AS TO THE ADMISSIBILITY OF

Application No. 24721/94
by Anna-Carin BURLIND
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 4 July 1995, the following members being present:

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

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 27 April 1994 by Anna-Carin Burlind against Sweden and registered on 28 July 1994 under file No. 24721/94;

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

The applicant, a Swedish citizen born in 1956, resides at Gothenburg. She has three daughters, V, born in 1975, R, born in 1985, and N, born in 1991.

On 6 April 1993 the Social District Council (Stadsdelsnämnden) of Majorna, Gothenburg decided to apply to the County Administrative Court (Länsrätten) at Gothenburg for a care order concerning R and N under Section 1, subsection 2 and Section 2 of the Act with Special Provisions on the Care of Young Persons (Lagen med särskilda bestämmelser om vård av unga, 1990:52). These provisions state that compulsory care is to be provided if there is a clear risk of impairment of the health and development of a person under 18 years of age due to ill-treatment, exploitation, lack of care or any other condition in the home and if the necessary care cannot be provided with the consent of the young person's custodian.

Before deciding to apply for a care order, the Social District Council had held a meeting during which it had heard the applicant, her lawyer, her mother and her two sisters.

Later, the County Administrative Court held a hearing at which

the applicant, her lawyer, her sisters, the children's counsel, representatives of the Social District Council and a social expert (socialkonsulent) from the County Administrative Board (Länsstyrelsen) were heard. The children's counsel and the social expert supported the Social District Council's application. The Court further had at its disposal medical certificates from a Children's Psychiatric Clinic (Barn- och ungdomspsykiatrisk mottagning) concerning the children and from a neurologist concerning the applicant and written statements from R's school and N's day-care centre.

By judgment of 30 April 1993, the County Administrative Court granted the application and ordered that R and N be taken into public care. The Court found that the applicant's insufficient care of R and N and the conditions in the home endangered the children's health and development. It noted, inter alia, that the applicant in January 1992 had been severely assaulted by N's father, that before and after this incident she had had drinking problems, that she had attempted to commit suicide shortly after the incident in February 1993 and that she had received assistance from the social authorities on several occasions. The Court further made the following conclusions:

(translation)

> "The investigation does not conclusively show how serious [the applicant's] drinking problems are. At the oral hearing, she has testified that she has a tendency to overconsume alcohol on festive occasions. This has repeatedly put her in very serious situations affecting both herself and her children. She has in a short period of time consumed so much alcohol that, on three occasions, she has been taken into custody pursuant to the Act on the Taking into Custody of Intoxicated Persons (Lagen om omhändertagande av berusade personer m m, 1976:511). Furthermore, she has repeatedly attempted to commit suicide. This indicates that she lacks a normal custodian's understanding of children's need of security, attention and care and that she gives priority to herself and her own problems. Even if she feels today that she is out of her crisis and the conditions in the home are stable, it is evident both from the written submissions in the case and from the information that has emerged during the oral hearing that, for a long time past, there is a need of care which [the applicant] - in spite of her good intentions - has not been able to satisfy.
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> The children have - in so far as can be ascertained - not yet suffered any serious mental disturbance, but they have clearly been affected by the conditions in their home to such an extent that care is required. [The applicant's] inability to understand the children's needs has caused considerable deficiencies in the care of them. ..."

The applicant appealed to the Administrative Court of Appeal (Kammarrätten) of Gothenburg. After having held a hearing at which it heard the applicant's eldest daughter, V, and the same persons as the County Administrative Court except for the social expert and the applicant's sisters, the appellate court, on 1 September 1993, upheld the County Administrative Court's judgment. On 2 November 1993 the Supreme Administrative Court (Regeringsrätten) refused the applicant leave to appeal.

COMPLAINTS

The applicant complains that the taking into care of her children has violated her rights under Article 8 of the Convention.

THE LAW

The applicant complains of a violation of her rights under 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.
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> 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 applicant contends that it was not necessary to take her daughters into public care, as, at the time of the courts' decisions, the family's situation had stabilised and she could take care of her daughters herself. She claims that she suffered from her injuries caused by the assault in January 1992 for a very long time and that she contacted the social authorities and asked for help during this period. Among other things, she suggested that the children be given public care on a voluntary basis. The social authorities, however, rejected her requests.

The Commission finds that the taking into public care of the applicant's daughters R and N 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 (Art. 8-2) and it must be "necessary in a democratic society" for that or those aims.

As regards the first condition, the Commission finds that the relevant decisions were in conformity with Swedish law, namely Section 1, subsection 2 and Section 2 of the Act with Special Provisions on the Care of Young Persons.

The Commission further finds that the interference had a legitimate aim under Article 8 para. 2 (Art. 8-2), namely the interests of the children, 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 children.

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. However, the Commission's review is not 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 County Administrative Court, in its judgment of 30 April 1993, found that the applicant's insufficient care of R and N and the conditions in the home endangered the children's health and development. It concluded, inter alia, that the applicant had drinking problems which, repeatedly, had put her in very serious situations affecting both herself and her children. It further noted that she had attempted to commit suicide on different occasions.

The Commission further recalls that the County Administrative Court and the Administrative Court of Appeal, before giving their judgments, had held hearings at which the applicant, her lawyer, the children's counsel and representatives of the Social District Council were present and heard. The County Administrative Court further heard a social expert from the County Administrative Board and the applicant's sisters and the Administrative Court of Appeal heard the applicant's eldest daughter, V. In addition, the courts had regard to written submissions. Thus, the courts cannot be said to have intervened without adequate knowledge of the case.

In the light of the foregoing the Commission finds that the taking into care of R and N 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 take the children into care. Accordingly, the Commission concludes that the relevant decisions 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 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.

Secretary to the Second Chamber Acting President of the Second Chamber

(M.-T. SCHOEPFER) (G.H. THUNE)