AS TO THE ADMISSIBILITY OF

Application No. 14573/89
by Anita ERIKSSON and Asta GOLDSCHMIDT
against Sweden

The European Commission of Human Rights sitting in private on 9 November 1989, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
G. BATLINER
J. CAMPINOS
H. VANDENBERGHE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 12 August 1988 by Anita Eriksson and Asta Goldschmidt against Sweden and registered on 24 January 1989 under file No. 14573/89;

Having regard to the report provided for in Rule 40 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 applicants are Swedish citizens, born in 1935 and 1933 respectively, and resident at Mockfjärd, Sweden. The first applicant is retired and the second applicant self-employed.

The first applicant is a transsexual who was registered at birth as being of male sex. She has had regular contact with the Psychiatric Clinic of the Hospital of Falun since 1962. Having received a certificate from the Clinic stating that for medical and mental reasons she needed to act as a woman in everyday life, she requested the National Board of Health and Welfare (socialstyrelsen) to change her Christian name and to determine that she is of female sex. On 23 September 1980 the National Board decided in accordance with Section 1 of the 1972 Act on the Determination of Sex in Special Circumstances (lagen om fastställande av könstillhörighet i vissa fall) that the first applicant should be considered as being of female sex. The Board referred her request for a change of name to the Patent and Registration Office (patent- och registreringsverket) with

its recommendation that the name be changed. The Patent and Registration Office on 22 October 1980 changed her Christian name from Sven Ove to Anita Birgitta. On 30 October 1980 the National Tax Board (riksskatteverket) gave the applicant a new personal identity number (personnummer) indicating that she is a woman. The applicant was subsequently registered in the population record as being of female sex. The applicant never had any surgical treatment and is physically still of male sex.

The applicants are living in a heterosexual relationship. Their request for a marriage licence was rejected by the Parish Civil Registration Office (pastorsämbetet) of Mockfjärd on 11 November 1984 on the ground that both applicants were of female sex. The applicants asked the Government for an exemption from the relevant provisions of the Marriage Code (giftermålsbalken). The Government on 11 September 1986 dismissed their request as it was not within their competence to grant such an exemption.

The applicants made a new request for a marriage licence which was rejected by the Parish Civil Registration Office on 11 May 1987. The applicants appealed to the Cathedral Chapter (domkapitlet) of Västerås which on 9 September 1987 confirmed the decision of the Parish Civil Registration Office. The applicants' further appeal was rejected by the Administrative Court of Appeal (kammarrätten) of Sundsvall on 17 November 1987. On 19 February 1988 the Supreme Administrative Court (regeringsrätten) refused leave to appeal.

COMPLAINTS

The applicants allege a violation of Article 12 of the Convention as they have been refused the right to marry. They maintain that they should have the right to marry as they are of opposite biological sex. They point out that long before the first applicant had her registered sex changed she had acted as a woman in order to facilitate everyday life. She would then have been allowed to marry the second applicant. The applicants furthermore point out that the first applicant would, although she is physically a man, in principle be allowed to marry another man.

THE LAW

The applicants allege a violation of their right to marry as guaranteed by Article 12 (Art. 12) of the Convention.

Article 12 (Art. 12) of the Convention reads as follows:

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right".

In the Rees case, the Court stated as follows (Eur. Court of H.R., Rees judgment of 17 October 1986, Series A no. 106, p. 19, paras. 49-51):

"In the Court's opinion, the right to marry guaranteed by Article 12 (Art. 12) refers to the traditional marriage between persons of opposite biological sex. This appears also from the wording of the Article which makes it clear that Article 12 (Art. 12) is mainly concerned to protect marriage as the basis of the family.

Furthermore, Article 12 (Art. 12) lays down that the exercise of this right shall be subject to the national laws of the Contracting States. The limitations thereby introduced must not restrict or reduce the right in such a way or to such an extent that the very essence of the right is impaired. However, the legal impediment in the United Kingdom on the marriage of persons who are not of the opposite biological sex cannot be

said to have an effect of this kind.

There is accordingly no violation in the instant case of Article 12 (Art. 12) of the Convention."

The Commission notes that the present applicants, although biologically of opposite sex, are under Swedish law both of female sex. This is so since the first applicant has, for medical and mental reasons, freely chosen to adopt the female sex and this change has been recognised in accordance with the Act on the Determination of Sex in Special Circumstances. Consequently, under Swedish law the applicants do not have the right to marry as they are legally of the same sex.

The Commission considers that the right to marry under Article 12 (Art. 12) of the Convention only covers the right to marry someone of the opposite sex. It accepts that this applies also where, as in the present case, the couple are not biologically of the same sex but where one of the partners has obtained the same sex status as the other partner through a voluntary act recognised under domestic law.

It follows that 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

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C. A. NØRGAARD)