AS TO THE ADMISSIBILITY OF

Application No. 18262/91
by Ingrid HJOST-LUKKONEN
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 30 June 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
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO

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 12 March 1991 by Ingrid HJOST-LUKKONEN against Sweden and registered on 27 May 1991 under file No. 18262/91;

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 1939 and residing in Hisings-Backa in western Sweden. Before the Commission she is represented by Ms Siv Westerberg, a lawyer practising in Västra Frölunda.

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

In 1974 the applicant and her husband had a son. In August 1980 the child was taken into public care according to the provisions of the 1960 Child Care Act (barnavårdslagen) as the parents were found to be overprotective vis à vis the child, thereby retarding his development. This decision was upheld by the Administrative Court of Appeal (kammarrätten). No further appeals were lodged. As from 1 January 1982 the care became subject to the provisions of the 1980 Act with Special Provisions on the Care of Young Persons (lag med särskilda bestämmelser om vård av unga) and as from 1 July 1992 to the 1990 Act with the same name.

The child was initially placed in a children's home in Gothenburg and the parents were allowed frequent and regular visits. However, after nine months the visiting rights were severely cut and the child transferred to a foster home in Stafsinge, a locality some 120 km from the applicant's and her husband's home. During 1981 and 1982 the applicant and her husband were allowed to see their son once a month

for a couple of hours in the foster home. Since 31 January 1984 there has been a complete prohibition on all visits.

During a great part of the 1980's the applicant in vain requested the social authority to lift the care order or at least to grant her some visiting rights.

In August 1987 the applicant met her present counsel and filed a new application for visiting rights. The Social District Council (Sociala distriktsnämnden) in Backa did not take any immediate decision but asked the applicant, as a preliminary measure, to discuss her case with two psychologists. The applicant accepted. In April 1988 she wrote to her counsel stating that she had agreed with the Social District Council to attempt to solve the problems through further discussions with the psychologists and requesting counsel to abstain from all actions. According to what the applicant has stated in her application to the Commission she sent this letter as she was told by the social authorities that she would never be allowed to meet her child as long as she engaged Ms Westerberg as counsel.

On 29 September 1988, the applicant, who had not been allowed to see her child during her discussions with the psychologists, referring to the conditions in the home, requested a lifting of the care order. In the alternative she requested extensive visiting rights (every weekend and all school holidays) and that her son be moved to another form of care, preferably to a child psychiatric clinic capable of providing the necessary support for a reunion. The Social District Council refused the requests by decision of 21 March 1989. The applicant appealed to the County Administrative Court (länsrätten) which rejected the appeal by judgment of 19 May 1989. The Court summarised its reasons as follows:

> "[The applicant's son] has clearly stated that he strongly opposes any change of his present conditions. In view of his age and maturity his wish has to be respected. What the [applicant] has stated in her appeal is not of a character to give her wishes precedence before those of her [son]. In view of the conflict which exists between the natural parents and the [child] it is clear that there is a need to maintain public care. The conditions are such that it is not possible to consider some other form of care. It is not possible to accede to any of the requests contained in the appeal. The appeal is accordingly rejected."

The applicant appealed to the Administrative Court of Appeal (kammarrätten). By judgment of 19 September 1989 the Court upheld the lower court's decisions as far as the requests regarding termination of care and visiting rights were concerned. The conditions in the parents' home were still held to be such that public care had to be maintained and visiting rights could not be granted in view of the child's strong objections and need for a calm upbringing. The Court also observed that as the applicant's son was now almost 15 years old it would in any event be practically impossible to enforce any decision regarding visiting rights against his will. The request to have the son removed from the foster home was rejected on the ground that there was no right of appeal against the Social District Council's decision on this point.

The applicant appealed to the Supreme Administrative Court (Regeringsrätten) which granted leave to appeal. By judgment of 20 December 1990 it rejected the appeal. It found it established that the child's open antagonism vis à vis his natural parents created a considerable risk of harm to his development and health if the care order were to be lifted and that the origin of this risk was to be found in the conditions of the parents' home. It also found that the child's attitude made it impossible to grant any visiting rights.

COMPLAINTS

1. The applicant complains of a violation of Article 8 in that the social authorities have made no attempt to reunite the family and have refused to accept the measures proposed by the applicant to facilitate reunification. In addition, the maintenance in force of the care order is unnecessary and in violation of Swedish law as there are no shortcomings in her home.

2. The applicant furthermore alleges that the total separation of the applicant and her child for such a long time as in the present case resulted from a form of "brainwash" of her child in violation of Article 3 of the Convention.

3. The applicant also alleges a violation of Articles 6 and 13 as a result of the social authorities' alleged refusal to take any immediate decision in response to the first request for visiting rights in August 1987 and as a result of the length of time which elapsed before a final decision was taken by the courts.

4. Finally, she maintains that the conditions in the foster home amount to forced labour in violation of Article 4 of the Convention.

THE LAW

1. The applicant alleges a violation of Article 8 (Art. 8) of the Convention in that the social authorities have made no attempt to reunite the family and have refused to take the measures proposed by the applicant to facilitate reunification. In addition, the maintenance in force of the care order is unnecessary and in violation of Swedish law as there are no shortcomings in her home. Article 8 (Art. 8) 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 to the alleged failure of the authorities to take measures aimed at reuniting the family, the Commission notes that to the extent that the substance of this complaint was not covered by the applicant's request of 29 September 1988 to the Social District Council, she has not complied with her obligations under Article 26 (Art. 26) of the Convention of exhausting domestic remedies and of filing any complaint alleging a violation of the Convention within 6 months of the final domestic decision, or failing such a decision, within six months of the event complained of (see, as to the last point, No. 10389/83, Dec. 17.7.86, D.R. 47 p. 72). The Commission notes in particular that the applicant could at all moments have challenged the access prohibition imposed in January 1984 before the administrative courts.

