AS TO THE ADMISSIBILITY OF

Application No. 24627/94
by Reino and Sinikka NICK
and Sini HOKKANEN
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 15 May 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, 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 20 April 1994 by Reino and Sinikka Nick and Sini Hokkanen against Finland and registered on 18 July 1994 under file No. 24627/94;

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 Nick are husband and wife, Finnish citizens born in 1939 and 1944 respectively. Mr. Nick is an engineer and Mrs. Nick a designer and housewife. The applicants Nick are the maternal grandparents of the third applicant, a Finnish citizen born in 1983. All applicants reside at Järvenpää. Before the Commission they are represented by Ms. Helena Molander, Children's Ombudsman of the Mannerheim League for Child Welfare.

1. Introduction

The facts underlying the case were to some extent already subject to proceedings before the organs of the Convention, namely in respect of Application No. 19823/93. That case had been lodged by Mr. Teuvo Hokkanen both in his own name and on behalf of his daughter Sini, i.e. the third applicant in the present case. The application was declared inadmissible by the Commission, inter alia, insofar as it had been brought on behalf of Sini. On 22 October 1993 the Commission adopted its Report in pursuance of Article 31 of the Convention. The Court rendered its judgment on 23 September 1994 (Eur. Court H.R., Hokkanen v. Finland, Series A no. 299-A).

The applicants in the present case consider that the Report of

the Commission concerning Application No. 19823/92 contains incorrect information on a number of points. They have particular misgivings about the following passages:

> "... On 30 April 1985 the applicant's wife, the mother of [Sini], committed suicide. According to the applicant, he then agreed with [Sini's] maternal grandparents [i.e. the Nicks] that they would provisionally take care of [Sini] until he had solved the problems caused by the death, including a re-organisation of his farming activities enabling him to resume the care of [Sini]. During this period [Sini] spent the weekends with the applicant.
>
> According to the applicant, [the Nicks] demanded, in November 1985, at a time when [Sini] was staying with him, that [she] come to stay with them or otherwise [Mrs. Sinikka Nick] would commit suicide ... (paras. 17-18 of the Report).
> ...
> In an opinion of 22 January 1987 ... the Child Guidance Centre considered that custody of [Sini] should remain with the applicant. According to the Centre, the contact between the applicant and [Sini] was mutual, namely through playing and discussions. The opinion stated, inter alia: ... (para. 33).
> ...
> In the spring of 1989 the National Board for Social Welfare ordered [the Nicks] to allow [Sini's] mental state and her attitude towards the applicant to be investigated (para. 52).
> ...
> In an opinion of 7 May 1991 ... the Child and Family Guidance Centre of Tuusula confirmed the views submitted by the Child Guidance Centre of Central Uusimaa in its opinion [of] 22 January 1987. It noted that [the Nicks] had refused to participate in interviews for the purpose of carrying out a further investigation, and that they had also refused to subject [Sini] to such an investigation ... (para. 65).
> ...
> In response to the applicant's request for measures to be taken by the Social Welfare Board of Järvenpää, ..., the Board on 25 June 1992 stated that the Child and Family Guidance Centre of Järvenpää had offered [the Nicks] 'an opportunity to obtain assistance and to discuss the matter concerning visiting rights'. [The Nicks] had refused, however, to contact the Centre ... (para. 77)."

In the proceedings before the Court in the Hokkanen case the applicants Nick were granted leave to submit written observations on any facts which they considered had been dealt with inaccurately in the Commission's Report. They availed themselves of this possibility (see Hokkanen judgment, p. 8, para. 5). At the hearing before the Court the Delegate of the Commission took note of these observations and pointed out the documentary basis for certain statements in the Commission's Report and the extent to which the other contested statements had been qualified by the words "According to the applicant" (see Cour/Misc (94) 110; No. 46,164 (the Court's Verbatim Record), pp. 5-6).

2. The particular circumstances of the case

The facts of the present case, as submitted by the applicants or apparent from the above-mentioned judgment, may be summarised as follows.

From 1985 to 1994 the applicants Nick were involved in a dispute with Sini's father, Mr. Teuvo Hokkanen, principally concerning custody and access in respect of her. Following Sini's mother's death

Mr. Hokkanen had, according to the applicants, accepted that the applicants Nick should permanently care for her. Subsequently they had refused to restore Sini to him, considering that a return would have contravened her interests. In 1988 the Supreme Court confirmed Mr. Hokkanen's custody of Sini and ordered her return to him. This court order was not enforced.

