. Moreover, hearings have been held before the County Administrative Court and the Administrative Court of Appeal at which the Courts have been in a position to hear the first applicant personally and to listen to the parties' arguments and hear witnesses and experts.

From the different court judgments it appears that the original care order was based on Roger's behaviour at school, his failure to attend school and that the conditions at home were such as to jeopardise Roger's emotional and social development. Roger's behaviour was considered to be such that his development was deranged. Despite extensive assistance measures in the autumn of 1985 and spring of 1986 when Roger was cared for at home, it was considered that Roger did not receive the care he needed. It was therefore necessary to place him in a foster home.

These reasons were, in the Commission's opinion, clearly "relevant" for the care decision and, having regard to the margin of appreciation of the States and the procedures followed it also finds that the reasons were "sufficient" and that the Swedish authorities were entitled to think that it was necessary to keep Roger in care until 27 April 1988.

It follows that, as regards the maintenance in force of the care order, the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The Comission has next examined whether the restrictions on access, including telephone communications and correspondence, were in conformity with Article 8 (Art. 8) of the Convention.

As regards the first period of access restrictions from June 1985 until September 1985, the Government submit that the application is inadmissible for failure to comply with the six months rule in Article 26 (Art. 26) of the Convention.

The Commission agrees with the Government. The restrictions here at issue were subject to court proceedings which terminated on 26 July 1985 when the Supreme Administrative Court refused leave to appeal. The restrictions applied were discontinued as a result of a written agreement between the first applicant and the Social Council on 26 August 1985 and Roger returned home on 3 September 1985.

Since the application was introduced on 13 Feburary 1987, which is more than six months after the final decision concerning the first period of access, it follows that the complaints relating to this period have been lodged out of time and must be rejected under Article 26 (Art. 26) of the Convention in conjunction with Article 27 para. 3 (Art. 27-3).

The second period of access restrictions lasted from 6 August 1986 to 27 April 1988. The Government submit that the applicants' complaints are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

The Commission considers that the issues which arise are, in particular, whether these restrictions were "in accordance with the law" and "necessary in a democratic society" within the meaning of

Article 8 para. 2 (Art. 8-2) of the Convention.

After an examination of these issues in the light of the parties' submissions, the Commission considers that they raise questions of fact and law which are of such a complex nature that their determination requires an examination of the merits. This part of th application cannot therefore be declared inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention, but must be declared admissible, no other ground for declaring it inadmissible having been established.

3. The applicants also complain that, in view of the risk of his escape, sending Roger back from the hospital to the foster home endangered his life contrary to Article 2 (Art. 2) of the Convention. They also allege that Roger's treatment in the foster home violated Articles 3 and 4 (Art. 3, 4) of the Convention.

The second applicant also complains of violations of his rights under Articles 9 and 10 (Art. 9, 10) of the Convention on the grounds that he has been prevented from visiting a vicar and has not been permitted to receive letters addressed to him in the foster home.

The Commission has examined these complaints in the light of the parties' submissions. It finds, however, that it has not been established that the facts were such as to disclose a violation of any of these provisions of the Convention.

It follows that these parts of the application are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicants also allege violations of Article 13 (Art. 13) of the Convention on the ground that they did not have an effective remedy for their complaints with regard to the decision not to prosecute the hospital personnel or the foster father and the refusal to let Roger visit the vicar.

Having regard to its conclusions above under No. 3 the Commisison finds that in these respects the applicants cannot be said to have an "arguable claim" of a violation of the Convention (cf. Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A No. 131, pp. 23-27, paras. 52-58). Consequently, Article 13 (Art. 13) does not grant them a right to an effective remedy for these complaints.

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.

With regard to the complaint of no effective remedy in respect of the access restrictions the Government argue that the applicants could have requested that those restrictions be discontinued before the Social Council and the administrative courts.

The Commission has carried out a preliminary examination of this issue in the light of the parties' submissions. It finds that the issue whether the first and the second applicant had effective remedies with regard to the restrictions on access raises questions of fact and law which are of such a complex nature that their determination requires an examination of the merits. This part of the application cannot therefore be declared inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention, but must be declared admissible, no other ground for declaring it inadmissible having been established.

5. Finally, the second applicant alleges a violation of his right under Article 25 (Art. 25) of the Convention to petition the Commission.

He bases his allegation on two grounds; namely that his representative was not allowed to meet him in order to prepare the pleadings before the Commission, and that he was refused legal aid in Sweden to present his case to the Commission.

The Commission notes that the application has been brought by the first applicant both on her own behalf and on behalf of her son Roger. She has been fully able to present her case to the Commission. Moreover, since April 1988 Roger has been living with the first applicant and he also appeared before the Commission at the hearing. In these circumstances no issue could arise under Article 25 (Art. 25) on this ground.

As regards the second ground, the Commission recalls that it has held that Article 25 (Art. 25) does not oblige a Contracting State to grant legal aid for the purpose of bringing an application to the Commission (cf. No. 11373/85, Dec. 11.5.87, to be published in D.R.).

Consequently, no issue arises in this respect either.

For these reasons, the Commission

1. DECLARES ADMISSIBLE, without prejudging the merits, the complaints relating to the prohibition on access and the absence of an effective remedy with regard to those restrictions (Articles 8 and 13 (Art. 8, 13) of the Convention);

2. DECIDES TO TAKE NO ACTION WITH RESPECT TO THE COMPLAINT UNDER ARTICLE 25 OF THE CONVENTION;

3. DECLARES INADMISSIBLE, the remainder of the application.

Secretary to the Commission — President of the Commission

H. C. KRÜGER — C. A. NØRGAARD