AS TO THE ADMISSIBILITY OF

Application No. 29778/96
by Lennart MICHEL
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 26 February 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
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 29 December 1995 by Lennart MICHEL against Sweden and registered on 10 January 1996 under file No. 29778/96;

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 applicant, a Swedish citizen born in 1946, resides in Halmstad. He was married to B, who died on 8 December 1995. Before the Commission he is represented by Mrs. Ruby Harrold-Claesson, a lawyer practising in Olofstorp.

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

In the autumn of 1993 the Social Council (socialnämnden) of Halmstad applied to the County Administrative Court (länsrätten) of the County of Halland for a care order concerning the applicant's and B's son P, born in 1985, and daughter M, born in 1988. The application was made pursuant to Sections 1 and 2 of the Act with Special Provisions on the Care of Young Persons (Lagen med särskilda bestämmelser om vård av unga, 1990:52; hereinafter "the 1990 Act"), according to which compulsory care is to be provided if there is a clear risk of impairment of the health and development of a person under 18 years of age due to ill-treatment, exploitation, lack of care or any other condition in the home and if the necessary care cannot be provided with the consent of the young person's custodian.

On 18 October 1993, following an oral hearing in the case, the County Administrative Court rejected the application.

In the summer of 1994 the Social Council again applied for P and

M to be taken into public care.

On 2 August 1994 the County Administrative Court rejected also the second application. The Social Council appealed, however, and on 31 October the Administrative Court of Appeal (Kammarrätten) in Gothenburg granted the application and ordered that the children be taken into public care. The appellate court found the investigation in the case to show that the conditions in their home were seriously deficient and that B did not understand the children's special needs. Both the County Administrative Court and the Administrative Court of Appeal held oral hearings before deciding in the case. On 28 November the Supreme Administrative Court (Regeringsrätten) refused the applicants leave to appeal.

In November 1994 the Social Council tried to enforce the care order but the applicant and B had left their home with the children before the Council arrived. Upon their return in January 1995 the care order could no longer be enforced as, under Section 5 of the 1990 Act, such enforcement had to take place within four weeks from the day the care order gained legal force, i.e. the day of the decision of the Supreme Administrative Court.

On 1 February 1995 the president of the Social Council decided, pursuant to Section 6 of the 1990 Act, immediately to take P and M into public care on a provisional basis. The decision was confirmed by the County Administrative Court on 10 February. The children were placed in a children's home in Kungälv.

Following the Social Council's further application, the County Administrative Court, by judgment of 15 March 1995, issued a new care order. The court found that the conditions in the parents' home had not improved since the appellate court's care order of 31 October 1994. It further took into account that the applicant and B had obstructed the enforcement of that order and had kept the children in hiding, away from school, day-care centre and other social contacts for three months. There was thus a clear risk of impairment of the health and development of the children. Before giving judgment, the County Administrative Court had held a hearing at which the applicant and B, their counsel, the children's counsel and representatives of the Social Council and the County Administrative Board (länsstyrelsen) of the County of Halland had been heard. The court had also heard evidence from three witnesses adduced by the parents.

The applicant and B appealed to the Administrative Court of Appeal. They further requested that their public counsel be dismissed and their representative, Mrs. Harrold-Claesson, be appointed as new public counsel.

The request to have Mrs. Harrold-Claesson appointed as public counsel was rejected by decisions of the appellate court of 3, 10 and 15 May 1995. The previously appointed counsel was however dismissed by the latter decision. On 3 July the Supreme Administrative Court refused leave to appeal against these decisions.

On 15 May 1995 the Administrative Court of Appeal held a hearing in the case, during which it heard the applicant and B, their representative, the children's counsel and representatives of the Social Council. It further heard evidence from five witnesses adduced by the parents.

By judgment of 2 June 1995, the Administrative Court of Appeal upheld the County Administrative Court's care order. On the same day it rejected a renewed request to have Mrs. Harrold-Claesson appointed as public counsel. The applicant and B appealed against the judgment and the decision on public counsel. They further claimed that the Administrative Court of Appeal was not impartial on account of its refusal to appoint new counsel. On 5 September 1995 the Supreme

Administrative Court refused leave to appeal in all respects.

