AS TO THE ADMISSIBILITY OF

Application No. 19537/92
by Maria and Martin DENEV
against Sweden

The European Commission of Human Rights sitting in private on 31 March 1993, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
J.-C. GEUS
M. NOWICKI

Mr. K. ROGGE, Secretary to the Second 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 31 January 1992 by Maria and Martin DENEV against Sweden and registered on 24 February 1992 under file No. 19537/92;

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 first applicant is a Swedish citizen, born in 1955. The second applicant, her husband, is a Swedish and Bulgarian citizen, born in 1938. They reside at Semmering, Austria.

The facts as presented by the applicants may be summarised as follows.

The applicants have a son, Alexander, born in 1977, who was a pupil at the Swedish school in Vienna. The applicants applied to the Swedish National School Administration (Skolverket) for a state subsidy to their son's school education on the basis of Section 29 of the 1978 Ordinance of State Subsidies to Swedish School Education Abroad (förordningen om statsbidrag till svensk undervisning i utlandet). According to this provision, a pupil in a Swedish school abroad or a pupil benefiting abroad from teaching by correspondence is eligible for a subsidy if, inter alia, at least one of the parents is a Swedish citizen and at least one of the parents resides abroad as employed by or as director of a Swedish enterprise, i.e. an enterprise which is a Swedish legal person. The applicants claimed that they resided abroad because of their enterprise. In this respect they have referred to a certificate of registration of 6 February 1975, showing that "Martin Denev's Research Institute" has been entered into the Register of the Country Administrative Board of Stockholm County (länsstyrelsen i Stockholms län).

By decision of 8 August 1991, the National School Administration decided not to grant the request, which in its decision was indicated as relating to "cost-free correspondence materials for Alexander Denev", the reason being that the eligibility criteria in Section 29 of the 1978 Ordinance were considered not to be satisfied.

The applicants state that for the preceding year they had appealed against a similar decision to the Supreme Administrative Court (Regeringsrätten) which, however, had considered itself not to be competent to examine the appeal. For this reason they did not lodge a new appeal against the decision of 8 August 1991.

COMPLAINT

The applicants complain of violations Article 6 para. 1 of Convention in that

(a) they were denied the right to an impartial tribunal to test their right to state subsidies for their son;

(b) they were denied a fair examination of their right, as there was no dialogue with them on why they did not satisfy the legal requirements for state subsidies and as the decision of the National School Administration did not contain reasons or arguments.

THE LAW

The applicants complain of violations of Article 6 para. 1 (Art. 6-1) of the Convention in that they did not have access to an impartial tribunal in regard to their request for state subsidies to their son's school education and in that their request was not examined in a fair manner by the National School Administration, which rejected their request without giving reasons or arguments.

Article 6 para. 1 (Art. 6-1) of the Convention provides, in its relevant parts, as follows:

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

The first question which arises is therefore whether the rejection of the applicants' request for state subsidies determined their civil rights within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

In this regard, the Commission recalls that in the cases of Feldbrugge and Deumeland the European Court of Human Rights was called upon to examine whether the right to certain social benefits was to be regarded as a civil right within the meaning of Article 6 para. 1 (Art. 6-1) (Eur. Court H.R., Feldbrugge judgment of 29 May 1986, Series A no. 99, and Deumeland judgment of the same date, Series A no. 100). In these judgments, the Court examined the features of public law and those of private law which were inherent in the social security systems involved, and it reached its conclusion on the basis of a consideration of whether the features of public law or of private law were predominant.

In the present case, the Commission notes that the system of state subsidies to school education abroad is predominantly, if not exclusively, of a public law character. The system is in no way based on specific contributions paid by the individuals concerned and bears no resemblance to a private insurance. Consequently, the Commission is

of the opinion that the applicants' complaints do not relate to civil rights within the meaning of Article 6 para. 1 (Art. 6-1) and that the application must therefore be rejected as being 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

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)