In 1990 the Social Welfare Board (sosiaalilautakunta, social-nämnden) of Tuusula instituted a second round of court proceedings with a view to having custody of Sini transferred to the applicants Nick. On 25 September 1991 the Helsinki Court of Appeal (hovioikeus, hovrätten) ordered that custody of Sini should be transferred to them. It also prescribed certain access arrangements concerning Mr. Hokkanen and Sini (see Hokkanen judgment, loc.cit., pp. 13-14, para. 29 and pp. 14-16, paras. 33-37). On 21 January 1992 the Supreme Court (korkein oikeus, högsta domstolen) refused Mr. Hokkanen leave to appeal (ibid., p. 14, para. 31).

In the ensuing enforcement proceedings which Mr. Hokkanen instituted in June 1992 the County Administrative Board (läänin-hallitus, länsstyrelsen) of Uusimaa on 31 December 1992 ordered the applicants Nick to comply with the access arrangements ordered by the Court of Appeal on 25 September 1991 on pain of having to pay an administrative fine (ibid., p. 15, para. 35). On 21 October 1993 the Court of Appeal upheld an appeal lodged by the applicants Nick against the County Administrative Board's decision. Its judgment was preceded by a hearing on 2 September 1993. On 4 February 1994 the Supreme Court refused Mr. Hokkanen leave to appeal (ibid., pp. 15-16, para. 37).

The applicants Nick lodged unsuccessful petitions with the National Board for Social Welfare (sosiaalihallitus, socialstyrelsen) in 1987 and with the Parliamentary Ombudsman (eduskunnan oikeusasia-mies, riksdagens justitieombudsman) in 1987 and 1991 regarding the treatment to which they considered themselves subjected by the authorities.

COMPLAINTS

1. In so far as can be ascertained from the applicants' submissions they complain that their right to respect for their family life was violated as a result of the treatment to which they were subjected by the authorities in the course of the applicants Nick's dispute with Mr. Hokkanen concerning Sini. They submit that it was only in the Court of Appeal's judgment of 21 October 1993 that this right of theirs was finally recognised. They invoke Article 8 of the Convention.

2. The applicants also complain of having been subjected to inhuman and degrading treatment by the authorities in the course of the applicants Nick's dispute with Mr. Hokkanen. They consider, in particular, that prior to 21 October 1993 the authorities' failed to take Sini's own opinion into account. They invoke Article 3 of the Convention.

3. The applicants further complain that Sini's return to Mr. Hokkanen against her will would have jeopardised her right to personal security. They invoke Article 5 of the Convention.

4. The applicants furthermore complain that prior to the Court of Appeal's judgment of 21 October 1993 they were denied a fair hearing within a reasonable time by an impartial tribunal. They invoke Article 6 of the Convention.

5. The applicants also complain that prior to the Court of Appeal's judgment of 21 October 1993 the only interests safeguarded in the course of the applicant Nicks' dispute with Mr. Hokkanen were those of the last-mentioned. They invoke Article 5 of Protocol No. 7.

6. Finally, the applicants complain that, since their petitions to the National Board for Social Welfare and the Parliamentary Ombudsman were unsuccessful, they were denied an effective remedy within the meaning of Article 13 of the Convention.

THE LAW

1. The applicants first appear to complain that their right to respect for their family life was violated as a result of the treatment to which they were subjected by the authorities during the applicants Nick's dispute with Mr. Hokkanen concerning Sini. They submit that it was only in the Court of Appeal's judgment of 21 October 1993 that this right of theirs was finally recognised. They invoke Article 8 (Art. 8) of the Convention which, in so far as relevant, reads as follows:

> "1. Everyone has the right to respect for his ... family life, ...
>
> 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 observes that at least from her mother's death onwards Sini has effectively been cared for by the applicants Nick. It therefore considers that at least from that moment onwards the applicants' relationship has constituted "family life" within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention (see, e.g., Eur. Court H.R., Kroon and others v. the Netherlands judgment of 27 October 1994, Series A no. 297-C, pp. 55-56, para. 30). This finding does not preclude the existence of "family life" within the meaning of the same provision between Sini and her father, Mr. Hokkanen. In its judgment in the case of Hokkanen v. Finland the Court indeed found that such "family life" existed between the two (pp. 19-20, para. 54 of the judgment).

