AS TO THE ADMISSIBILITY OF

Application No. 27303/95
by Eva, Anders and Cecilia HOVING
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 9 April 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

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 January 1995 by Eva, Anders and Cecilia HOVING against Sweden and registered on 12 May 1995 under file No. 27303/95;

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 applicants, a mother and her two children, are Swedish citizens, born in 1947, 1975 and 1981 respectively. They reside in Stockholm. Before the Commission the applicants are represented by Mr Lars Arrhenius of the law firm Bengt H Nilsson AB, Stockholm.

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

On 23 April 1992 the National Police Board (Rikspolisstyrelsen) submitted a request on behalf of the applicants to the Stockholm District Court (tingsrätt) for leave to use fictitious personal information (fingerade personuppgifter) pursuant to the 1991 Act on Fictitious Personal Information [lagen (1991:483) om fingerade personuppgifter]. The request was made due to the applicants' repeated allegations of harassment by the first applicant's ex-husband who was also the second and third applicants' father.

On 16 June 1992 the District Court rejected the request since the investigation made disclosed, in the Court's view, that the applicants did not fulfil the necessary requirements.

The applicants appealed against this decision to the Svea Court of Appeal (Svea hovrätt) which, however, upheld it on 15 January 1993. The applicants thus asked for leave to appeal to the Supreme Court (Högsta domstolen). Leave was granted on 8 November 1993. Following further written observations the Supreme Court rejected the applicants' request on 11 July 1994. In its decision the court stated inter alia as follows:

(Translation)

> "The 1991 Act on Fictitious Personal Information is intended to protect harassed and threatened persons in certain special circumstances by allowing them to use other information concerning themselves than what is actually correct. Leave to use fictitious personal information may be granted for a maximum of five years.
>
> The Act states as a precondition for such leave that there is an obvious risk that the person concerned may be the subject of particularly serious crimes which threatens life, health and freedom. This must be considered to imply that the risk shall be of an objective character. Thus, it is not sufficient that the person in question considers that such a risk exists.
>
> A further precondition for leave to use fictitious personal information is that the person cannot obtain sufficient protection by other means. This means, according to the travaux préparatoires, that it shall be examined first whether registration pursuant to section 16 of the National Register Act [folkbokföringslagen (1981:481)], visit prohibitions or other means would be sufficient in order to protect the person ...
>
> The investigations in this case show that, on 27 November 1991, the applicant and her children were permitted to remain registered at their previous address until 31 December 1994. A special secrecy examination pursuant to Chapter 7, Section 15 of the Secrecy Act [sekretesslagen (1980:100)] applies in regard to information concerning them at the local registration office since 7 September 1989. According to a special decision such an examination shall be carried out until 31 December 1994.
>
> [The first applicant] has submitted before the Supreme Court and the Court of Appeal that she, and her children, experience a considerable risk that [her ex-husband] will commit serious crimes against them. According to [the first applicant] [her ex-husband] committed serious offences during their marriage, such as assault and battery and rape. She has not, however, maintained that, following the separation in January 1989, [her ex-husband] has committed similar offences or otherwise used physical force against them. She alleges instead that, during the years following the separation, [her ex-husband] indirectly harassed and threatened her and the children. ... As an example [the first applicant] has submitted that [her ex-husband] and his sister made slanderous remarks about her and the children to various authorities and obtained information about them in data registers. [Her ex-husband] furthermore stays near her and the children in order to sustain the fear [he] has provoked in them through his previous acts.

It is undeniable that [the applicants] experience a strong fear for [the ex-husband/father] and that for this reason they live under a strong mental strain and in otherwise very difficult circumstances. What has been submitted does not show, however, that from an objective point of view such a risk as the Act requires exists. Therefore, leave to use fictitious personal information cannot be granted."

COMPLAINTS

The applicants complain that the refusal to grant them leave to use fictitious personal information in the circumstances violates their rights set out in Article 8 of the Convention.

THE LAW

The applicants complain of a violation of Article 8 (Art. 8) of the Convention which reads as follows:

"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." They maintain that Sweden has violated its positive obligation under the above provision, to secure to them their right to respect for their private and family life, by refusing to allow them to use fictitious personal information.

The Commission recalls that the obligation to secure the effective exercise of the Convention rights may involve positive obligations on a State in a number of areas, and these obligations may involve the adoption of measures even in the sphere of the relations of individuals themselves. An obligation of this kind exists, for instance, in regard to the right to respect for private and family life guaranteed by Article 8 (Art. 8) of the Convention (see e.g. Eur. Court HR, X and Y v. the Netherlands judgment of 26 March 1985, Series A no. 91, p. 11, para. 23).

In the present case the Commission recalls that the applicants had asked for leave to use fictitious personal information out of fear that their ex-husband/father would otherwise threaten their life, health and freedom. These issues were thoroughly examined by three courts which also took into consideration other means which could be, and were indeed, implemented in order to protect the applicants. Having regard to the reasons advanced by, in particular, the Supreme Court in its decision of 11 July 1994 the Commission finds no indication that the court gave inadequate consideration to the applicants' rights under Article 8 (Art. 8).

Furthermore, the fact that the applicants were unsuccessful in their request submitted under the Fictitious Personal Information Act does not mean that the respondent State has failed in its obligation to provide adequate protection for their rights under Article 8 (Art. 8) of the Convention. The Commission finds, therefore, that the case does not disclose any appearance of a violation of this provision.

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, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER Secretary to the Second Chamber	G.H. THUNE President of the Second Chamber