AS TO THE ADMISSIBILITY OF

Application No. 20877/92
by Helena ENGDAHL
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 10 February 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

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 2 November 1992 by Helena ENGDAHL against Sweden and registered on 3 November 1992 under file No. 20877/92;

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 applicant is a Swedish citizen born in 1956. She is a secretary resident in Stockholm.

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

Particular circumstances of the case

On 9 November 1991 the applicant gave birth to a son, Issa.

On 25 November 1991 Issa, the applicant and the father of Issa were admitted to the crisis and investigation home Eurenii Minne in application of Section 6 of the 1980 Social Services Act (social-tjänstlag 1980:620).

On 10 December 1991 Issa's father was transferred to the psychiatric institution of Beckomberga.

On 23 January 1992 the applicant and Issa were discharged from Eurenii Minne. On the same day the Chairman of Social District Council no. 4 of Stockholm (sociala distriktsnämnden nr 4 i Stockholms stad) provisionally decided pursuant to Section 6 of the 1990 Act on the Care of Young Persons (lag 1990:52 med särskilda bestämmelser om vård av unga, "the 1990 Act") to place Issa in public care in a children's home. The Chairman had regard to information from Eurenii Minne showing that the applicant was not able to give Issa sufficient care and that his health and development was thus being jeopardised.

On 6 February 1992 the County Administrative Court (länsrätten) of Stockholm held a hearing in camera. The Court had regard to a memorandum of 29 January 1992 submitted by two members of the staff at Eurenii Minne.

The applicant, represented by official counsel, objected to the placing of Issa in public care and submitted, in particular, that as from 1987 she was no longer undergoing compulsory psychiatric treatment but was receiving therapy on a voluntary basis. She was well aware of her psychiatric symptoms. Subsequent to her discharge from compulsory treatment she had complied with all instructions by the medical authorities. She was living in stable conditions. She was no longer cohabiting with Issa's father and had no intention of cohabiting with him again. The allegations in the memorandum were out of context and irrelevant and the decision of the Social District Council was formulated in general terms. Her possible need for social assistance could be fulfilled through voluntary arrangements.

Issa, represented by official counsel, requested that the placement in public care be confirmed.

The County Administrative Court decided, by a majority, not to confirm the placement order, considering that there was no reason to believe that the applicant would not, as she had already done, voluntarily accept assistance in the care of Issa. The applicant was aware of her symptoms and her contacts with the medical institutions had been correct.

The Social District Committee appealed, alleging that the applicant had fetched Issa from the nursing home, that she had refused to let investigators from the social authority in to her home and that she was unable to care for Issa without extensive assistance.

On 11 February 1992 the Administrative Court of Appeal (kammarrätten) of Stockholm provisionally ordered that Issa be placed in public care pending further proceedings in the case.

The applicant objected to the appeal, submitting, in particular, that she had refused to be visited by the social welfare officials between 7 and 9 February 1992, a weekend, as she had wanted to spend some time alone with Issa for the first time since his birth.

Issa's official counsel concurred with the Social District Committee's appeal, having regard to the applicant's symptoms and her attitude towards assistance given on a voluntary basis.

On 21 February 1992 the Administrative Court of Appeal quashed the decision of the County Administrative Court and upheld the provisional care order.

On 12 March 1992 the County Administrative Court pursuant to Section 1, para. 2 and Section 2 of the 1990 Act and following an oral hearing in camera on 2 March 1992 finally placed Issa in public care. It had regard to the fact that the applicant was a single mother and further stated the following:

> "... It appears, mainly from the report submitted by Dr. Weronica Mattsson, deputy chief doctor at the [open] institution for psychiatric rehabilitation of Södermalm, that [the applicant]...suffers from a chronic psychiatric disturbance diagnosed as a schizophrenic process. She is known within the field of psychiatric treatment at Södermalm since 1984 and since 1987 she has been in [voluntary] treatment... Her treatment...consists of injections every two weeks... She further has pills which

she can take against temporarily stronger anxiety as well as...sleeping pills. She has further participated in psychosocial therapy... As a result of interruptions in her medication [she] has on a two occasions been subjected to compulsory treatment. At present, however, she is aware of her need for regular medication and is managing [her medication] well. Already several years ago she attained a stable condition without schizophrenic symptoms. This has made it possible for her to continue leading a fairly normal life. The prognosis is good provided the treatment continues. She is, however, still on sick leave from her work.

