AS TO THE ADMISSIBILITY OF

Application No. 24482/94
by Jan BOGDANSKI
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 29 November 1995, the following members being present:

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

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 7 April 1994 by Jan Bogdanski against Sweden and registered on 28 June 1994 under file No. 24482/94;

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 1946, is a researcher. He resides at Skogås.

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

In May 1984 the applicant got a divorce from his wife, Z.B. By a decision of the District Court (Tingsrätten) of Huddinge, she was awarded custody of their son, A, born on 21 June 1982. Also in May 1984 the applicant was convicted of having threatened and assaulted Z.B. He was sentenced to pay a fine.

In 1985 the applicant left Sweden. He first moved to Norway and then, in 1986, he settled in the United States. In October 1990 he moved back to Sweden with his cohabitee and her daughter. While abroad, the applicant did not have any contact with A. At the time of his return to Sweden, the applicant had not seen his son since 28 October 1983.

On 17 December 1990 the applicant contacted the Social Council (Sociala enheten - "the Council") at Vårby and requested it to help him in securing access to A. When visiting the social welfare office a month later, he explained that he wanted a social worker to deliver his son for the meetings, as he feared that Z.B. again would accuse him of assault should he contact her. At a visit to the social welfare office

a few days thereafter, the applicant's ex-wife, however, objected to this arrangement, finding it more appropriate that the applicant first contacted his son in the latter's home.

On 11 February 1991 the applicant instituted access proceedings against Z.B. in the District Court. He also requested the Court to issue a provisional access order. The Court held a preparatory hearing with the parties on 18 April. They agreed that the applicant should meet A on four Saturdays in May and June. However, the first meeting, scheduled for 4 May at the son's home, did not take place, as nobody was at home when the applicant arrived. As a consequence, the applicant, by application dated 7 May, requested the Court to transfer custody of A to him. He claimed that Z.B. was unfit as A's custodian, as she allegedly hindered meetings between father and son.

Thereafter, the Council arranged meetings between the applicant and A at the latter's home on 29 May and 6 June 1991 in the presence of a contact person (kontaktperson) appointed by the Council. However, the meetings went off badly. According to the Council, A asked the applicant to leave as he had not heard from him for such a long time. He then refused to talk to his father.

On 17 June 1991 the Court held a further preparatory hearing, during which the parties reached an agreement on certain access dates between June and September and the particular arrangements for these meetings. The Court decided that the question of access should be investigated by the Council and that the next preparatory hearing should be held on 3 October. The parties agreed that the proceedings should be stayed until that date.

At a third meeting between the applicant and A on 19 June 1991, A again had a very negative attitude towards his father and was very upset. The following meetings, which were to take place on 6 July and 17 August, had to be abandoned due to A's reactions. On 25 June, a contact between A and a psychiatrist at the Children's Psychiatric Centre (Psykiatriska barn- och ungdomsmottagningen) at Skärholmen was initiated by Z.B. as a consequence of A's reactions to the meetings with his father.

On 17 July 1991 the Council, at the applicant's request, appointed another contact person to assist in the access attempts. After having talked to the parents in September and October, the contact person concluded that there was no basis for an agreement between them. The Council then advised the Court to await the result of its investigation before deciding on future access.

After a postponement, the Court held its third preparatory hearing on 5 November 1991. By decision of 8 November, it requested the Council and the Psychiatric Centre to give, before 29 November, its opinions on the advisability of further provisional access. The decision was upheld on appeal.

In reply to the Court's request, the Psychiatric Centre stated that while A was undergoing treatment at the Centre it refrained from commenting on the question of further access. The Council, in its reply to the Court, found it advisable to await the outcome of the on-going co-operation talks (samarbetssamtal) between the parents. These talks were lead by the person appointed by the Council, in mid-September 1991, to carry out the investigation of the question of access as requested by the Court on 17 June. The investigator met the applicant on 25 October, the mother on 7 November and both parents together on 27 November and 3 December.

By decision of 3 December 1991, the Court rejected the applicant's request for provisional access. It found it advisable to await the outcome of the co-operation talks, the treatment of A at the Psychiatric Centre and the Council's investigation. It further ordered

that the investigation should be concluded by 31 March 1992. The decision was upheld on appeal.

