AS TO THE ADMISSIBILITY OF

Application No. 18511/91
by Bengt DAHLBERG, Eva DAHLBERG
and Bengt Olof DAHLBERG
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 2 March 1994, the following members being present:

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

Mr. K. ROGGE, 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 20 November 1990 by Bengt DAHLBERG, Eva DAHLBERG and Bengt Olof DAHLBERG against Sweden and registered on 15 July 1991 under file No. 18511/91;

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 applicants, may be summarised as follows.

The first and second applicants are a Swedish married couple, born in 1944 and 1946 respectively. The third applicant is their son, born in 1982. The family resides at Malmö. All applicants are Swedish citizens. Before the Commission they are represented by Mr. Göran Ravnsborg, a university lecturer.

From the time of his birth the third applicant suffers from certain linguistic and physical disabilities. In 1986 the first and second applicants contacted a so-called special state school (specialskola) for children with certain disabilities, the Hällsbo school, to have their son's problems examined in order to file a preliminary application to have him admitted to the school when he reached school age.

The examination took place in 1988 following which the examiners suggested that the child be placed in a training class in another special school (särskola). In 1989 the first and second applicants formally applied to have their son admitted to the Hällsbo school. However, by decision of 13 April 1989 the school, after having recalled the outcome of the earlier examination, refused to accept the child. The school stated that its decision was based on the findings in that earlier

examination which had shown that the child's disabilities as such were of the kind to make him suitable for admittance but that his level of development was such that the school lacked the necessary means to satisfy his needs.

The first and second applicants appealed against this decision to the National School Board (skolöverstyrelsen). By decision of 31 July 1989 the Board rejected the appeal. The Board noted, inter alia, that the first and second applicants had not contacted the local school board to have an examination made of the most appropriate school alternative for their child. In view hereof it did not find it established that the third applicant's handicaps were such that he should attend the special school instead of some other school category, such as a normal or another special school. The Board concluded that the Hällsbo school's decision was lawful. It added that it was of the opinion that the third applicant's case should be further examined in order to determine the best school alternative for the child. Furthermore, it was pointed out that the first and second applicants were free to request that the third applicant's school-start should be postponed.

The first and second applicants appealed against this decision to the Government claiming that their son did not only have a duty to go to school but also a right to receive the most appropriate education available and that this implied attending a special school such as the Hällsbo school. By decision of 23 May 1990 the Government rejected the applicants' appeal.

COMPLAINTS

1. The applicants complain of a violation of Article 6 para. 1 of the Convention as they maintain that they could not challenge the Government's decision of 23 May 1990 before the courts.

2. The applicants further complain that the refusal to provide the third applicant with a place in the Hällsbo school violates their son's right to education as guaranteed by Article 2 of Protocol No. 1 to the Convention and the parents' right to respect for their religious and philosophical convictions in this context as guaranteed by the second sentence of the same provision.

THE LAW

1. The applicants maintain that they have been denied access to court and invoke Article 6 (Art. 6) of the Convention.

The first sentence of Article 6 para. 1 (Art. 6-1) of the Convention reads as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Commission recalls the constant jurisprudence of the Convention organs, according to which Article 6 para. 1 (Art. 6-1) applies only to the "determination" of "civil rights and obligations" or any "criminal charge". As the Convention organs have held on several occasions, there are cases which are not included in either of these categories and which thus fall outside the scope of Article 6 para. 1 (Art. 6-1) (see e.g. No. 10144/82, Dec. 11.5.83, D.R. 33 p. 276).

In the present case there is no question of a "criminal charge" and furthermore the Commission recalls that the right to elementary education is not a civil right within the meaning of Article 6 (Art. 6) of the Convention (cf. No. 14688/89, Dec. 4.12.89, D.R. 64 p. 188). Accordingly there is no civil right at issue in the present case for which reason Article 6 para. 1 (Art. 6-1) of the Convention is not applicable. It

follows that this part of the application must be rejected as being incompatible ratione materiae with the provisions of the Convention pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicants further maintain that there has been a violation of the son's right to education as guaranteed by Article 2 of Protocol No. 1 (P1-2) to the Convention and the parents' right in this context to respect for their religious and philosophical convictions under the second sentence of that provision.

As regards the complaint on behalf of the son the Commission observes that Article 2 of Protocol No. 1 (P1-2) does not grant an absolute right. In principle, it guarantees access to public educational facilities which have been created at a given time and the possibility of drawing benefit from the education received. This right "by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals", as long as the substance of the right to education is preserved (Eur. Court H.R., Belgian Linguistic judgment of 23 July 1968, Series A no. 6, pp. 30-32, paras. 3-5). The Commission recalls that handicapped children's needs are cared for within the present Swedish system and the Commission recognises that there must be a wide measure of discretion left to the appropriate authorities as to how to make the best use possible of the resources available to them in the interests of handicapped children generally. In the present case the third applicant was not denied the right of education, but only to be placed in a particular school as this school, in the authorities' view, which was based on a thorough examination of the child, did not have the necessary facilities to provide for his needs. In these circumstances the Commission finds that the impugned decision fell well within the State's margin of appreciation in this field. Consequently, there is no appearance of a violation of Article 2 of Protocol No. 1, first sentence (P1-2-1).

As regards the parents' rights under Article 2 of Protocol No. 1 (P1-2) to the Convention the Commission recalls that the decision to deny the child access to the school was based on an examination of him in which it was concluded that his needs could not be satisfied by the school in question in view of his level of development. Thus, the refusal was based on findings of facts concerning the child's development whereas there is nothing which indicates that the parents' religious or philosophical beliefs in this respect have been disregarded in a way which would be at variance with Article 2 of Protocol No. 1 (P1-2) to the Convention.

In these circumstances, the Commission concludes that the present case does not disclose any appearance of a violation of Article 2, first sentence, or second sentence of Protocol No. 1 (P1-2-1, P1-2-2). 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.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)