The Commission recalls that the essential object of Article 8 (Art. 8) is to protect the individual against arbitrary interference by the public authorities. There may in addition be positive obligations inherent in an effective "respect" for family life. Whilst the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition, the applicable principles are similar. In particular, in both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual or individuals involved as well as the community as a whole, and in both contexts the State is recognised as enjoying a certain margin of appreciation (cf. ibid., p. 20, para. 55).

The question arising in the present case is essentially whether there has been a failure on the part of the Finnish authorities to respect the "family life" prevailing between the present applicants while attempting to strike a fair balance between the interests as well as the rights and freedoms of these applicants as well as those of Mr. Hokkanen (cf. ibid. p. 22, para. 58).

In the Hokkanen judgment the Court found that the applicants Nick had initially repeatedly refused to comply with the court-ordered provisional access arrangements concerning Sini and Mr. Hokkanen (see ibid., p. 10, paras. 11-12); that they had subsequently refused to fulfil their court-ordered obligation to restore Sini to Mr. Hokkanen; and that they had finally refused to cooperate with the authorities for the purpose of implementing the court-ordered final access arrangements between Sini and Mr. Hokkanen (see ibid., pp. 10 et seq., paras. 15 et

seq.).

The Commission observes that despite this refusal on the part of the applicants Nick the authorities considered themselves unable to intervene in the dispute between them and Mr. Hokkanen with a view to effectively enforcing the court orders issued at Mr. Hokkanen's request. The Commission furthermore recalls that by judgment of 25 September 1991 the Court of Appeal transferred custody of Sini to the applicants Nick, finding that the fact that she lived with them since 30 April 1985 militated strongly in favour of her remaining in their care (see ibid., pp. 13-14, para. 29).

Having regard to the above facts, the conflicting interests at stake and the State's margin of appreciation, the Commission is satisfied that the authorities made reasonable efforts to show respect for the present applicants' "family life". There is therefore no appearance of any violation of Article 8 (Art. 8).

It follows that this complaint must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicants also complain of having been subjected to inhuman and degrading treatment by the authorities in the course of the applicants Nick's dispute with Mr. Hokkanen. They consider, in particular, that prior to 21 October 1993 the authorities' failed to take Sini's own opinion into account. They invoke Article 3 (Art. 3) of the Convention which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Commission recalls that the assessment of treatment alleged to be contrary to that provision is relative and must take account of all the circumstances of the case (e.g., Eur. Court H.R., Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 162). In the circumstances of this case the Commission cannot find that the treatment to which the applicants consider themselves to have been subjected attained the threshold of "inhuman and degrading" treatment within the meaning of Article 3 (Art. 3) of the Convention.

It follows that this complaint must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicants further complain that Sini's return to Mr. Hokkanen against her will would have jeopardised her right to personal security. They invoke Article 5 (Art. 5) of the Convention which reads, in its introductory part, as follows:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
> ..."

The Commission notes that even according to the applicants themselves the situation which allegedly could have raised an issue under Article 5 (Art. 5) never materialised. In these circumstances there is no appearance of any violation of that provision.

It follows that this complaint must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicants furthermore complain that prior to the Court of Appeal's hearing on 2 September 1993 and its subsequent judgment of

21 October 1993 they were denied a fair hearing within a reasonable time by an impartial tribunal. They invoke Article 6 (Art. 6) of the Convention.

(a) Insofar as the applicants complain that they were denied a fair hearing before an impartial tribunal, the Commission notes that even according to the applicants themselves such a hearing was afforded to them by the Court of Appeal on 2 September 1993. Moreover, in its subsequent judgment the Court of Appeal held that Sini should not be forced to meet her father but be allowed to decide for herself, considering her maturity. It therefore found in the applicants' favour (see pp. 15-16, para. 37 of the Hokkanen judgment).

In these circumstances the Commission considers that the applicants may not claim to be "victims" within the meaning of Article 25 para. 1 (Art. 25-1)of the Convention of a violation of Article 6 (Art. 6) on account of the alleged denial of a fair hearing by an impartial tribunal.

