AS TO THE ADMISSIBILITY OF

Application No. 23346/94
by Anneli and Gabriel LJUNGQVIST
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 5 April 1995, the following members being present:

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

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 29 December 1993 by Anneli and Gabriel LJUNGQVIST against Sweden and registered on 28 January 1994 under file No. 23346/94;

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, Swedish citizens residing at Nässjö, are mother and son born in 1951 and 1989 respectively. Before the Commission they are represented by their lawyers, Mrs. Ruby Harrold-Claesson, Olofstorp, and Mr. Sören Alfredsson, Röbäck.

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

On 12 May 1992 the Chairman of the Social Council (Socialnämnden) of Nässjö ("the Council") decided provisionally to take the second applicant into care pursuant to Section 6 of the Act with Special Provisions on the Care of Young Persons (Lagen med särskilda bestämmelser om vård av unga, 1990:52 - "the 1990 Act"). The same day he was placed with foster parents. On 25 May 1992 the County Administrative Court (Länsrätten) of the County of Jönköping confirmed the Council's decision.

On 30 June 1992 the County Administrative Court ordered that the second applicant be taken into care pursuant to Section 2 of the 1990 Act, which provides that such orders may be made in cases where, due to physical abuse, exploitation, inadequate care or some other circumstances in the home, there is a clear risk of the young person's health and development being impaired. In its judgment, the Court stated that the second applicant, at least on one occasion, had been

physically abused by the first applicant and that the possibility of further abuse could not be ruled out. The Court further found that the first applicant had psychological problems which could injuriously affect the second applicant's mental health. On 27 August 1992 the first applicant's appeal was rejected by the Administrative Court of Appeal (Kammarrätten) of Jönköping. No appeal was made to the Supreme Administrative Court (Regeringsrätten).

After the placement of the second applicant in the foster home, the first applicant had access to him initially once a week and from 11 June 1992 twice a week. On 7 July 1992 the Council decided that the first applicant's access to her son should be restricted to one day in the foster home every second weekend. The first applicant appealed to the County Administrative Court which, on 30 September 1992, decided to strike the case off its list of cases, as the Council, on 15 September 1992, had annulled the appealed decision. Thereafter, the first applicant had access to her son once a week. By a Council decision of 1 March 1993, the first applicant's right of access was settled at once a week, alternately in her own home and in the foster home.

After the first applicant had requested the Council to terminate the care of the second applicant, the Council requested the County Administrative Court to appoint a public counsel to assist her. By decision of 26 March 1993, the Court appointed a lawyer practising in Jönköping. The first applicant, however, requested the Court to appoint Mrs. Ruby Harrold-Claesson. The request was rejected by the Court on 1 April 1993, as Mrs. Harrold-Claesson practised some distance away from Jönköping and the appointment of her would therefore entail considerably higher costs. By decisions of 3 May and 15 July 1993, the rejection was upheld by the Administrative Court of Appeal. On 7 September 1993 the Supreme Administrative Court refused leave to appeal. On 13 May 1993 the County Administrative Court dismissed the public counsel at his own request, as the first applicant had declared that she did not want him to represent her. Mrs. Harrold-Claesson subsequently represented the first applicant as private counsel. After the first applicant had notified the Council that she intended to arrange a meeting between her natural father and the second applicant, the Council decided, on 13 April 1993, that access to the second applicant could only be exercised by the first applicant. On 14 April 1993, after the first applicant had arrived at the foster home with her natural father, the Council decided to prohibit access until 27 April 1993. The first applicant appealed against this decision to the County Administrative Court. On 21 April 1993 the Court decided to reject the appeal, finding that the Council had allowed the first applicant access to her son on his birthday on 22 April 1993 and that, thus, access had not been restricted in practice compared to the access arrangement of 1 March 1993. After having had access on her son's birthday, the first applicant did not return him to the foster home.

On 23 June 1993 the Council decided to terminate the care of the second applicant. Having regard to this decision, the County Administrative Court, on 23 August 1993, struck the case concerning termination of care off its list of cases.

COMPLAINTS

1. Invoking Articles 8 and 9 of the Convention, the applicants complain of the taking into public care of the second applicant and the Council's decision of 14 April 1993 to prohibit access.

