AS TO THE ADMISSIBILITY OF

Application No. 36341/97
by Susanne BALLENSKY
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 1 July 1998, the following members being present:

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

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

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

Having regard to the application introduced on 28 May 1997 by Susanne BALLENSKY against Sweden and registered on 5 June 1997 under file No. 36341/97;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Swedish citizen born in 1960 and resident in Hägersten, is a waitress. Before the Commission she is represented by Mr Lennart Hane, a lawyer practising in Stockholm.

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

a. The particular circumstances of the case

The applicant and her husband have a son R, born on 30 August 1990. On 5 September 1990 R was taken into public care on a provisional basis under Section 6 of the Act with Special Provisions on the Care of Young Persons (Lagen med särskilda bestämmelser om vård av unga, 1990:52 - hereinafter "the 1990 Act"). By judgment of 30 October 1990, the County Administrative Court (länsrätten) of the County of Stockholm granted, pursuant to the 1990 Act, the request of the Social District Council (Sociala distriktsnämnden - hereinafter "the Council") No. 11 of Stockholm for a care order in respect of R on the grounds that the applicant and her husband were unable to rear R and that, due to the parents' mental illness, there was a risk of

impairment of R's health and development.

On 20 December 1990 R was placed with foster-parents. He still lives with the same foster-family.

On 19 March 1991 the applicant requested that R should be removed from the foster-family and placed in the grandparents' home. Her request was rejected by the Council on 7 May 1991 and the Council decided that R should remain in the foster-home. The Council's decision was later confirmed by the County Administrative Court.

In February 1992 the parents renewed their request that R should be removed from the foster-home to the grandparents' home. The Council upheld its former decision that R should remain in the foster-home. By judgment of 21 August 1992, the County Administrative Court confirmed the Council's decision.

In January 1995 the applicant requested that the public care be terminated. She declared that her and her husband's intention was that R should live with his grandparents. Their request was refused by the Council on 1 November 1995.

The parents appealed against the Council's decision to the County Administrative Court. By decision of 23 January 1996, the court rejected the applicant's request to hear R's grandparents and three other witnesses who were supposed to give evidence as to the grandparents' ability to take care of R.

On 24 January 1996 the court held a hearing at which the applicant, her lawyer, the child's counsel and representatives of the Council were present and heard. At the hearing the court restricted the discussion to the following three issues: whether if R needed care, whether the conditions in the applicant's and her husband's home had been changed since the first decision to take R into public care and whether there was a consent by the custodians to the proposed care. The court did not allow the applicant's lawyer to present arguments with regard to the grandparents' capability of taking care of R. By judgment of 21 February 1996, the County Administrative Court rejected the appeal against the Council's decision not to terminate the care. The court found that the deficiencies on which the initial care decisions had been based still existed and that there was thus still a clear risk of impairment of R's health and development due to the conditions in his parents' home. The court found that the parents' mental health had not improved to such an extent that they were able to take care of R.

The parents appealed to the Administrative Court of Appeal (kammarrätten) in Stockholm. By decision of 29 April 1996, the court granted the applicant's request that R's grandparents be heard at the court's hearing. Finding the evidence to be given by the other three witnesses proposed by the applicant unnecessary, the court, however, rejected the applicant's request in that respect.

On 3 May 1996 the appellate court held a hearing, during which it heard the same persons as the County Administrative Court and, in addition, R's grandparents.

By judgment of 17 May 1996, the Administrative Court of Appeal upheld the appealed judgment. The appellate court agreed with the County Administrative Court that the deficiencies on which the initial care decisions had been based still existed. Thus, the parents could not take care of R due to their mental illness. The appellate court stated that R had special needs. The court took into account the statement of Dr. Brune at the Children's Medical Clinic (Barn- och ungdomsmedicinska kliniken) at Danderyd hospital that children with a mental retardation are very dependent on a safe and solid home environment for their development and that the removal of R, who was mentally retarded, from the foster-home would cause him much anxiety

and therefore negatively affect his psychomotoric development. The court noted that R had made some progress with his speech and motoric activity and that it was important not to disturb this development. The court further stated that there was no reason to question the grandparents' wish to give R a good and safe home environment. The court, however, found that the circumstances in the case were such that the care should not be terminated.

On 28 November 1996 the Supreme Administrative Court (Regeringsrätten) refused leave to appeal against the Administrative Court of Appeal's judgment.

b. Relevant domestic law

The taking of children into public care without the consent of the parents is governed by the 1990 Act. Section 2 of the Act provides that care is to be provided if there is a clear risk of impairment of the health or development of a person under eighteen years of age due to ill-treatment, exploitation, lack of care or any other condition in the home.