To the extent indicated above her complaint is, accordingly, inadmissible pursuant to Article 27 para. 3 (Art. 27-3) of the Convention.

2. The above-mentioned request of 29 September 1988 to the Social District Council concerned the prohibition on access, the possibility of moving the child to a child psychiatric clinic and the lifting of the care order.

The Commission finds that these decisions constituted an interference with the applicant's right to respect for her family life within the meaning of Article 8 (Art. 8) of the Convention (see, mutatis mutandis, e.g. Eur. Court. H.R., W. v. the United Kingdom judgment of 8 July 1987, Series A no. 121, p. 27, para. 59). The Commission must therefore examine whether these interferences were justified under Article 8 para. 2 (Art. 8-2) of the Convention.

The Commission finds that in the circumstances of the case it is appropriate to make a joint examination of the justification of these interferences with the applicant's family life.

The Commission notes that the impugned decisions were taken pursuant to the 1980 Act with Special Provisions on the Care of Young Persons. As regards in paticular the lawfulness of the refusal to lift the care order, the Commission recalls that it is primarily for the national authorities, and notably the courts, to interpret and apply domestic law (see, Eur. Court H.R., Olsson II judgment of 27 November 1992, Series A No. 250, para. 79). In the present case the Commission has found nothing to indicate that the refusal to lift the care order was not in accordance with the domestic law in force.

As regards the aim of these interferences, the Commission notes that they were all taken with a view to protecting the interests of the child, notably his health and his own rights. The Commission accordingly concludes that the interferences had legitimate aims.

As to the necessity of the interferences, the Commission observes that the authorities attached great weight to the clear statements made by the applicant's son as to his position on the disputed points and to his age and maturity. The Commission also notes the Administrative Court of Appeal's statement as to the impossibility of enforcing any decision contrary to the wishes of a 15 year old boy. The Commission finds that these reasons are relevant and sufficient to show that the interferences were necessary in a democratic society in order to achieve the legitimate aims pursued.

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.

3. The applicant also alleges that her total separation from her child for such a long time as in the present case resulted from a form of "brainwash" of the child in violation of Article 3 (Art. 3) of the Convention.

The Commission recalls that it has found the prohibition on access, to the extent that it has been competent to examine this prohibition, to have been necessary in a democratic society in order to protect the child's rights and health. In such circumstances the Commission cannot find that the maintenance in force of this prohibition discloses any appearance of a violation of Article 3 (Art. 3) of the Convention.

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.

4. The applicant furthermore alleges a violation of Articles 6 and 13 (Art. 6, 13) of the Convention as a result of the social authorities' alleged refusal to take any immediate decision in response to the first request for visiting rights in August 1987 and as a result of the length of time which elapsed before a final decision was taken by the courts.

Article 6 para. 1 (Art. 6-1) reads in relevant parts:

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

The Commission recalls that the requirements of Article 6 (Art. 6) cover the right of access to court and that these requirements are stricter than those imposed by Article 13 (Art. 13) (see, Eur. Court H.R., Håkansson and Sturesson judgment of 21 February 1990, Series A No, 171, pp. 20-21, paras. 62-63 and 69). Accordingly, the Commission will first examine the present complaint in the light of the former Article.

The Commission finds that the disputes regarding the applicant's right of access to her child in public care fell within the scope of Article 6 para. 1 (Art. 6-1) as they concerned the determination of her right of access as recognised under Swedish law (see, e.g. Eur. Court H.R., O v. United Kingdom judgment of 8 July 1987, Series A No. 120-A, pp. 24-26, paras. 53-58).

The Commission notes as regards the Social District Council's alleged refusal to take an immediate decision in response to the request of August 1987 that the impugned situation was the result of an agreement with the applicant. The Commission notes the applicant's statements about the circumstances in which this agreement was allegedly reached. It does not find it necessary to examine whether these statements are correct as it considers that the applicant was not in fact prevented from pursuing her request and from appealing against a refusal by the authority to the administrative courts in order to have the courts examine the reasons for the refusal. The Commission, accordingly, finds that the applicant's complaint under Article 6 (Art. 6) of the Convention on this point is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. It follows from the above conclusion that the period to be taken into account in determining the reasonableness of the length of the court proceedings regarding her requests for access and a lifting of the care order started when the applicant submitted her request to the Social District Council on 29 September 1988 (see, inter alia, Eur. Court H.R., Olsson II judgment of 27 November 1992, Series A No. 250, para. 101). The period ended with the Supreme Administrative Court's judgment on 20 December 1990. The period to be taken into account accordingly amounts to approximately two years and three months. The Commission notes that the issues involved in the proceedings were of some complexity and that the proceedings comprised full review at three levels. In these circumstances the Commission cannot find that the length of the proceedings exceeded the "reasonable time" provided for in Article 6 para. 1 (Art. 6-1) (see, mutatis mutandis, the above mentioned Olsson II judgment, paras. 101-103). This part of the application is accordingly also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

6. In the light of its conclusions above the Commission finds no separate issue under Article 13 (Art. 13) of the Convention and this complaint is accordingly also manifestly ill-founded.

7. Finally, the applicant maintains that the conditions in the foster home amount to forced labour in violation of Article 4 (Art. 4) of the Convention.

The Commission notes that this complaint relates to a violation of the rights of the child and moreover finds nothing to substantiate this allegation. Accordingly, this part of the application is also manifestly ill-founded.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber	President of the Second Chamber
(K. ROGGE)	(S. TRECHSEL)