On 12 June 1995, after having visited the children, the applicant removed them from the children's home and later brought them to Poland, where they have since been staying with the B and her relatives.

By judgment of 18 July 1995, the District Court (tingsrätten) of Stenungsund convicted the applicant for having arbitrarily removed the children from the home (egenmäktighet med barn) and sentenced him to three months in prison.

The applicant and B later requested that the public care of P and M be terminated. The request was rejected by the Social Council on 19 October 1995 and, on appeal, by the County Administrative Court on 15 February 1996. The court stated that there was no indication of a change of the conditions in the applicant's home such as to make public care unnecessary. His abduction of the children from the children's home was further adduced as evidence of his lack of care of the children. The court held a hearing and heard the applicant, Mrs. Harrold-Claesson - at this time appointed public counsel for the applicant - the children's counsel and representatives of the Social Council.

The applicant appealed against the County Administrative Court's judgment and also complained that the judge presiding over the court's hearing on 13 February 1996 had not been impartial as she had also presided when the County Administrative Court gave its previous judgment on 15 March 1995. By decision of 7 May 1996, the Administrative Court of Appeal noted that, under Section 41 of the Administrative Procedure Act (Förvaltningsprocesslagen, 1971:291) and Chapter 4, Section 14 of the Code of Judicial Procedure (Rättegångsbalken), a challenge against the impartiality of a judge shall be made when the complainant first becomes aware of the fact on which the challenge is based. The applicant should thus have raised the issue during the County Administrative Court's hearing. As this had not been done, the appellate court was prevented from examining the complaint, which was accordingly dismissed. It appears that no appeal has been made against this decision.

On 13 September 1996 the Administrative Court of Appeal, agreeing with the reasons given by the County Administrative Court, upheld the appealed judgment. The appellate court held a hearing, during which, in addition to the persons heard by the County Administrative Court, it also heard evidence from a witness proposed by the applicant. On 24 October 1996 the Supreme Administrative Court refused leave to appeal.

COMPLAINTS

1. The applicant complains that the decisions and judgments concerning the public care of P and M have violated his and B's right to respect for their family life under Article 8 of the Convention.

2. The applicant also contends that he and B were denied a fair hearing because of the refusal of the Administrative Court of Appeal to appoint their representative, Mrs. Harrold-Claesson, as public counsel and beacuse of that court's lack of impartiality in deciding on this issue. He invokes Article 6 para. 3 (c) of the Convention.

3. Invoking Article 3 of the Convention, the applicant further claims that the children's placement in the children's home, where they stayed for four months, constituted inhuman and degrading treatment and punishment.

4. Moreover, the taking into care of the children allegedly caused B's death and thus violated Article 2 of the Convention.

5. The applicant also alleges that the decision of the president of the Social Council of 1 February 1995 to take P and M immediately into care and place them in the children's home constituted a deprivation of the children's liberty and a violation of Article 5 of the Convention.

6. Finally, the applicant claims that Article 2 of Protocol No. 1 to the Convention has been violated as P's preparation for confirmation was allegedly interrupted when he was taken into care on 1 February 1995. He submit that B was catholic and that, according to catholic tradition, children shall be confirmed at the age of ten.

THE LAW

The Commission first observes that B died on 8 December 1995, i.e. before the present application was lodged, and therefore cannot be, under Article 25 (Art. 25) of the Convention, an applicant in the present case.

1. The applicant complains that the decisions and judgments concerning the public care of P and M have violated his and B's right to respect for their family life. They invoke 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 and morals, or for the protection of the rights and freedoms of others."

The applicant contends that the provisions of the 1990 Act do not meet the requirements of accessibility and foreseeability and that, thus, the decisions and judgments in the case were not taken in accordance with law. Moreover, there was no need to take the children into care as they were healthy and well taken care of by their parents. Thus, the measure of taking them into public care did not pursue a legitimate aim. Finally, there was no pressing social need justifying the measure which was, accordingly, not necessary in a democratic society.

