AS TO THE ADMISSIBILITY OF

Application No. 29245/95
by Freddy FOSKJÆR
against Denmark

The European Commission of Human Rights (Second Chamber) sitting in private on 22 October 1997, the following members being present:

Mrs G.H. THUNE, President
MM J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA
A. ARABADJIEV

Ms M.-T. SCHOEPFER, 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 10 October 1995 by Freddy Foskjær against Denmark and registered on 15 November 1995 under file No. 29245/95;

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 Danish citizen, born in 1954. He resides in Gentofte. Before the Commission he is represented by Ms Ulla Merete Bak, a lawyer practising in Copenhagen.

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

In June 1994 the applicant instituted proceedings against his wife with a request for divorce. He also requested to be awarded custody of their two children, born in 1991 and 1993 respectively. A preliminary agreement was reached between the parties as regards custody and access while the case was pending.

The Ballerup City Court (retten i Ballerup) held a hearing in the case on 8 August 1994 during which the parties, assisted by counsel, were present and had the opportunity to state what in their opinion was of relevance to the outcome of the case. It was furthermore decided to obtain an expert opinion which was available on 20 November 1994. It concluded that it would be appropriate to award the applicant custody

of the children and to grant the mother extended access rights.

By judgment of 14 December 1994 the City Court accepted the parties' request for divorce and awarded the applicant custody of both children.

The mother appealed against the judgment to the High Court of Eastern Denmark (Østre Landsret). She requested that a new expert opinion be obtained which, however, the Court refused.

The High Court held a new hearing in the case on 12 April 1995 during which the applicant and his former wife again had the opportunity to address the Court. By judgment of the same day the High Court awarded custody of the children to the mother. After an evaluation of the available evidence the Court found this to be in the best interest of the children.

Leave to appeal to the Supreme Court (Højesteret) was refused on 12 July 1995.

COMPLAINTS

Under Articles 8, 12 and 14 of the Convention and Article 5 of Protocol No. 7 to the Convention the applicant complains of the fact that custody of the children was awarded to the mother. He maintains that the decision was based on the incorrect view that small children are best taken care of by their mother. He also maintains that the High Court in fact granted custody to the parent who was least capable of taking care of the children and that the decision was discriminatory in view of his sex.

The applicant furthermore complains that Article 13 of the Convention was violated as the High Court's decision was based on insufficient grounds and, also, since he was refused leave to appeal to the Supreme Court.

THE LAW

1. The applicant complains that the judgment granting custody of the children to his former wife was discriminatory and based on an incorrect evaluation of the factual circumstances.

With regard to the judicial decisions of which the applicant complains, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to the established case-law of the Convention organs (see e.g. Eur. Court HR, Schenk v. Switzerland judgment of 12 July 1988, Series A no. 140, p. 29, para. 45).

It is true that the applicant also refers to Articles 8, 12 and 14 (Art. 8, 12, 14) of the Convention and Article 5 of Protocol No. 7 (P7-5) to the Convention in respect of the custody dispute.

Whereas the Commission finds no room for considering this case under Article 12 (Art. 12) of the Convention, it has considered the applicant's complaints under the other Articles invoked in so far as they involve his right to respect for his family life without discrimination. The Commission notes, however, that the national courts are in cases like the present one often faced with the problem of making a choice between the parents. Their decision in this respect

will not as such disclose any lack of respect for the family life of the parent who is not granted custody. In the circumstances of the present case the Commission furthermore considers that the decision taken was neither arbitrary nor disproportionate, or in any other way discriminated against the applicant in the enjoyment of his right to respect for his family life within the meaning of the Convention.

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 also complains, under Article 13 (Art. 13) of the Convention, that the decision was based on insufficient grounds and of the fact that he was not granted leave to appeal.

The Commission recalls that the applicant could, and did, bring the custody dispute before the City Court and, on appeal, the case was also heard by the High Court of Eastern Denmark which, like the City Court, had full competence to consider this dispute. In these circumstances the Commission finds that the requirements of Article 13 (Art. 13) were complied with.

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.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber