Application No. 19123/91
by Mervi KARPPINEN
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 11 January 1994, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. ŠVÁBY

Mr. K. ROGGE, 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 28 October 1991 by Marvi KARPPINEN against Sweden and registered on 22 November 1991 under file No. 19123/91;

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

The applicant is a Swedish citizen, born in 1931. She resides at Lilla Edet, Sweden. Before the Commission she is represented by Mrs. Siv Westerberg, a lawyer practising in Gothenburg.

On 16 July 1990 the applicant's nephews, T and C, were taken into care in accordance with the Act with Special Provisions on the Care of Young Persons (lagen med särskilda bestämmelser om vård av unga). On 28 March 1991 the social authorities arranged for access in respect of the children, their parents, grandmother and uncle. On 16 June 1991 the children were placed with a foster family and on 19 June 1991 the social authorities agreed with the parents that the applicant could meet the children when the parents met them in accordance with the access arrangements made.

On 25 June 1991 the applicant submitted a request to the social authorities for access to the two nephews to the extent that they should stay with the applicant in her home one weekend every month as from July 1991. On the same day the social authorities concluded, with reference to the above access situation, that the applicant had the possibility to meet her nephews when they were with their parents and that this arrangement was in the interest of the children.

COMPLAINTS

The applicant complains, under Article 8 of the Convention, that the social authorities' decision not to comply with the request for access to her nephews amounts to an unjustified interference with her right to respect for her family life.

She furthermore complains that she could not bring this issue before a court and she invokes in this respect Article 6 of the Convention.

THE LAW

1. The applicant complains that the limitation on her access to her nephews, T and C, amounts to an unjustified interference with her right to respect for her family life. She invokes in this respect Article 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."

The Commission recalls that the question of access to T and C in respect of their parents and other family members was examined by the Commission on 1 December 1993 in Application No. 18562/91 in which the Commission stated as follows:

"As for the remaining aspects of the implementation of the care order the Commission notes that there appears to be no question of the children's being adopted, and the parents have not been deprived of their parental rights. Nevertheless the restriction on access was an interference with the right to respect for family life within the meaning of Article 8 para. 1 of the Convention for which reason the Commission must examine whether this interference complied with para. 2 of this provision.

The Commission finds that the interference was in accordance with law and had a legitimate aim (cf. Eur. Court H.R., Margareta and Roger Andersson judgment of 25 February 1992, Series A no. 226-A, pp. 25-28, paras. 74-87). What remains is accordingly to consider whether it was 'necessary'. In this respect the Commission recalls that T and C were placed together at Lyckhem and their parents and other family members had the possibility of visiting them daily. Moreover the social authorities arranged for the children to visit their parents and grandmother. The Commission has in this respect not overlooked that the social authorities did not fully comply with certain requests for access, for example at Christmas 1990. However, the implementation of the care order at Lyckhem was nevertheless such that easy and regular access was provided for and thus the access regulation did not, in the Commission's view, exceed what could be regarded as 'necessary' within the meaning of Article 8 para. 2 of the Convention.

As regards the possibilities of access after the children's placement in the foster home, the Commission recalls that this was limited to once a week as far as the parents were concerned and to once a month as far as other family members were concerned. Although the appeal against this limitation was unsuccessful, nothing has been submitted which shows that such a regular access was not in fact established. Furthermore, the Commission recalls the reasons given by the courts, in particular by the County Administrative Court in its judgment of 27 June 1991, for partially accepting the access arrangements fixed by the social authorities. In the particular circumstances of this case the Commission finds that these reasons were both relevant and sufficient.

In conclusion the Commission thus finds that the measures taken in implementation of the care order were supported by reasons justifying them as proportionate to the aim pursued (cf. also Eur. Court H.R., Olsson (No. 2) judgment of 27 November 1992, Series A no. 250, pp. 35-37, paras. 89-92).

It follows that the applicants' complaints relating to the implementation of the care order as submitted under Articles 2, 3, 4 and 8 of the Convention are manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention."

Having regard to this and to the facts of the present case the Commission finds that it can be left open whether the relationship between the applicant and her nephews concerns "family life" which has been interfered with within the meaning of Article 8 para. 1 of the Convention, because even assuming this to be the case the Commission finds that this interference was permissible under paragraph 2 of this provision.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The applicant furthermore complains that she could not bring the access dispute before a court for determination and she considers this to be in violation of the right of access to court within the meaning of Article 6 para. 1 of the Convention which in its relevant parts reads as follows:

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

The Commission recalls that in order for Article 6 to apply to the proceedings in question it must first ascertain whether there was a dispute over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law (cf. for example Eur. Court H.R., Skärby judgment of 28 June 1990, Series A, no. 180-B, p. 36, para. 27). Under Swedish law the applicant has no right of access to her nephews. Thus she cannot claim on any arguable ground that she has a right under domestic law for which reason Article 6 does not apply in the present case (cf. No. 12763/87, Dec. 14.7.88, D.R. 57 p. 216).

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention and must be rejected under Article 27 para. 2 of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber President of the Second Chamber

(K. ROGGE) (S. TRECHSEL)