AS TO THE ADMISSIBILITY OF

Application No. 21078/92
by Doris Agneta LUNDBLAD
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 2 September 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. 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 19 June 1991 by Doris Agneta LUNDBLAD against Sweden and registered on 15 December 1992 under file No. 21078/92;

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

a. The particular circumstances of the case

The applicant, a Swedish citizen born in 1948 and residing in Eskilstuna, Sweden, is on early retirement. She has a daughter, Viktoria, born in 1979.

In a previous application (No. 14103/88, unpublished), which the Commission declared inadmissible on 10 December 1990, the applicant complained that her daughter had been kept in public care. She also complained of the manner in which the initial care order had been carried out and of the restrictions on access during the care. The complaint concerning restrictions on access was declared inadmissible on the ground that the applicant had failed to comply with the condition under Article 26 of the Convention to exhaust domestic remedies, as she had not shown that she had appealed to the Supreme Administrative Court.

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

On 3 January 1987 the Deputy Chairman of the Social Council (socialnämnden) of Enköping decided provisionally to take Viktoria into care pursuant to Section 6 of the 1980 Act with Special Provisions on the Care of Young Persons (lagen med särskilda bestämmelser om vård av

unga, 1980:621 - "the 1980 Act"). The decision was later confirmed by the County Administrative Court (Länsrätten of the County of Stockholm), and on 27 February 1987 that Court ordered that Viktoria be taken into care. The applicant's appeal was rejected by the Administrative Court of Appeal (Kammarrätten of Stockholm), and she was later refused leave to appeal to the Supreme Administrative Court (regeringsrätten). Subsequent requests that the care be terminated were rejected by the Social Council and by the County Administrative Court and the Administrative Court of Appeal.

Viktoria has lived in a foster home since 30 March 1987. On 25 September 1990 the Social Council prohibited the applicant's access to her, including telephone conversations, pending a police investigation concerning suspected sexual abuse of Viktoria by the applicant. In January 1991 the prosecutor decided not to indict the applicant. On 6 March 1991 the Social Council rejected the applicant's request that the care be terminated and decided that the applicant should temporarily have no personal contact with her daughter.

On 18 June 1991 the County Administrative Court rejected the applicant's appeal against the decision of 6 March 1991. As regards the prohibition of access, the Court referred to a statement by a child psychologist, B.L., who had met Viktoria on two occasions, in December 1990 and January 1991, at which Viktoria had expressed that she did not want to have any contact with her mother until the autumn of 1991 and that she did not want to meet her alone but in the presence of a social worker, preferably in a café for about an hour every three months. The psychologist, who found Viktoria's suggestions to be genuine and considered, concluded that it was not in Viktoria's best interest to grant the applicant access to a greater extent than had been suggested by Viktoria herself.

By judgment of 15 April 1992, the Administrative Court of Appeal rejected the applicant's appeal as regards termination of the public care and concluded that it was necessary to regulate her access to her daughter. The Court, however, found it important to bring about contacts between the applicant and the daughter as soon as possible. A total prohibition of access was therefore not acceptable. The Court found it impossible to regulate in detail how and when these contacts were to take place, but stated that great importance should be attached to Viktoria's wishes. Accordingly, the Court instructed the Social Council to regulate the question of access in accordance with what Viktoria had expressed in her conversations with the psychologist. The Court further found it advisable that contact be resumed between mother and daughter through telephone calls.

On 5 June 1992 the Supreme Administrative Court refused leave to appeal against the judgment of the Administrative Court of Appeal.

On 8 May 1992 the applicant and her daughter met in the presence of two social workers at the home of an elderly woman whom the applicant knew. The meeting lasted for little more than an hour. On 12 August 1992 the Social Council decided that the next meeting was to take place either in August 1992, at the home of Viktoria's brother, or in October the same year. The applicant's appeal against this decision was rejected by the County Administrative Court on 15 October 1992.

b. Relevant domestic law

Before 1 July 1990, compulsory care could be ordered under the 1980 Act. On that date it was replaced by new legislation (lagen med särskilda bestämmelser om vård av unga, 1990:52 - "the 1990 Act"), the relevant provisions of which are essentially the same. Section 16 of the 1980 Act and Section 14, subsection 2 of the 1990 Act read as follows:

(translation)

> "If it is necessary in order to achieve the purposes of care measures taken under this Act, the Social Council may
>
> 1. decide how the right of access to the young person shall be exercised by a parent or other person who has custody of him ..."