2. The first applicant claims that the courts' decisions not to appoint as her public counsel a lawyer of her own choosing violated Article 6 para. 1 of the Convention.

3. The first applicant further claims that she did not have an effective remedy under Article 13 of the Convention in that the

Administrative Court of Appeal only confirmed the decisions of the County Administrative Court which, on its part, only confirmed the Council's decisions.

THE LAW

1. The applicants complain of the taking into public care of the second applicant and the Council's decision of 14 April 1993 to prohibit access. They invoke Articles 8 and 9 (Art. 8, 9) of the Convention.

The Commission recalls that it is not required to decide whether or not the facts submitted by an applicant disclose any appearance of a violation of the provisions referred to if, inter alia, the requirement under Article 26 (Art. 26) of the Convention as to the exhaustion of domestic remedies has not been complied with.

In the present case, the Administrative Court of Appeal, by decision of 27 August 1992, upheld the County Administrative Court's decision to take the second applicant into care. The applicants did not appeal to the Supreme Administrative Court. Moreover, they did not appeal against the Council's general access decision of 1 March 1993. Finally, after the County Administrative Court, on 21 April 1993, had rejected the first applicant's appeal against the Council's decision of 14 April 1993 to temporarily restrict her access to the second applicant, the applicants did not appeal to the Administrative Court of Appeal.

Accordingly, it is clear that the applicants have not exhausted the remedies available to them. However, with regard to the care decision the first applicant submits that the administrative courts only confirm the decisions of the social authorities, for which reason her public counsel had told her that an appeal to the Supreme Administrative Court would have been of no avail.

The Commission recalls, in this respect, that in order to comply with the requirements of Article 26 (Art. 26) of the Convention, an applicant is obliged to exhaust every domestic remedy which cannot clearly be said to lack any prospect of success. The mere existence of a doubt as to the effectiveness of a particular remedy does not itself excuse an applicant from the requirement to exhaust it (cf., e.g., No. 6271/73, Dec. 13.5.76, D.R. 6 p. 62, and No. 9586/82, Dec. 14.5.87, D.R. 52 p. 38).

In the present case, the Commission considers that the applicants have not shown that recourse to the domestic remedies at their disposal clearly lacked any prospect of success. The Commission, thus, finds that no special circumstance existed which might have absolved the applicants from exhausting these remedies.

It follows that this part of the application must be rejected for non-exhaustion of domestic remedies under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The first applicant claims that the courts' decisions not to appoint as her public counsel a lawyer of her own choosing violated Article 6 para. 1 (Art. 6-1) of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights ..., everyone is entitled to a fair ... hearing ..."

The Commission recalls that, although the Convention contains no provision on legal assistance in civil rights disputes, Article 6, para. 3 (c) (Art. 6-3-c) dealing only with criminal proceedings, Article 6 para. 1 (Art. 6-1) may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves

indispensable for an effective access to court (cf. Eur. Court H.R., Airey judgment of 9 October 1979, Series A no. 32, p. 14-16, para. 26).

In the present case, a public counsel had been appointed for the first applicant by the County Administrative Court. In its decision not to replace the counsel by a lawyer chosen by the applicant, the Court stated that the replacement would entail considerably higher costs. Throughout the subsequent proceedings, the applicant was represented by her private counsel. The Commission, therefore, finds that the decision not to replace the public counsel does not disclose any appearance of a violation of the applicant's rights under Article 6 para. 1 (Art. 6-1) of the Convention.

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 first applicant further claims that she did not have an effective remedy in that the Administrative Court of Appeal only confirmed the decisions of the County Administrative Court which, on its part, only confirmed the Council's decisions. She invokes Article 13 (Art. 13) of the Convention, which reads as follows:

> "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 Commission notes that with regard to both the Council's decision to take the second applicant into public care and its subsequent decisions on access the first applicant had the possibility to apply to the County Administrative Court. Furthermore, even assuming that Article 13 (Art. 13) applies to further appeals, the Commission notes that the applicant had the possibility to appeal to the Administrative Court of Appeal, and, with leave to appeal, to the Supreme Administrative Court. The Commission finds no indication that these courts did not constitute effective remedies under Article 13 (Art. 13) 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.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber Acting President of the Second Chamber

(K. ROGGE) (G.H. THUNE)