On 4 December 1991, after having been refused to record the co-operation talks on audio tape, the applicant informed the Council that he did not want to continue with the talks. He later requested a meeting with A at the Psychiatric Centre. At this meeting, which took place on 17 January 1992, A refused to sit in the same room as the applicant, for which reason they sat in different rooms and talked via microphone. At the end of the meeting, A expressed that he never wanted to see his father again.

The Council later asked for an extension of the time-limit for submission of its investigation report to the Court. As a consequence, the applicant lodged a further request for provisional access. By decision of 7 May 1992, the Court rejected the applicant's request and ordered the Council to submit its report by 1 June. The decision was upheld on appeal.

On 2 June 1992 the Council's investigation was concluded and a report was submitted to the Court. In the report, it was noted that the applicant had refused to talk about his feelings for A or his wish to establish a relationship with him and that he preferred to submit information in writing. It was further noted that the attempts at establishing access had been unsuccessful and that A, both to the Psychiatric Centre and the Council's investigator, had expressed that he did not want to see his father again, an attitude which, according to the Centre, could not be expected to change in the foreseeable future. Having regard to this and to A's age, maturity and clear attitude towards his father, the investigator concluded that access would not be beneficial to either A or the applicant. The investigator, however, expressed that it was to be hoped that future meetings would take place on A's initiative.

A further request by the applicant for provisional access to A was rejected by the Court on 16 July 1992. The decision was upheld on appeal.

The Court's main hearing in the case, originally scheduled for 25 August 1992 was, at the applicant's request, postponed until 4 September. During the hearing, the Court heard the parties.

Having regard to the parties' statements and the Council's report, the Court, by judgment of 25 September 1992, rejected the applicant's claim for transfer of custody, finding such a measure not to be in the best interests of A. In this connection, the Court considered as unfounded the applicant's allegation that Z.B. was obstructing the contacts between him and A. As regards access, the Court, however, found that it was in A's best interests to have contact with his father. The Court stated that the applicant should have access to A initially once a month, starting on 3 October, and after the turn of the year every second weekend, four weeks during summer and every second Easter, Christmas and New Year. The Court's decisions were taken in accordance with Chapter 6, Sections 6 (custody) and 15 (access) of the Parental Code (Föräldrabalken), which state that the child's best interests are decisive. The decision concerning access was put into effect immediately.

On 3 October the applicant came to fetch A at the latter's home. A, however, refused to leave the apartment and got very upset. After some discussion the meeting ended. The applicant claimed that Z.B. had failed in her responsibility to prepare A for the meeting.

The parties appealed against the judgment of the District Court to the Svea Court of Appeal (Svea hovrätt). The applicant requested that custody be transferred to him and Z.B. claimed that the applicant should not be granted any access to A. Z.B. further requested the Court

of Appeal to stop further access, as it was harmful to A.

By decision of 30 October 1992, the Court of Appeal annulled the District Court's decision that the applicant's right of access was immediately enforceable. The Court of Appeal found, under the circumstances, no reason to order meetings between the applicant and A. No appeal was available against this decision.

On 4 December 1992 the Court of Appeal requested the Children's Psychiatric Centre at Huddinge to give, before 2 March 1993, its opinion on the advisability of access between the applicant and A. In its reply of 2 March, the Centre suggested that an observation study of A should be made at a children's psychiatric clinic. After having rejected, by decision of 26 March, the applicant's renewed request for a provisional access order, the Court of Appeal, however, decided, on 2 April, not to order the suggested study, as both parents were against it. Instead, the Centre was asked to give its opinion as previously requested. The Centre replied on 3 May, stating that it had no basis for an assessment of the relationship between the applicant and A and that it was thus impossible to appraise the value for A to have contact with his father. The Centre, however, considered that in the prevailing situation forced access would be traumatic for A and, for this reason, inappropriate.

The Court of Appeal held hearings in the case on 24 and 31 August 1993, during which it heard the parties, the psychiatrist treating A at the Psychiatric Centre at Skärholmen and the applicant's cohabitee.