It follows that this aspect of the complaint is incompatible ratione personae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

(b) Insofar as the applicants complain about the length of the court proceedings, the Commission recalls that in the Hokkanen v. Finland judgment the Court found no violation of Article 6 para. 1 (Art. 6-1) on account of the duration of the second set of custody proceeding starting on 13 August 1990 and terminating on 21 January 1992 (see p. 26, para. 72 of the judgment). The question arises whether the two sets of custody proceedings as well as the related enforcement proceedings can be considered as a whole for the purposes of examining the present grievance (cf., a contrario, No. 12366/86, Dec. 5.7.89, D.R. 62 pp. 172, 178; cf. also Eur. Court H.R., Silva Pontes v. Portugal judgment of 23 March 1994, p. 13, para. 30 and p. 14, para. 33). Even assuming that this question can be answered in the affirmative, the Commission considers that this aspect of the complaint is in any case inadmissible for the following reasons.

Since the Convention entered into force with respect to Finland only on 10 May 1990, the Commission must limit its examination to whether the facts occurring after that date disclosed a breach of the Convention. Events prior to 10 May 1990 will therefore be taken into account merely as a background to the issues before the Commission (see, e.g., the above-mentioned Hokkanen judgment, p. 19, para. 53).

Having regard to its competence ratione temporis, the Commission considers that the period of relevance to the assessment of whether the length of the overall proceedings was "reasonable" began to run from 13 August 1990, when the second set of custody proceedings was instituted, and terminated on 4 February 1994, when the Supreme Court refused Mr. Hokkanen leave to appeal in the enforcement proceedings. The total length of the proceedings which the Commission must assess under Article 6 para. 1 (Art. 6-1) of the Convention thus amounts to approximately three years and a half.

The reasonableness of the length of the proceedings is to be determined in the light of the circumstances of the case and with reference to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant as well as that of the competent authorities. On the latter point, the importance of what is at stake for the applicant in the litigation has to be taken into account (see, e.g., Eur. Court H.R., Allenet de Ribemont v. France judgment of 10 February 1995, Series A no. 308, p. 19, para. 47).

In the present case the Commission recalls that the second set of custody proceedings lasted some eighteen months before three

judicial levels (see p. 26, para. 72 of the Hokkanen judgment). The enforcement proceedings lasted about twenty months and also involved three decision-making bodies. Between the end of the afore-mentioned proceedings and the commencement of the enforcement proceeding there was a gap of about five months preceding Mr. Hokkanen's enforcement request.

The Commission does not consider it necessary to examine this complaint in depth with regard to the various criteria laid down by the Court, since already from the outset it cannot find that the length of the overall proceedings was excessive, even bearing in mind the duration of the first set of custody proceedings which terminated prior to the entry into force of the Convention with regard to Finland. Accordingly, there is no appearance of a violation of Article 6 para. 1 (Art. 6-1) on this point either.

It follows that this aspect of the complaint must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicants also complain that prior to the Court of Appeal's judgment of 25 September 1991 the only interests safeguarded in the course of the applicants Nick's dispute with Mr. Hokkanen were those of the last-mentioned. They invoke Article 5 of Protocol No. 7 (P7-5) which reads as follows:

> "Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children."

The Commission notes that this provision concerns only the equality between "spouses" in certain exhaustively listed situations. Thus it is not applicable in the present case.

It follows that this complaint is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

6. Finally, the applicants complain that, since their petitions to the National Board for Social Welfare and the Parliamentary Ombudsman were unsuccessful, they were denied an effective remedy within the meaning of Article 13 (Art. 13) of the Convention. This provision 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 recalls that under Article 26 (Art. 26) of the Convention it may only deal with a matter, inter alia, within a period of six months from the date on which the final decision was taken. The present complaint principally appears to concern decisions taken in 1987, i.e. even before the entry into force of the Convention with regard to Finland, and in 1991, that is more than six months prior to 20 April 1994, when the application was introduced. However, the Commission need not determine to what extent the complaint might therefore be incompatible ratione temporis with the provisions of the Convention or inadmissible for non-compliance with the six months' rule. Instead it notes that the applicants had access to remedies within the meaning of Article 13 (Art. 13) by virtue of the court proceedings which eventually ended in findings in their favour not only as regards custody of Sini but also as regards the non-enforcement of

the access arrangements concerning her and Mr. Hokkanen.

It follows that this complaint must in any case be rejected as being 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 First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)