AS TO THE ADMISSIBILITY OF

Application No. 15467/89
by Jan and Marja IPSONIUS
against Sweden

The European Commission of Human Rights sitting in private on
12 December 1991, the following members being present:

MM.C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs.G. H. THUNE
SirBasil HALL
MM.F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs.J. LIDDY
MM.L. LOUCAIDES
J.-C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ
B. MARXER

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 19 July 1989 by
Jan and Marja IPSONIUS against Sweden and registered on
8 September 1989 under file No. 15467/89;

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 are Swedish citizens born in 1941 and 1952,
respectively. They are resident at Norsborg. Mr. Ipsonius is a
technician and Mrs. Ipsonius is a catering assistant by profession.
They have two children together, Anna born in 1982 and Johan born in
1984. Before the Commission they are represented by Mrs. Kerstin
Koorti, a lawyer practising in Stockholm.

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

Particular circumstances of the case

As from August 1986 the applicants' family was, on several
occasions, contacted by the Social District Council (sociala
distriktsnämnden) of Alby under Section 6 of the Social Services Act
(socialtjänstlagen) due to rows during some of which Mrs. Ipsonius had
been assaulted by Mr. Ipsonius, the incidents generally involving

alcohol.

During the summer of 1988 the Social District Council were informed that the applicants had relapsed into alcoholism and that there were again rows in the family.

On 21 October 1988 the applicants' children were placed in a children's home in Klingsta under Section 6 of the Social Services Act. On 5 November 1988 the children were transferred, in agreement with the applicants, to the home of the second applicant's sister. On 21 November 1988 the children were again transferred, in agreement with the applicants, to a children's home (utrednings- och korttidshem) in Geneta under Section 6 of the Social Services Act for an investigation of the family situation. The children's home was to be used for shorter stays.

On 2 February 1989 Mrs. Ipsonius came drunk to the children's day care center and took Johan away, while Anna refused to go with her. On the same day the Social District Council of Alby decided to take the applicants' children into care on a provisional basis, having regard to the applicants' long and serious abuse of alcohol. The care order was issued under Section 6 of the 1980 Act with Special Provisions on the Care of Young Persons (lagen med särskilda bestämmelser om vård av unga, hereinafter "the 1980 Act"). The decision was confirmed on 16 February 1989 by the County Administrative Court (länsrätten) of the County of Stockholm.

On 1 March 1989 the Social District Council requested that the children be taken into care under Section 1, para. 2, sub-para. 1 of the 1980 Act.

On 6 April 1989 the County Administrative Court, after a hearing, issued a care order regarding the children.

In the proceedings before the County Administrative Court the Social District Council referred to a care plan (vårdplan, arbetsplan) of 23 February 1989, according to which, in order to ensure the children's future health and development, their need for care could
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for the moment, best be achieved by providing care under the 1980 Act; the need of care would best be met by placing them in a family home; the intercourse with their parents and siblings was of great importance and was therefore to be encouraged and facilitated; a plan was to be made in cooperation with the parents in order to have them undergo treatment; and termination of the care was to be considered in cooperation with the parents when their alcohol problems were solved.

The plan included an opinion regarding the mental state of the children of 25 January 1989 submitted by a psychologist. According to this opinion the enforcement of the care plan was necessary in order to prevent further difficulties from which the children would otherwise suffer.

The County Administrative Court found inter alia that the applicants had been abusing alcohol for a long time and extensively. It further found that, although the applicants had agreed to the care plan, it was doubtful whether their consent would last for the whole of the necessary period of care.

At a hearing before the Administrative Court of Appeal (kammar-rätten) of Stockholm following the applicants' appeal the Social District Council again referred to the care plan and argued, in particular, that the children needed to be placed in a family home for up to one and a half years and that the parents' consent to the care plan did not concern possible long term care. Moreover, the aim was to arrange frequent contacts with the parents. The Social District Council found, however, that the relationship as such between the parents and

the children was good.

According to the deputy matron of the children's home, who was heard as a witness, the children's home had no cooperation problems with the parents. However, when they had previously relapsed into their abuse of alcohol their behaviour had again become disturbed.

On 2 June 1989 the Administrative Court of Appeal of Stockholm rejected the applicants' appeal. The Court noted that the family situation had improved, but found it premature to consider whether it had improved to such an extent as to allow the public care to be terminated. It further doubted that the parents' consent to the care plan would last for the necessary period of care.

The applicants underwent institutional treatment for their abuse of alcohol, the first applicant for six weeks as from 16 March 1989 and the second applicant for eight weeks as from 7 March 1989.

Before the Social District Council and the administrative courts the applicants were represented by their lawyer before the Commission.

The children remained in the children's home of Geneta until 7 March 1990, when the Social District Council revoked the care order and the children were returned to the applicants.

Relevant domestic law

Under Section 1, para. 2, sub-para. 1 of the 1980 Act care is to be provided for a young person, if his health or development is endangered by lack of care or any other condition in the home.

Under Section 5 the care shall be carefully monitored by the Social Council. The care shall be terminated when it is no longer necessary.

Under Section 11, paras. 1 and 4 the Social Council shall, when a care order has been issued under the 1980 Act, decide how care is to be arranged for the person concerned and where he is to reside during the period of care. The person shall be kept under surveillance and decisions concerning his personal circumstances shall be made, to the extent they are necessary for the discharge of the care. According to the Government Bill (1979/80:1, Part A, pp. 585, 596) the question whether a young person should be given care is to be considered by the County Administrative Board, while it is for the Social District Council to consider whether care should be given in another private home, a foster home or an institution.