By judgment of 14 September 1993, the Court of Appeal ruled in favour of Z.B. The applicant's claim for access to A was thus rejected. The Court of Appeal shared the District Court's view on the question of custody. As regards access, the Court of Appeal stated, inter alia, the following:

(translation)

> "The circumstances of the case are, in the Court of Appeal's opinion, exceptional. The Court of Appeal refers, in this respect, to the total lack of contact between [A] and [the applicant] from the time when [A] was just over a year old (the autumn of 1983) until [the applicant] returned to Sweden in the autumn of 1990 and the question of access arose. The subsequent attempts at establishing access - which, as far as meetings between [the applicant] and [A] are concerned, have been limited to four meetings during the period May-August 1991 and the meeting on 3 October 1992 - have been unsuccessful. Moreover, the [Council's] investigation shows that [A], who is now 11 years old, has a negative attitude, which has grown stronger and stronger, towards meeting the father.
>
> [A] and [Z.B.] have since June 1991 had a regular contact with [the Children's Psychiatric Centre] at Skärholmen. [The psychiatrist] has, when heard in the Court of Appeal, stated that she has met [A] on about 30 occasions. In her view, [A] has already been affected in a very negative way by the dispute between the parents. She has, furthermore, expressed the opinion that forced contacts will involve such an emergency situation for [A] that he will suffer mentally.
>
> The Court of Appeal considers that a decision to grant [the applicant] a right of access to [A], at present, would pose such risks to [A's] mental health that it would not be in his best interests."

On 26 October 1993 the Supreme Court (Högsta domstolen) refused the applicant leave to appeal.

COMPLAINTS

1. The applicant claims that he was subjected to inhuman and degrading treatment in violation of Article 3 of the Convention at the meeting between him and A at the Children's Psychiatric Centre at Skärholmen on 17 January 1992.

2. Invoking Article 6 of the Convention, the applicant further complains of the length of the proceedings in the case concerning custody and access.

3. The applicant also asserts that he has been hindered from establishing access to his son. In this respect, he invokes Article 8 of the Convention.

4. Finally, the applicant claims that the courts and the social authorities, in their handling of his requests for custody and access, are guilty of sexual discrimination in violation of Article 14 of the Convention and Article 5 of Protocol No. 7 to the Convention.

THE LAW

1. The applicant complains that he was subjected to treatment contrary to Article 3 (Art. 3) of the Convention at the meeting on 17 January 1992.

The Commission, however, is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of the Articles invoked as, under Article 26 (Art. 26) of the Convention, it "may only deal with the matter ... within a period of six months from the date on which the final decision was taken". Where no domestic remedy is available, the six months period runs from the date of the act which is itself alleged to be in violation of the Convention (cf., e.g., No. 10389/83, Johnson v. the United Kingdom, Dec. 17.7.86, D.R. 47 p. 72).

In the present case, the Commission observes that the alleged violation occurred at a meeting on 17 January 1992. Whether or not the applicant could have instituted proceedings against the persons responsible for the meeting, he apparently did not do so. In these circumstances, the Commission finds that the six months period under Article 26 (Art. 26) began to run from the date of the said meeting. The present application was introduced on 7 April 1994, which is more than six months later.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant complains of the length of the proceedings in the case concerning custody and access. He invokes Article 6 (Art. 6) of the Convention which, in so far as relevant, provides the following:

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

The applicant claims that the courts intentionally, unfairly and discriminatory delayed the proceedings of the case. He maintains, in this respect, that the courts left the determination of the case in the hands of the social authorities.

The reasonableness of the length of proceedings is to be

considered in the light of the criteria laid down in the case-law of the European Court of Human Rights, in particular the complexity of the case, the conduct of the applicant and that of the relevant authorities. On the latter point, the importance of what is at stake for the applicant in the litigation has to be taken into account (cf., e.g., Vallée v. France judgment of 26 April 1994, Series A no. 289-A, p. 17, para. 34).

The Commission finds that the relevant period to be taken into consideration started on 11 February 1991, when the applicant requested the District Court to grant him access to A, and ended on 26 October 1993, when the Supreme Court refused leave to appeal. The proceedings thus lasted two years and eight and a half months.

The Commission considers that it is essential that a case concerning custody and access is not unduly prolonged. It recognises on the other hand that the decision to be taken requires careful examination of the circumstances of the case, not least in the interests of the child. The courts must ensure that they have sufficient information for this examination.

In the present case, the Commission recalls that the applicant had not had any contact with A for more than seven years when he instituted proceedings in the District Court. When they met on 29 May and 6 June 1991, A stated that he did not want to see his father. The son's negative attitude apparently grew stronger and stronger for each meeting with the father. At the meeting at the Children's Psychiatric Centre at Huddinge on 17 January 1992, A expressed that he never wanted to see his father again, a statement he later reiterated to the Council's investigator.

