AS TO THE ADMISSIBILITY OF

Application No. 21827/93
by Jonas ERIKSSON and Anneli ALANKO
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 30 November 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
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 21 April 1993 by Jonas ERIKSSON and Anneli ALANKO against Sweden and registered on 12 May 1993 under file No. 21827/93;

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

a. The particular circumstances of the case

The first applicant, a Swedish citizen born in 1981 and residing at Arboga, Sweden, is a student. The second applicant, a Swedish citizen born in 1966 and residing at Gällstad, Sweden, is an agricultural worker. They are half-siblings. Before the Commission they are represented by Mrs. Siv Westerberg, a lawyer practising in Gothenburg.

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

In March 1978, the Southern Social District Council (Södra sociala distriktsnämnden) of Lidingö decided to take L, the first applicant's sister and the second applicant's half-sister, into public care in accordance with the Child Welfare Act (Barnavårdslagen, 1960:97). L, then one month old, was placed in a foster home, where she has lived ever since. L's and the applicants' mother, C, instituted several unsuccessful sets of proceedings in the administrative courts. In January 1990, the District Court (Tingsrätten) of Sjuhäradsbygden decided to appoint the foster parents as custodians of L and to grant C access to her at certain intervals. The decision was upheld on appeal. Later, the administrative courts refused to enforce C's right of access, as L was opposed to meeting her outside the foster home.

In December 1984, C brought an application before the Commission.

The European Court of Human Rights subsequently held that there had been violations of her rights under Article 8 and Article 6 para. 1 of the Convention (Eur. Court H.R., Eriksson judgment of 22 June 1989, Series A no. 156). In March 1990, C brought another application before the Commission, which was declared inadmissible on 16 January 1992.

C has met L a few times per year. The meetings have taken place for a few hours each time in the foster home in the presence of the first applicant. In recent years, C and the first applicant have not met L at all. Apparently, the second applicant has not met L for several years.

On 12 March 1992, the applicants requested the Social Council of Halmstad to institute proceedings in the District Court with a view to securing access to L. However, on 25 June 1992, the Social Council decided not to institute proceedings, as L, at that time 14 years old, had stated in very definite terms that she did not want to meet the applicants.

The applicants appealed to the County Administrative Court (Länsrätten) of the County of Halland, which by decision of 27 August 1992 dismissed the appeal, as the decision by the Social Council was final. An appeal against the dismissal was rejected by the Administrative Court of Appeal (Kammarrätten) of Göteborg on 23 September 1992. On 12 March 1993, the Supreme Administrative Court (Regeringsrätten) refused leave to appeal.

b. Relevant domestic law

Swedish law does not afford siblings any rights over each other. The rights over a child are normally vested in its parents or custodians, who, according to Chapter 6, Section 15, subsection 1 of the Parental Code (Föräldrabalken), shall see to it that the child's need of access to a person who is particularly close to the child is satisfied to the utmost possible extent. As concerns the possibility of instituting court proceedings, subsection 3 provides that such proceedings may be brought by the Social Council, if access requested by somebody else than the natural parents is denied by the child's custodians. The court shall determine the question of access in keeping with the child's best interests.

COMPLAINTS

1. The applicants allege, under Article 8 of the Convention, that the denial of access to L constitutes an interference with their right to respect for their family life.

2. They further complain that they could not bring this issue before a court. In this respect, they invoke Article 6 of the Convention.

THE LAW

1. The applicants allege that the refusal of the Social Council to institute proceedings concerning access to L constitutes an interference with their right to respect for their family life. They invoke Article 8 (Art. 8) of the Convention which reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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."

As has been stated by the Court (Eur. Court H.R., Marckx judgment of 13 June 1979, Series A no. 31, p. 21, para. 45), "family life" within the meaning of Article 8 (Art. 8) includes at least the ties between near relatives, since such relatives may play a considerable part in family life. By way of example, the Court mentioned the relationship between grandparents and grandchildren. The Commission considers that the same reasoning applies to the relationships between siblings and between half-siblings. The Commission, however, recalls that the existence or not of family ties falling within the scope of Article 8 (Art. 8) will depend on a number of factors and on the particular circumstances of each case (cf., e.g., No. 12763/87, Dec. 14.7.88, D.R. 57 p. 216).

In the present case, the Commission finds that it can be left open whether the relationship between the applicants and L concerns "family life" which has been interfered with within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention, because, even assuming this to be the case, the Commission considers that the interference was permissible under para. 2 of this provision. In reaching this conclusion, the Commission finds that the Social Council's decision was in accordance with the law and had a legitimate aim. The Commission further finds that the decision did not exceed what could reasonably be regarded as necessary, as L, at the age of 14, very clearly had stated that she did not want to meet the applicants.

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 applicants further complain that they could not bring the access dispute before a court for determination and they consider this to be in violation of the right of access to court within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention, which in its relevant parts reads as follows:

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

The Commission recalls that in order for Article 6 para. 1 (Art. 6-1) to apply to the proceedings in question it must first be ascertained whether there was a dispute over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law (cf., e.g., Eur. Court H.R., W v. the United Kingdom judgment of 8 July 1987, Series A no. 121-A, p. 32-33, para. 73). Under Swedish law the applicants have no right of access to their sister. Thus they cannot claim on any arguable ground that they have a right under domestic law, for which reason Article 6 (Art. 6) does not apply in the present case (cf. No. 12763/87, referred to above).

It follows that this part of the application is 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)