An appeal against a decision by the Social Council to regulate the right of access lies to the County Administrative Court, the Administrative Court of Appeal and, with leave, the Supreme Administrative Court.

COMPLAINTS

The applicant alleges that the Social Council's decisions of 25 September 1990 and 6 March 1991 to prohibit her access to her daughter, including telephone conversations, have violated her rights under Article 8 of the Convention. She maintains that there was no reason to terminate her access to her daughter, as the accusation of sexual abuse was groundless.

THE LAW

The applicant complains that the decisions to restrict her access to her daughter have violated her rights under 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."

In its decision to declare the applicant's previous application inadmissible, the Commission concluded, as far as the question of access was concerned, that domestic remedies had not been exhausted. The applicant has since exhausted these remedies by appealing to the Supreme Administrative Court. Given this relevant new information the application, to the extent that it is substantially the same as the applicant's previous application, is not inadmissible under Article 27 para. 1 (b) (Art. 27-1-b) of the Convention.

With regard to the applicant's complaint, the Commission recalls that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and the natural family relationship is not terminated by reason of the fact that the child is taken into public care. Moreover, telephone conversations between family members are covered by the notions of "family life" and "correspondence" within the meaning of Article 8 (Art. 8) (cf., e.g., Eur. Court H.R., Margareta and Roger Andersson v. Sweden judgment of 25 February 1992, Series A no. 226-A, p. 25, para. 72). It follows that the restrictions on the applicant's access to her daughter in the present case amounted to interferences with the applicant's right to respect for her family life and correspondence.

Such interferences are justified within the meaning of Article 8 (Art. 8) if they are "in accordance with the law", have a legitimate aim under Article 8 para. 2 (Art. 8-2) and are "necessary in a democratic society" for the aforesaid aim.

The Commission recalls that by judgment of 15 April 1992, the

Administrative Court of Appeal lifted the total prohibition of access and found it advisable that contact be resumed between mother and daughter through telephone calls. The Court, however, found it necessary to regulate the applicant's access to her daughter in accordance with the wishes expressed by the daughter.

The Commission considers that the Social Council and, on appeal, the different administrative courts were empowered to regulate meetings between the applicant and her daughter under Section 16 of the 1980 Act or Section 14, subsection 2 of the 1990 Act, and that, accordingly, the regulations at issue were "in accordance with the law". As far as telephone conversations were concerned, it is not clear whether the applicant could talk to her daughter on the telephone without any restrictions after the judgment of the Administrative Court of Appeal. However, the Commission is in any event satisfied that if such restrictions remained, they were also "in accordance with the law". In this regard, the Commission recalls that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (cf. Margareta and Roger Andersson judgment, loc. cit., pp. 26-28, paras. 80-85).

The Commission further considers that the restrictions at issue pursued the legitimate aim of protecting the health and rights of the applicant's daughter.

As regards the question of whether the restrictions on access were "necessary in a democratic society", the Commission recalls that this condition implies that the interferences correspond to a pressing social need and, in particular, that they are proportionate to the legitimate aim pursued. The Commission must determine whether the reasons adduced to justify the interferences at issue were "relevant and sufficient". In this respect, a margin of appreciation is left to the Contracting States (cf. Eur. Court H.R., Olsson judgment of 24 March 1988, Series A no. 130, pp. 31-32, paras. 67-68). The Commission further recalls that in cases like the present a parent's and child's right to respect for family life under Article 8 (Art. 8) includes a right to the taking of measures with a view to their being reunited (cf. Olsson judgment, loc. cit., pp. 36-37, para. 81, and Margareta and Roger Andersson judgment, loc. cit., p. 30, para. 91).

The Commission notes that Viktoria was almost twelve years old when she met the psychologist and expressed her wish not to have any contact with her mother until the autumn of 1991 and only limited contact thereafter. The psychologist found that Viktoria's suggestions were genuine and considered, and concluded that they should be respected. The Commission therefore finds that there were grounds for the Administrative Court of Appeal to regulate the applicant's access in accordance with Viktoria's wishes. To order more frequent contacts might, under the circumstances, very well have made future attempts to reunite the applicant and her daughter impossible to realise. The Commission is therefore satisfied that the reasons for the restrictions at issue were relevant and sufficient for the ultimate aim of reuniting the applicant and her daughter. They could thus reasonably be considered "necessary in a democratic society".

The Commission concludes that the examination of the applicant's complaints does not disclose any appearance of a violation of Article 8 (Art. 8) of the Convention.

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.

Secretary to the Second Chamber President of the Second Chamber

(K. ROGGE) (S. TRECHSEL)