The Commission further recalls that the District Court ordered an investigation by the Council on the question of access and that the Court of Appeal requested the opinion of the Children's Psychiatric Centre at Huddinge. It is true that the Council's investigation lasted for almost a year and that the Psychiatric Centre's opinion was delivered five months after the Court of Appeal's request. The Commission, however, recalls that, while the Council investigation was carried out, the contact person and the investigator appointed by the Council tried, through talks between the parents, to come to an agreement on access. The Commission further notes that the applicant refused to discuss certain matters with the investigator and that he, after a few meetings, discontinued the co-operation talks. Thus, in the Commission's opinion, the investigations and thus the courts' examination of the case were made more difficult partly due to the applicant's own conduct.

The Commission also recalls that meetings between the applicant and his son took place with the help of the social authorities during the initial stages of the court examination of the case and that the courts regularly assessed the case when deciding on the applicant's requests for provisional access orders.

Having regard to the particular circumstances of the case, especially A's attitude towards his father and the consequent need for investigations regarding the advisability and possible effects on A of any access arrangements, the Commission finds that the length of the court proceedings did not exceed a "reasonable time" within the meaning of Article 6 (Art. 6) 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.

3. The applicant also asserts that he has been hindered from establishing access to his son. In this respect, he 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 and morals, or for the protection of the rights and freedoms of others."

The Commission recalls that, in accordance with its constant case-law, the right to respect for family life within the meaning of Article 8 (Art. 8) of the Convention includes the right for a divorced parent, who has not been granted custody of the child after the dissolution of the marriage, to visit his child or have contacts with it; the state may not interfere with the exercise of this right except in accordance with the conditions laid down in para. 2 of this Article (Art. 8-2) (cf., e.g., No. 7911/77, X. v. Sweden, Dec. 12.12.77, D.R. 12 p. 192, and No. 9018/80, K. v. the Netherlands, Dec. 4.7.83, D.R. 33 p. 9).

The Commission finds that the Court of Appeal's judgment of 14 September 1993, which rejected the applicant's claim for access to his son, interfered with the applicant's right to respect for his family life under 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).

The Commission finds that the relevant decisions were in conformity with Swedish law, namely Chapter 6, Section 15 of the Parental Code. The Commission further finds that the interference had a legitimate aim under Article 8 para. 2 (Art. 8-2), namely the interests of the child, which in this case fall under the expressions "for the protection of health or morals" and "for the protection of the rights and freedoms of others".

It thus remains to be determined whether the interference was "necessary in a democratic society" in the interests of the 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 H.R., Olsson judgment of 24 March 1988, Series A no. 130, pp. 31-32, paras. 67-68).

In the present case, the Commission recalls that the applicant and A had not met for more than seven years when the applicant requested access. On several occasions thereafter, A clearly expressed that he did not want to see his father. The meetings between the applicant and A in 1991 and 1992 were all unsuccessful and A's negative attitude appears to have grown stronger and stronger for each meeting with the applicant. Moreover, the Council concluded, in its report of 2 June 1992, that access, under the circumstances, would not be beneficial to A. In its opinion of 3 May 1993, the Children's

Psychiatric Centre at Huddinge considered that in the prevailing situation forced access would be traumatic for A and, for this reason, inappropriate. The Commission further recalls that the Court of Appeal, before giving its judgment, held a hearing, at which A's parents and two witnesses were present and heard. The Court further had at its disposal the report of the Council and the opinion of the Centre at Huddinge. Thus, the Court cannot be said to have intervened without adequate knowledge of the case.

In the light of the foregoing the Commission finds that the Court of Appeal's decision to reject the applicant's claim for access to A was supported by relevant and sufficient reasons and that, having regard to their margin of appreciation, the Swedish authorities were reasonably entitled to think that it was necessary to reject the access claim. Accordingly, the Commission concludes that the relevant decision 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 also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. Finally, the applicant claims that the courts and the social authorities, in their handling of his requests for custody and access, are guilty of sexual discrimination in violation of Article 14 (Art. 14) of the Convention and Article 5 of Protocol No. 7 (P7-5) to the Convention.

The Commission, however, finds that an examination of this complaint as it has been submitted does not disclose any appearance of a violation of the rights and freedoms of the Convention and in particular the Articles invoked.

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

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

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