Once public care has been ordered, it is executed by the Social Council, which decides on the particular details of the care. Section 11 of the Act provides that the Council shall decide on how the care should be arranged and where the child should live.

Section 21 of the Act provides that the care under the Act shall terminate when such care is no longer necessary.

COMPLAINTS

1. The applicant complains of the public care of R. She claims that the public care was not necessary, as proper care of R could be provided by his grandparents. The applicant invokes Article 8 of the Convention.

2. Furthermore, invoking Article 6 of the Convention, the applicant complains that she has been denied a fair hearing by an impartial tribunal. She claims that the courts have not properly analysed R's special needs and have ignored the possibility that the grandparents could take care of R with the support of, inter alia, physicians and speech therapists.

THE LAW

1. The applicant complains of the public care of R. She invokes 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 finds that the refusal to terminate the care of R interfered with the applicant's right to respect for her family life as ensured by Article 8 para. 1 (Art. 8-1) of the Convention. It must therefore be examined whether this interference was justified under the terms of Article 8 para. 2 (Art. 8-2). In this respect, the Commission recalls that three conditions must be satisfied: the interference must

be "in accordance with the law", it must pursue one or more of the legitimate aims enumerated in para. 2 and it must be "necessary in a democratic society" for that or those aims.

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

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

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

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

In the present case, the Commission recalls that the County Administrative Court and the Administrative Court of Appeal, in their judgments, found that the deficiencies on which the initial care decisions had been based still existed and that, thus, there was still a clear risk of impairment of R's health and development due to the conditions in his parents' home. Reference was made to the parents' mental health which had not improved to such an extent that they could take care of R, who had special needs on account of his mental retardation. Furthermore, the appellate court took into account the statement of Dr. Brune that the removal of R from the foster-home would cause him much anxiety and therefore negatively affect his psychomotoric development. The appellate court also noted that R had made some progress with his speech and motoric activity and that it was important not to disturb this development.

The Commission further recalls that the courts, before giving their judgments, had held hearings, at which the applicant, her lawyer, the child's counsel, representatives of the Social Council and - before the Administrative Court of Appeal - the grandparents were present and heard. The courts further had regard to the parties' written submissions and to the statement of Dr. Brune. Thus, the courts cannot be said to have based their decisions on insufficient evidence.

In the light of the foregoing the Commission finds that the(Art. ant and sufficient reasons and that, having regard to their margin of appreciation, the Swedish authorities were reasonably entitled to think that it was necessary for the care decision to remain in force. Accordingly, the Commission concludes that the decisions not to terminate care can reasonably be regarded as "necessary in a democratic society" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

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

Convention.

2. The applicant complains that she did not have a fair hearing by an impartial tribunal. She invokes Article 6 of the Convention which, in so far as relevant, reads as follows:

> "1. In the determination of his civil rights ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ..."

As regards the courts' refusal to hear certain witnesses, the Commission recalls that it is in principle within the discretionary powers of the domestic courts to assess the evidence before them as well as the relevance of the evidence which the parties seek to adduce. The Commission notes that the appellate court heard the grandparents. However, the courts refused to hear the other witnesses proposed by the applicant, finding that their evidence would not be of particular assistance in the case. The Commission finds that these decisions cannot be considered to be arbitrary or to disclose any indication of a violation of Article 6 para. 1 (Art. 6-1).

As concerns the courts' alleged failure to analyse R's special needs and state reasons why the grandparents could not take care of R, the Commission accepts that under specific circumstances the absence of reasons in a court decision might raise an issue as to the fairness of the procedure which is guaranteed by Article 6 para. 1 (Art. 6-1) (cf., e.g., Eur. Court HR, Hadjianastassiou v. Greece judgment of 16 december 1992, Series A no. 252, p. 16, para. 33 and No. 24949/94, Dec. 3.12.1996, D.R. 87-A p. 77).

However, the Commission notes that the judgments of the County Administrative Court and the Administrative Court of Appeal mentioned the facts, the relevant legal provisions applied as well as their conclusions. With respect to R's special needs, the courts had regard to Dr. Brune's statement. Moreover, the appellate court considered the possibility of R's grandparents taking care of R. Thus, there is no indication of a violation of Article 6 para. 1 (Art. 6-1) in this respect.

Finally, the applicant alleges that the courts decided in favour of the Council and, therefore, were not impartial. However, the Commission finds that the applicant's submissions fail to substantiate her claim. Moreover, nothing in the file suggests any reason to call in question the impartiality of the courts.

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

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER Secretary to the Second Chamber	J.-C. GEUS President of the Second Chamber