AS TO THE ADMISSIBILITY OF

Application No. 27327/95
by Richard Ian BOYCE
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 16 October 1996, the following members being present:

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

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 24 April 1995 by Richard Ian BOYCE against Sweden and registered on 15 May 1995 under file No. 27327/95;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of Barbados born in 1965. He resides at Christ Church, Barbados. Before the Commission he is represented by Mr. Thomas Wasteson, a lawyer practising at Linköping, Sweden.

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

The applicant arrived in Sweden on 10 December 1991. He was granted a residence permit from 31 January 1992 on account of his marriage to a Swedish woman, M.B. The permit was later extended until 2 December 1994. The applicant and M.B. have two children, a son born in October 1991 and a daughter born in March 1994. In June 1993 the couple filed a petition for divorce and, by judgment of the District Court (tingsrätten) of Linköping of 7 July 1994, the divorce was finalised.

On 22 August 1994 the District Court convicted the applicant of two counts of battery, aggravated battery, threatening behaviour, trespassing and violent resistance. The offences, some of which were directed against M.B., had been committed in August 1993 and July 1994. The applicant was sentenced to one year's imprisonment.

The public prosecutor called for the applicant's expulsion. The

District Court noted that the applicant was a drug abuser and that the crimes he had committed, especially the aggravated battery, were of a serious nature. This had to be weighed against the applicant's connections to Sweden. In this respect, the Court noted that the applicant had been in Sweden for more than two years but did not have a job and had not in any other significant way integrated into Swedish society. However, an expulsion of the applicant would effectively render further contacts between him and his two children impossible. On balance, the Court therefore concluded that there were not sufficient reasons to order the applicant's expulsion.

No appeal was made against the District Court's judgment.

M.B. instituted custody proceedings in the District Court, claiming sole custody of the two children. The applicant conceded to her request. Accordingly, on 31 October 1994, the Court decided provisionally to grant M.B. sole custody. The applicant's request for provisional access was rejected, however, as the Court found this not to be in the children's best interests. The decision was upheld on appeal by the Göta Court of Appeal (Göta hovrätt) on 3 November 1994. On 29 November 1994 the District Court reversed its previous decision and decided provisionally to grant the applicant access to his son once a month for four hours in the presence of a contact person appointed by the social authorities at Linköping. The Court further ordered the social authorities to investigate the question of access.

The applicant later applied for an extension of his residence permit. After having refused the applicant an oral hearing, the National Immigration Board (Statens invandrarverk), on 29 December 1994, rejected the application. The Board had regard to the offences of which the applicant had been convicted and considered that the ties between the applicant and his children were not close. The Board further ordered the applicant's expulsion and issued a prohibition on return valid for five years from its decision.

On 13 March 1995 the Aliens Appeals Board (Utlänningsnämnden) upheld the Immigration Board's decision save for the prohibition on return, which was revoked due to the pending access investigation. As regards the applicant's relation to his children, the Appeals Board noted that he had taken care of his son between January and October 1993 when M.B. had been working part-time. Thereafter, the applicant and the son had had only sporadic contacts. Like the Immigration Board, the Appeals Board rejected the applicant's request for an oral hearing.

The applicant was expelled to Barbados on 22 March 1995.

The proceedings concerning custody and access are still pending in the District Court. In March 1996 the applicant requested access to his children one week every summer and one week every second Christmas. M.B. accepted his request on the condition that a contact person from the social authorities be present at the meetings. The applicant's representative has not been able to reach the applicant and obtain his views on this condition since March 1996. Furthermore, the social authorities have not had the opportunity to observe the applicant and the children together and have thus not concluded the investigation requested by the Court.

Under Chapter 2, Section 1 of the Aliens Ordinance (Utlännings-förordningen, 1989:547), a citizen of Barbados may enter Sweden without a visa. Chapter 1, Section 4 of the Aliens Act (Utlänningslagen, 1989:529) provides that a residence permit is required for a stay exceeding three months.

COMPLAINTS

1. The applicant alleges that his expulsion from Sweden prevents

contacts between him and his children and thus fails to respect his family life. He invokes Article 8 of the Convention.

2. The applicant also maintains that he has not had a fair hearing in the case concerning custody and access as the expulsion order makes it very difficult or impossible for him to appear in court or take part in the social authorities' access investigation. In this respect, he invokes Article 6 of the Convention.

3. Further under Article 6 of the Convention, the applicant complains that the National Immigration Board and the Aliens Appeals Board did not hold oral hearings.

THE LAW

1. The applicant complains that his expulsion from Sweden prohibits contacts between him and his children and thus fails to respect his family life. He invokes Article 8 (Art. 8) of the Convention, which provides the following:

> "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 the expulsion of a person from a country in which close members of his family live may amount to an unjustified interference with his right to respect for his family life as guaranteed by Article 8 (Art. 8) of the Convention (cf. Eur. Court HR, Moustaquim v. Belgium judgment of 18 February 1991, Series A no. 193, pp. 19-20, paras. 43-46).

The Commission notes, however, that the Aliens Appeals Board, due to the pending access investigation, revoked the prohibition on return imposed by the National Immigration Board. Furthermore, Chapter 2, Section 1 of the Aliens Ordinance provides that a citizen of Barbados may enter Sweden without a visa. The applicant may thus return to Sweden and stay there for periods of three months. In this connection, the Commission further notes that the applicant, in the pending District Court proceedings, has requested access to his children one week every summer and one week every second Christmas. Accordingly, the expulsion order does not prevent the applicant from meeting his children on the requested dates. Moreover, the Commission cannot find, in the circumstances of the case, that the inconvenience of having to travel from Barbados to Sweden on these occasions places an unreasonable burden on the applicant.

In view of the above, the Commission concludes that the present case does not reveal any failure of the Swedish authorities to respect the applicant's family life under Article 8 (Art. 8) 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 also complains that he has not had a fair hearing in the case concerning custody and access as the expulsion order makes it very difficult or impossible for him to appear in court or take part in the social authorities' access investigation. In this respect, he invokes Article 6 (Art. 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 and public hearing ..."

Recalling its findings under 1 above, the Commission considers that there is nothing to prevent the applicant from travelling to Sweden to appear in court or to take part in the access investigation. There is thus no indication of a violation of the applicant's rights under Article 6 (Art. 6) 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.

3. Further under Article 6 (Art. 6) of the Convention, the applicant complains that the National Immigration Board and the Aliens Appeals Board did not hold oral hearings.

The Commission recalls that the proceedings in which it is merely decided whether an individual should be expelled from a country do not come within the scope of Article 6 (Art. 6) of the Convention (cf., mutatis mutandis, No. 12364/86, Kilic v. Switzerland, Dec. 17.10.86, D.R. 50 p. 280).

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention 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	G.H. THUNE
Secretary	President
to the Second Chamber	of the Second Chamber