AS TO THE ADMISSIBILITY OF

Application No. 29034/95
by Elzbieta CIESLAR
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. J.-C. GEUS
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 13 September 1995 by Elzbieta Cieslar against Sweden and registered on 31 October 1995 under file No. 29034/95;

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 Swedish citizen, born in 1942. She is a teacher residing in Gothenburg. Before the Commission she is represented by Mrs. Siv Westerberg, a lawyer in Gothenburg.

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

The applicant suffers from a mental illness and was receiving a sickness allowance. On 20 December 1994 the Social Insurance Office of Gothenburg (Göteborgs allmänna försäkringskassa) decided no longer to pay her this allowance as from 22 December.

The applicant requested the Social Insurance Office to re-examine its decision. The Office considered that it needed a further assessment of her mental health. By a letter of 3 April 1995 it therefore requested her to undergo an examination by Professor F, who had not previously examined her. She was also reminded of the terms of chapter 20, section 3 of the 1962 Insurance Act (lag 1962:381 om allmän försäkring). According to this provision, a person entitled to a certain benefit within the meaning of that Act may lose it if he or she

refuses to be examined by a physician.

The applicant objected to her allegedly forced examination but, since she did not want to risk losing her sickness allowance, she nevertheless underwent the examination on 7 April 1995. Allegedly, her mental health subsequently deteriorated as she had been forced to discuss her personal problems with Professor F.

By a letter of 17 August 1995 the Social Insurance Office informed the applicant that Professor F had not yet submitted his opinion, considering that he needed to examine her once more. A further examination had therefore been scheduled for 29 August. The Office again reminded the applicant of the terms of chapter 20, section 3 of the Insurance Act.

On 28 August 1995 the applicant appealed to the County Administrative Court of Göteborg and Bohus County (länsrätten i Göteborgs och Bohus län) which, without taking any formal decision, sent her submissions to the Social Insurance Office.

On 29 August 1995 the applicant was again examined by Professor F.

On 30 August 1995 the Office dismissed the applicant's appeal without examining its merits, considering that its request that she undergo a further examination formed part of its processing of her request for a re-examination of its decision of 20 December 1994. It did not therefore concern a decision which could in itself be re-examined pursuant to chapter 20, section 10 of the Insurance Act.

The applicant's further appeal to the County Administrative Court was rejected on 20 October 1995. The Administrative Court of Appeal of Göteborg (kammarrätten i Göteborg) refused her leave to appeal on 12 December 1995. The Supreme Administrative Court (Regeringsrätten) refused her leave to appeal on 9 April 1996.

COMPLAINTS

1. The applicant complains that her right to respect for her private life under Article 8 para. 1 of the Convention was infringed. Allegedly, she had to undergo psychiatric examinations against her will and reveal intimate matters to a physician whom she did not know.

2. She also complains under Article 6 para. 1 of the Convention that she had no access to a court so as to obtain a review of the Social Insurance Office's orders that she be examined by Professor F.

3. She finally complains under Article 13 of the Convention that she had no effective remedy before a national authority against the examination orders.

THE LAW

1. The applicant complains that her right to respect for her private life under Article 8 para. 1 (Art. 8-1) of the Convention was infringed, since she allegedly had to undergo psychiatric examinations against her will. Article 8 (Art. 8) reads, as far as relevant, as follows:

> "1. Everyone has the right to respect for his private ... life, ...
>
> 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 recalls that a compulsory medical intervention, even if it is of minor importance, must be considered an interference with the right to respect for private life (see, e.g., No. 21132/93, Dec. 6.4.94, D.R. 77-A pp. 75,79).

In the present case the Social Insurance Office requested the applicant to undergo examinations by Professor F, an expert appointed by itself. The Commission notes that she could nevertheless have refused to be examined. Such a refusal would not necessarily in itself have prejudged the outcome of the proceedings for the purpose of re-assessing her right to a sickness allowance. A decision in that respect would initially have to be made by the competent administrative body and, on her possible appeal, by an administrative court.