According to Section 6 of the Social Services Act the Social Council shall ensure assistance for a person's maintenance and way of life, provided these needs cannot be ensured in any other way. The assistance shall ensure reasonable conditions of living and strengthen the person's possibilities to lead an independent life.

Under Section 22 the Social District Council shall ensure that persons needing care or accommodation in homes other than their own are admitted to a family home or to a nursing or residential home. The care should be designed to promote the person's affinity to his next of kin and his contact with the home environment.

Under Section 41 of the 1981 Social Services Ordinance (socialtjänstförordningen) a care order based on unsatisfactory conditions in the child's home must be reconsidered by the Social Council regularly and at least once a year.

COMPLAINTS

1. The applicants complain that they could not obtain a judicial determination of their civil rights. They submit that, as they had not been consuming any alcohol since 3 February 1989, the care should have been terminated. Moreover, following the institutional treatment of their alcohol problems they underwent repeated after-treatment and joined Alcoholics Anonymous.

The applicants further complain that, contrary to the care plan invoked by the Social District Council before the administrative courts in support of its request that the care order be upheld, the children were never placed in a family home, but remained in a children's home.

However, neither the keeping in force of the care order nor the fact that the care plan was not being implemented could be challenged before a court. They allege violations of Article 6 para. 1 of the Convention.

2. The applicants further complain of a violation of Article 13 of the Convention, as they had no effective remedy before a national authority to challenge the validity of the care plan.

THE LAW

1. The applicants complain that they could not obtain a judicial determination of their civil rights, as they could not challenge the keeping in force of the care order or the fact that the care plan regarding their children was not being implemented by the Social District Council. They allege violations of Article 6 para. 1 (Art. 6-1) of the Convention, which reads, in its relevant parts:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law..."

(a) Insofar as the complaint pertains to the alleged failure to terminate the care in view of the improved family situation the Commission recalls that family law rights are civil in character and therefore fall within the scope of Article 6 para. 1 (Art. 6-1) of the Convention (see Eriksson v. Sweden, Comm. Report 14.7.88, para. 232, Eur. Court H.R., Series A no. 156, p. 48, with further reference). A decision as to whether a child should be taken into public care or kept in care is, having regard to the effects on the enjoyment of the family life of the parents, decisive for their "civil rights".

The Commission observes that under the general principles of Swedish administrative law the applicants could, at any time, have requested the Social District Council to terminate the care. An appeal lay to the County Administrative Court, thereafter to the Administrative Court of Appeal and finally to the Supreme Administrative Court (regeringsrätten), in the last-mentioned case provided leave to appeal was granted (cf. Eur. Court H.R., Olsson judgment of 24 March 1988, Series A no. 130, pp. 25-26, para. 49). The applicants thus had access to a tribunal in accordance with Article 6 para. 1 (Art. 6-1) of the Convention in order to challenge the keeping in force of the care order in view of the improved family situation.

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.

(b)The applicants further complain that they could not obtain a judicial determination of their civil rights, as they could not challenge before a court the fact that the care plan was not being implemented by the Social District Council.

It appears that the administrative courts, when deciding on the necessity of placing and keeping the children in public care, had regard to the care plan referred to by the Social District Council. The

Commission considers, however, that this plan did not have the character of a legally binding agreement reached between the Social District Council and the applicants. Nor was the care plan a formal decision on where the children were to be placed or how they were to be treated. Rather, the care plan set out the modalities of the care and, in this sense, served as a working-plan guiding social workers on how the care of the applicants' children should be enforced. The alleged failure of the Social District Council to adhere to the care plan did therefore not involve any determination of the applicants' civil rights.

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.

2.The Commission has also examined the application under Article 8 (Art. 8) of the Convention, which 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."

Under this provision it must be examined whether the fact that the applicants' children were kept in public care, notwithstanding the applicants' abstention from alcohol even before the care plan was adopted, can be justified for any of the reasons set out in Article 8 para. 2 (Art. 8-2).

The Commission has found above that the care plan cannot be considered a legally binding agreement or decision. Therefore, there could be no obligation for the Social District Council to deal with the children in accordance with the plan. Moreover, it is clear from the file that the applicants have a background of long and extensive abuse of alcohol. Their previous attempts to abstain from alcohol had failed, which fact was also noted by the administrative courts.

In these circumstances the fact that the applicants' children were not returned to them at an earlier stage must be considered justified under para. 2 of Article 8 (Art. 8-2) of the Convention for the protection of the children.

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.

3.The applicants further complain that they had no effective remedy before a national authority to challenge the validity of the care plan. They allege a violation of Article 13 (Art. 13) of the Convention, which reads:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the

violation has been committed by persons acting in an official capacity."

The applicants' complaint under Article 13 (Art. 13) is closely linked to their complaint under Article 6 para. 1 (Art. 6-1) of the Convention, which the Commission has found above to be manifestly ill-founded. It follows that the complaint under Article 13 (Art. 13) of the Convention must also be rejected on the same grounds.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission	President of the Commission
(H.C. KRÜGER)	(C.A. NØRGAARD)