As [the applicant] had become pregnant the Social District Council began investigating whether [she] and her then cohabitant, the father of [Issa], who also suffers from a psychiatric illness, were capable of taking care of a child.

Following the birth of [Issa] the family was enrolled at the Eurenii Minne in order to investigate the relations between the respective parents and [Issa] and the parents' caring capability and possible needs for assistance. The father has not been able to go through with the investigation, as in December 1991 he became acutely ill and was taken into care under the 1966 Act on Compulsory Psychiatric Treatment (lag 1966:293 om beredande av sluten psykiatrisk vård i vissa fall).

From the investigation conducted at Eurenii Minne it appears... that the time the applicant spent [there] has shown her to be competent to a large extent to care [for Issa] in the practical and physical sense of the word. She is not, however, sufficiently capable of conceiving and meeting [Issa's] needs, in particular his mental needs. She is severely restricted from having a deeper relation and social intercourse with [Issa]. [She] has not been able to understand and process these problems. Her own problems and needs affect to a large extent her capacity to establish and maintain a close relation to Issa. Neither [the applicant] nor [Issa's father] can at present on their own meet Issa's needs.

Mr. Jan Elmqvist, deputy manager of Eurenii Minne, has been heard as a witness at the Social District Council's request and has submitted the following in connection with the written opinion. In an investigation of the social intercourse between parents and their child regard is had to the parents' capability of entering into [a relation with the child], their capability of conceiving the child in a realistic way, their control of impulses and their awareness of problems. Under these criteria [the applicant's] capability of caring [for Issa] must at present be considered severely restricted. ... There is a lot to suggest that [she] finds it difficult to perceive and assess Issa's needs, the changes caused by his growing and development and to... adjust to those [changes]. Regard has then also been had to the fact that parents facing a crisis such as being subjected to an investigation sometimes behave differently... In [the applicant's] case the staff have not noticed that she has really been affected... Part of her problem is rather that due to her medication upon which she is totally dependent she becomes so subdued that she cannot feel the anxiety that she should sometimes feel with regard to [Issa]. Moreover, because of her medication she sometimes sleeps so deeply that a child's crying does not wake her up... There has been a

certain anxiety among the staff members caused by the fact that Issa has been sleeping often and for lengthy periods of time, sometimes for up to 11-12 consecutive hours. The reason for this [sleeping pattern] is unknown.

[The applicant] has submitted... that she is aware of her illness and that she realises that she needs medication in order to feel well. After the birth of [Issa] she has only very rarely taken sleeping pills. [Issa] is a child very much longed for and she loves him. She has no problems in caring for him... She may, however, need assistance with cleaning. One of the side effects of the medication is that she becomes almost pedantic. She associates with, among others, persons with serious problems. This cannot be wrong. She also has other friends. As from about a month ago she is no longer living with Issa's father... She feels that when considering Issa's situation too much regard has been had to his father's illness. Issa is a healthy and normally developed boy... It has not been shown that he suffered during the period when he was staying in her home. She has given explanations as to the problems referred to in the submission by Eurenii Minne. She felt nervous and pressured when staying there.

At [the applicant's] request Ms. Karin Tivenius, a psychotherapist..., has been heard as witness regarding [the applicant's] capability of caring for Issa. [Moreover,] Ms. Birgitta Einarsson, a nurse... and midwife, has been heard... regarding her observations during [the applicant's] pregnancy and her capability of accepting advice and support... Although the witnesses have expressed themselves in [the applicant's] favour neither one of them has, however, seen [the applicant and Issa] together.

Issa's official counsel has referred to certain observations made by the foster parents while [the applicant] has been visiting Issa. These observations point in the same direction as the opinion by Eurenii Minne.
...
[In the Court's view] the basis for assessing whether [the applicant's] psychiatric disturbance is of such a character that she is unable to care for Issa in an adequate way must... consist of the written evaluation of [the relation between] [the applicant and Issa] at... Eurenii Minne as well as of the witness statement submitted in this respect.

During the investigation period... it has been observed that [the applicant] is well capable of handling the practical care of Issa. Her caring capability in the mental sense has, however, been insufficient. [Her] strong dependency on medication raises doubts as to how she would be able to care for Issa alone. When she feels in need of being alone there is nobody in her home who can assist in taking care of Issa. [She] does not seem to have any close relatives nearby... Her social network... largely consists of friends with mental problems of their own. [T]his does not affect [Issa's]... environment in any positive way. It does not seem realistic [to expect] [her] to care for Issa on her own even with significant support from the social welfare authority. It should also be noted that [she] has clearly stated that she is in no need of any help with the care of Issa... The conditions in [her] home jeopardise Issa's health and development and he should therefore be given [public] care... in accordance with the 1990 Act..."