Even assuming that in these circumstances the examination orders amounted to an interference with the applicant's right to respect for her private life within the meaning of Article 8 para. 1 (Art. 8-1), the Commission considers that this interference was justified under Article 8 para. 2 (Art. 8-2) for the following reasons.

In order to be justified under the terms of Article 8 para. 2 (Art. 8-2) an interference must satisfy three conditions: it must be "in accordance with the law", it must pursue one or more of the legitimate aims enumerated in Article 8 para. 2 (Art. 8-2) and it must be "necessary in a democratic society" for that or those legitimate aims. The notion of necessity implies that the interference corresponds to a pressing social need and, in particular, requires that it be proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society", the Commission will also take into account that a margin of appreciation is left to the Contracting States. The Commission's review is not limited to ascertaining whether a respondent State exercised its discretion reasonably, carefully and in good faith. It must also determine whether the reasons adduced to justify the interferences at issue were "relevant and sufficient" (cf. e.g., 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 notes that the examination orders were based on chapter 20, section 3 of the 1962 Act and were thus issued "in accordance with the law". They aimed at obtaining fresh medical evidence of relevance to the re-examination of the Social Insurance Office's decision to stop paying the applicant a sickness allowance. This aim must be considered "legitimate" in that it served the interests of the economic well-being of the country.

The Commission finally notes that in ordering the applicant to undergo examinations by Professor F, who had not previously examined her, the Social Insurance Office sought to obtain fresh medical evidence enabling it to re-examine whether the applicant was entitled to a sickness allowance. The Commission considers that this reason was clearly relevant and sufficient to justify the examination orders. It also observes that the Social Insurance Office's orders in no way prevented the applicant from adducing medical opinions submitted by physicians of his own choosing. For these reasons the examination orders were not disproportionate to the aim sought to be achieved.

Having regard, moreover, to the State's margin of appreciation, the Commission is satisfied that the Social Insurance Office was reasonably entitled to consider its examination orders necessary in a democratic society for the purpose of achieving the above-mentioned legitimate aim. Accordingly, there is no appearance of any violation of Article 8 (Art. 8).

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

2. The applicant also complains under Article 6 para. 1 (Art. 6-1) of the Convention that she had no access to a court so as to obtain a review of the Social Insurance Office's orders that she be examined by Professor F. Article 6 para. 1 (Art. 6-1) reads in its relevant parts:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing ... by ... [a] tribunal ..."

The applicability of Article 6 para. 1 (Art. 6-1) depends on whether there was a dispute over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, and, if so, whether this right was of a "civil" character within the meaning of that provision. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and the results of the proceedings concerning the dispute must be directly decisive for such a right (see, e.g., Eur. Court HR, Zander v. Sweden judgment of 25 November 1993, Series A No. 279-B, p. 38, para. 22).

The Commission has already found that the applicant could have refused to undergo the medical examinations in question and that such a refusal would not necessarily in itself have prejudged the outcome of the proceedings for the purpose of re-assessing her right to a sickness allowance. Any decision in that respect can - or could - initially be appealed against to the County Administrative Court which is competent to review all the evidence presented to it, including expert reports submitted by physicians of her own choosing.

Accordingly, even assuming that the Social Insurance Office's examination orders were directly decisive for any of the applicant's "civil rights" within the meaning of Article 6 para. 1 (Art. 6-1), the Commission notes that she had - or has - access to a "tribunal" within the meaning of the same provision.

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

3. The applicant finally complains under Article 13 (Art. 13) of the Convention that she had no effective remedy before a national authority against the examination orders. Article 13 (Art. 13) reads as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission recalls that Article 13 (Art. 13) has been interpreted by the European Court of Human Rights as requiring a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, e.g., Eur. Court HR, Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A No. 172, p. 15, para. 33).

The applicant's complaint under Article 8 (Art. 8) of the Convention has just been considered manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2). The Commission therefore finds that the applicant had no arguable claim of a violation of her Convention rights. Consequently, there is no appearance of any violation of Article 13 (Art. 13).

It follows that this complaint is likewise 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

G.H. THUNE
President
of the Second Chamber