AS TO THE ADMISSIBILITY OF

Application No. 28019/95
by Ove HALLGREN
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 27 November 1996, 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

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 1 June 1995 by Ove Hallgren against Sweden and registered on 25 July 1995 under file No. 28019/95;

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 Swedish citizen, born in 1935 and resident at Mölndal. He is on an early retirement pension.

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

The applicant suffered from blood vessel ruptures in his face and was granted early retirement pension. He was allegedly wrongly diagnosed up to 1979. During the preceding 20 years his face had been highly red; others would repeatedly call him ugly or consider him an alcoholic.

In the late 1970's or early 1980's the applicant obtained access to his medical records. He was shocked by certain allegedly insulting annotations which had been made by physicians treating him without success. The records indicated that he was mentally ill, principally suffering from a neurosis. At his request the records which were being kept by certain care institutions were destroyed, while his requests pertaining to records kept by various other public bodies were rejected.

In 1987 the applicant requested the destruction of five medical

reports submitted to the Mölndal Social Insurance Office (Försäkrings-kassan i Mölndal) between 1974 and 1980. The Office was opposed to their complete destruction, given that his entitlement to an early retirement pension was founded on them and they would be of interest, should the Office ex officio re-assess his right to the pension. This was the Office's right under chapter 20, section 10a of the 1962 Insurance Act (lag 1962:381 om allmän försäkring). The Office did not, however, object to deleting certain passages which the applicant found particularly insulting.

On 25 February 1987 the National Board of Health and Welfare (Socialstyrelsen) rejected the applicant's request, considering that it was in the public interest to retain the medical reports in question.

The Stockholm Administrative Court of Appeal (Kammarrätten i Stockholm) rejected the applicant's appeal on 1 October 1987. The Supreme Administrative Court (Regeringsrätten) refused him leave to appeal on 23 February 1988.

In 1992 the applicant requested the deletion of certain annotations appearing in the patient records kept by the Mölndal Hospital. He also renewed his request to have the five medical reports kept by the Social Insurance Office destroyed.

On 2 December 1992 the Board decided that the relevant annotations appearing in his hospital records should be destroyed. As to the medical reports kept by the Social Insurance Office, the Board found that the conditions for a destruction thereof had not changed since its decision of 1987. His request was therefore again rejected.

The applicant appealed, arguing that copies of the reports which he sought to have destroyed had previously been destroyed by the care institutions. In any case, it was not necessary to retain those reports for any possible reconsideration of his entitlement to the early retirement pension, given that the reports contained wrong diagnoses of his state of health. His appeal was rejected by the Administrative Court of Appeal on 1 February 1993. The Supreme Administrative Court refused him leave to appeal on 23 December 1994.

According to the 1985 Act on Patient Records (patientjournallag 1985:562), annotations in a patient record within the health care or hospital administration shall be phrased so as to respect the patient's integrity (section 4). Patient records shall be kept so as to prevent unauthorised access to them (section 7). At the request of the patient concerned the National Board of Health and Welfare may order that his or her record shall be destroyed either completely or partly. The patient must, however, show acceptable reasons for such a request. It is also required that the record to be destroyed is not needed for his or her care and that the public interest does not require that the record be kept (section 17).

COMPLAINTS

1. The applicant complains about the authorities' refusal to order the destruction of his patient records at the Mölndal Social Insurance Office. He invokes no specific Article of the Convention.

2. He furthermore complains that he cannot have the refusal reviewed by an impartial tribunal. He invokes Article 6 of the Convention.

THE LAW

1. The applicant complains about the refusal to order the destruction of his patient records at his local social insurance office. The Commission has examined this complaint under Article 8

(Art. 8) of the Convention which, as far as relevant, reads as follows:

> "1. Everyone has the right to respect for his private ... 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 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."

The Commission recalls that the essential object of Article 8 (Art. 8) is to protect the individual against arbitrary interference by the public authorities. The storing in patient records of information relating to a person's private life may constitute an interference with the right to respect for private life guaranteed by Article 8 para. 1 (Art. 8-1) (cf. No. 14461/88, Dec. 9.7.91, D.R. 71 pp. 141, 155-157). In addition, there may be positive obligations inherent in an effective "respect" for private life within the meaning of that provision. Whilst the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition, the applicable principles are similar. In particular, in both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole (see, e.g., Eur. Court HR, Gaskin v. the United Kingdom judgment of 7 July 1989, Series A no. 160, pp. 15 et seq., paras. 38 et seq.; cf. also Leander v. Sweden judgment of 26 March 1987, Series A no. 116).

The question arising in the present case is essentially whether the Swedish authorities have failed to respect the applicant's private life by refusing to destroy certain medical reports which relate to him and are being kept by the local social insurance office.

The applicant asserts that the diagnoses contained in the medical reports which he sought to have destroyed are no longer accurate and have been corrected by later medical reports. It therefore appears that any harm which the non-destruction of the first-mentioned reports might be causing or could cause him today is or would be negligible. In addition, his requests for the destruction of similar information kept by other institutions have met with the authorities' approval. In so far as the authorities have ordered that the original reports are to be retained by the local social insurance office the Commission notes that this body remains entitled to review its decision to grant the applicant an early retirement pension. Under domestic law, however, patient records such as those at issue here shall be kept so as to prevent unauthorised access to them.

In these particular circumstances and taking into account the respondent State's margin of appreciation, the Commission finds that the Swedish authorities were reasonably entitled to refuse the applicant's request that these medical reports be destroyed. Accordingly, there is no appearance of a violation of Article 8 (Art. 8) of the Convention.

It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains that he cannot have the refusal to order the destruction of those records reviewed by an impartial tribunal. He invokes Article 6 (Art. 6) of the Convention which, in so far as relevant in the present case, reads as follows:

> "1. In the determination of his civil rights and

obligations ... everyone is entitled to a ... hearing ...
by an ... impartial tribunal established by law. ..."

Assuming that this provision is applicable, the Commission notes that the refusal in question was reviewed by the Administrative Court of Appeal. The applicant has in no way substantiated his allegation that this body failed to meet the requirements of an "impartial tribunal" within the meaning of Article 6 para. 1 (Art. 6-1). Accordingly, there is no indication of a violation of this provision either.

It follows that this complaint 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