Issa's official counsel had supported a final placement in public care.

The applicant appealed, submitting that her psychiatric disturbance did not prevent her from caring for Issa in an adequate way. She refuted the finding that to a large extent she had been associating with persons with mental problems of their own.

The Social District Council referred inter alia to a psychiatric report concerning the applicant and submitted that on some occasions she had handed Issa over to persons incapable of caring for him, this showing that she was considering her own needs more important than those of Issa.

Issa's counsel stated that the applicant's difficulties in realising Issa's all needs had increased as he had developed and was demanding more from his parents. The support which the applicant had agreed to receive was not sufficient. If she were to take care of Issa in her home a further person would have to be available throughout the twenty-four hours.

On 23 June 1992 the Administrative Court of Appeal following an oral hearing in camera rejected the appeal.

On 21 July 1992 the Supreme Administrative Court (regeringsrätten) refused leave to appeal.

Relevant domestic law

Under Section 1, para. 2 of the 1990 Act a child shall be placed in public care in one of the circumstances mentioned in Section 2 if it can be assumed that the necessary care cannot be provided with the consent of that person or those persons who have custody of him.

Public care shall be provided if there is a particular reason to believe that the health or development of the child may be jeopardised because of insufficient care or any other circumstance in the home (Section 2).

A Social Council or, in urgent cases, its Chairman or another member appointed by the Board may provisionally place a young person under 20 years of age in public care, if it is likely that the person is in need of care under the 1990 Act and provided a court decision cannot be awaited having regard to inter alia the danger to his health or development (Section 6).

Section 6 of the Social Services Act grants individuals a right to assistance by the Social Council for their maintenance and living in general provided their needs cannot be met otherwise.

Under Section 16 of the 1971 Act on the Procedure before Administrative Courts (förvaltningsprocesslag 1971:291, "the 1971 Act") the publicity of oral hearings shall, mutatis mutandis, be governed by Chapter 5 of the Code of Judicial Procedure (rättegångsbalken). An administrative court may further decide to hold an oral hearing in camera provided there is reason to believe that the submissions at the hearing are to be protected under the Secrecy Act (sekretesslag 1980:100).

Under Section 34 of the 1971 Act an appeal against a decision in a procedural matter shall, with certain exceptions not relevant in the present case, be lodged in connection with the appeal against the decision on the merits.

COMPLAINTS

1. The applicant complains of the taking into public care of Issa. She refutes the allegations made in the memorandum drawn up on the

basis of her stay with Issa at Eurenii Minne.

2. The applicant further complains of restrictions of her freedom of movement while staying at Eurenii Minne. She alleges that she was refused permission to leave the institution on Christmas Eve and New Year's Eve 1991 and that she needed permission from a social welfare official to go for longer walks.

3. The applicant finally complains that the oral hearing before the County Administrative Court on 6 February 1992 was held in camera.

The applicant invokes no particular provision of the Convention or any of its Protocols.

THE LAW

1. The applicant complains of the taking into public care of Issa.

The Commission has considered this complaint under Article 8 (Art. 8) of the Convention, which reads in its relevant parts:

> "1. Everyone has the right to respect for his private and family 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...,for the protection of health ..., or for the protection of the rights and freedoms of others."

It is common ground that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and the natural family relationship is not terminated by reason of the fact that the child is taken into public care (see e.g. Eur. Court H.R., Rieme judgment of 22 April 1992, para. 54, to be published in Series A no. 226-B). The right to respect for family life includes a right to the taking of measures with a view to the parent or parents being reunited with the child (ibid., para. 69).

The taking into care of Issa clearly interfered and continues to interfere with the applicant's right to respect for her family life. Such an interference constitutes a violation of Article 8 (Art. 8) of the Convention unless it is "in accordance with the law", has one or more aims that are legitimate under Article 8 para. 2 (Art. 8-2) and is "necessary in a democratic society" (ibid., paras. 55-56).

It has not been alleged that the interference was not "in accordance with the law". The Commission, for its part, accepts that the interference was in accordance with Swedish law.

The relevant domestic law was aimed at protecting the health and the rights and freedoms of Issa. The Commission finds no indication that the provisions were applied for any other purpose. The interference thus had aims that were legitimate under Article 8 para. 2 (Art. 8-2).

The notion of necessity implies that the interference with a right under Article 8 para. 1 (Art. 8-1) must correspond to a "pressing social need" and, in particular, that it must be proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society" a margin of appreciation is to be left to the Contracting State. The Convention organs' review, however, is not limited to ascertaining whether the State exercised its discretion reasonably, carefully and in good faith. Moreover, the Convention organs must look at the impugned decisions in the light of

the case as a whole and determine whether the reasons adduced to justify the interference are "relevant and sufficient" (Eur. Court H.R., Olsson no. 2 judgment of 27 November 1992, para. 87, to be published in Series A no. 250). When determining these questions the Convention organs should take into account that Article 8 (Art. 8) includes a procedural requirement that in child-care cases the parents must have been sufficiently involved in the decision-making process (e.g. Eur. Court H.R., W. v. the United Kingdom judgment of 8 July 1987, Series A no. 121, pp. 28-29, paras. 63-65).

The Commission notes that both the provisional and the final care orders were based on careful examination by the County Administrative Court and the Administrative Court of Appeal following oral hearings. The reasons for the placing of Issa in public care were, in essence, that the applicant was suffering from a psychiatric disturbance requiring medication and that, as a single mother, she was unable to care properly for her child.

These reasons are clearly relevant and in the Commission's view also sufficient to justify the placement of Issa in public care. The Commission further observes that the applicant was represented by counsel throughout the proceedings. There is thus no indication that she was not sufficiently involved in the decision-making process.

Taking all the circumstances of the case into account and having regard to the State's margin of appreciation the Commission is satisfied that the Swedish authorities had and have relevant and sufficient reasons for placing and keeping Issa in public care.

The Commission thus concludes that the interference with the applicant's right to respect for her family life, being proportionate to the legitimate aim pursued, could and can be considered justified under Article 8 para. 2 (Art. 8-2) as being necessary in a democratic society for the protection of the rights and freedoms of Issa.

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 further complains of restrictions of her freedom of movement while staying at Eurenii Minne.

The Commission does not consider it necessary to determine whether this complaint should be examined under Article 5 (Art. 5) of the Convention or under Article 2 of Protocol No. 4 (P4-2) to the Convention as it is, in any event, manifestly ill-founded for the following reason.

The Commission notes that the applicant's stay at Eurenii Minne was not a deprivation of liberty as referred to in Article 5 (Art. 5) of the Convention, but was based on Section 6 of the Social Services Act and occurred with her consent. Consequently, any rules which may have restricted her movements during her stay at the institution must be considered to have been accepted by her in connection with her admission. Moreover, she was free at any time to interrupt the investigation undertaken at the institution. The restrictions cannot therefore raise any problem under Article 5 (Art. 5) of the Convention or under Article 2 of Protocol No. 4 (P4-2).

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. The applicant finally complains of the fact that the oral hearing before the County Administrative Court on 6 February 1992 was held in camera.

The Commission observes that, following this hearing, the County Administrative Court ruled in the applicant's favour. The question therefore arises whether the applicant can claim to be a "victim", within the meaning of Article 25 (Art. 25) of the Convention, of a violation of her rights under Article 6 para. 1 (Art. 6-1) of the Convention, which reads, in its relevant parts:

> "In the determination of his civil rights..., everyone is entitled to a... public hearing...[T]he... public may be excluded from all or part of the trial..., where the interests of juveniles or the protection of the private life of the parties so require..."

The Commission notes that the decision of the County Administrative Court was subsequently quashed by the Administrative Court of Appeal and that a final care order was issued by the Country Administrative Court following a second hearing which also took place in camera. This decision was upheld by the Administrative Court of Appeal, again following a hearing in camera. Finally, the Supreme Administrative Court's consideration of whether the applicant should be granted leave to appeal took place without a hearing.

The Commission considers that the question regarding the applicants "victim" status under Article 25 (Art. 25) of the Convention, and the question whether the absence of a public hearing discloses any violation of Article 6 (Art. 6) of the Convention, need not be resolved as, under Article 26 (Art. 26) of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

In the present case the applicant has not shown that she objected to a hearing in camera either before the County Administrative Court or that she raised this issue in her submissions to the administrative courts of appeal. In these circumstances she has not established that she has availed herself of the domestic remedies at her disposal. Moreover, an examination of the case does not disclose any circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from raising this issue in the proceedings referred to.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and this part of the application must be rejected under Article 27 para. 3 (Art. 27-3) 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)