The Commission finds that the taking into public care of P and M interfered with the applicant's right to respect for his family life as ensured by Article 8 para. 1 (Art. 8-1) of the Convention. It must therefore be examined whether this interference was justified under the terms of Article 8 para. 2 (Art. 8-2). In this respect, the Commission recalls that three conditions must be satisfied: the interference must be "in accordance with the law", it must pursue one or more of the legitimate aims enumerated in para. 2 and it must be "necessary in a democratic society" for that aim or those aims.

As regards the first condition, the Commission finds that the relevant decisions were in conformity with Swedish law, namely Sections 1, 2 and 6 of the 1990 Act, and that these provisions met the requirements of accessibility and foreseeability.

The Commission further finds that the interference had a legitimate aim under Article 8 para. 2 (Art. 8-2), namely the interests of the children, which in this case fall under the expressions "for the protection of health or morals" and "for the protection of the rights and freedoms of others".

It thus remains to be determined whether the interference was "necessary in a democratic society" in the interests of the children.

According to the established case-law of the Commission and the European Court of Human Rights, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society", the Commission furthermore has to take into account that a margin of appreciation is left to the Contracting States. However, the Commission's review is not limited to ascertaining whether the respondent State has exercised its discretion reasonably, carefully and in good faith. Furthermore, it cannot confine itself to considering the relevant decisions in isolation but must look at them in the light of the case as a whole. It must determine whether the reasons adduced to justify the interference at issue are "relevant and sufficient" (cf. Eur. Court HR, Olsson v. Sweden judgment of 24 March 1988, Series A no. 130, pp. 31-32, paras. 67-68).

In the present case, the Commission recalls that the Administrative Court of Appeal, in its judgment of 31 October 1994, found that the conditions in the parents' home were seriously deficient and that B did not understand the children's special needs. In later judgments, the respective courts have considered that no improvement of those conditions has occurred. It is further recalled that the applicant and B obstructed the enforcement of the first care order and kept the children in hiding for three months and that the applicant on 12 June 1995 abducted the children from the children's home and brought them to Poland where they have been staying ever since.

The Commission also takes into account that the County Administrative Court and the Administrative Court of Appeal, before deciding in the case, had held hearings at which the applicant and B, their counsel, the children's counsel, representatives of the Social Council and several witnesses were heard. Thus, the courts cannot be said to have intervened without adequate knowledge of the case.

In the light of the foregoing the Commission finds that the decisions on the public care of P and M have been supported by relevant and sufficient reasons and that, having regard to their margin of appreciation, the Swedish authorities have been reasonably entitled to think that it has been necessary to take P and M into care. Accordingly, the Commission concludes that the relevant decisions can reasonably be regarded as "necessary in a democratic society" within the meaning of Article 8 para. 2 (Art. 8-2) 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.

2. The applicant also contends that he and B were denied a fair hearing because of the refusal of the Administrative Court of Appeal to appoint their representative, Mrs. Harrold-Claesson, as public counsel and beacuse of that court's lack of impartiality in deciding on this issue. He invokes Article 6 para. 3 (c) (Art. 6-3-c) of the Convention.

The relevant parts of Article 6 (Art. 6) read as follows:

> "1. In the determination of his civil rights ..., everyone is entitled to a fair ... hearing ... by an ... impartial tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
> ...

c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ..."

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 HR, Airey v. Ireland 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 applicant and B. After the Administrative Court of Appeal, on 15 May 1995, had dismissed that counsel at the their request, the applicant and B were represented, throughout the subsequent proceedings, by their private counsel. In these circumstances, the Commission finds that the refusal to appoint the private counsel as new public counsel does not disclose any appearance of a violation of the applicants' rights under Article 6 (Art. 6) of the Convention. The Commission further considers that the applicant's submissions fail to substantiate any lack of impartiality on the part of the Administrative Court of Appeal deciding on the matter.

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 applicant has made further complaints under Articles 2, 3 and 5 (Art. 2, 3, 5) of the Convention and Article 2 of Protocol No. 1 (P1-2) to the Convention.

The Commission, having examined the separate complaints as they have been submitted, considers, however, that they fail to disclose any appearance of a violation of the applicants' rights under the Convention and its Protocols and in particular the Articles invoked.

It follows that these parts of the application are 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.

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