AS TO THE ADMISSIBILITY OF

Application No. 21111/92
by Ingegerd NILSSON
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 30 June 1993, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO

Mr. K. ROGGE, Secretary to the Second 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 11 August 1992 by Mrs. Ingegerd Nilsson against Sweden and registered on 17 December 1992 under file No. 21111/92;

Having regard to the information provided by the Government on 1 February 1993 and the applicant's comments in reply in February and March 1993;

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 is a Swedish citizen born in 1943 and resident at Malmö. She is a teacher by profession.

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

Particular circumstances of the case

On 18 January 1989 the Western Social District Council (västra socialnämnden) of the municipality of Malmö decided to place the applicant's son Jonas, born in 1980, in public care in accordance with Section 1, subsection 1 and subsection 2, no. 1 as well as Section 6 of the 1980 Act on the Care of Young Persons (lag 1980:621 med särskilda bestämmelser om vård av unga, hereinafter "the 1980 Act"). The care order was issued following an incident during which the applicant had behaved in a violent and confused manner against Jonas' teacher.

The decision was upheld by the County Administrative Court (länsrätten) of Malmöhus County and subsequently upheld by the Administrative Court of Appeal (kammarrätten) of Gothenburg. Leave to appeal was refused by the Supreme Administrative Court

(regeringsrätten).

Regard was had to an opinion of 10 February 1989 submitted by Dr. G.T., Deputy Senior Medical Officer, and Dr. H.H., a psychologist, at the request of the Social District Council and in which the following was stated :

(translation from Swedish)

"... Jonas is the only child of [the applicant]. The parents separated in connection with [his] birth ... [Jonas'] father has founded a new family ..., following which [the applicant] has denied Jonas the right to meet him. She has ... developed signs of a chronic paranoid psychosis ... She has never worked since the birth of Jonas, but lived exclusively for him. Her social network has slowly diminished and now mainly consists of her parents ... In her medical records [it is said] that her personality started to change long before the birth of Jonas ... [She] has been considered by, among others, [teachers and other parents in Jonas'] pre-school and school as being very divergent (Note: Swe. "avvikande"). She ... still accompanies Jonas to school. Previously she would not ... allow him to have his meals in the school cafeteria ... He has never ... been allowed to play with other children ... An attempt to have Jonas undergo [psychiatric] treatment in 1986 did not succeed, as [the applicant] did not comply with the ... plan.
...
What caused parents and teachers at [Jonas's] school to file a report was [his] strongly divergent, aggressive behaviour against his fellow-pupils. He would pinch them with pencils and run after them with pieces of glass in his hands, threatening to cut their throats. [He] expressed fantasies to the staff, such as to murder and drown children or break their arms ... In particular, [small] children's inability to let things alone and their curiosity provokes and irritates [him], as he needs to have rules and order.

Jonas shows very little emotions ... He does not play with other children ... He only reacts in aggressive ways ... e.g. by making racist remarks ...

Following the taking into public care of Jonas certain changes have been seen in his relations with others. He does not behave as aggressively at school ... His fear of dirt or bacteria has decreased considerably ...

Lately he has lost some weight [and] seems somewhat sad and quiet. [This] is, in the circumstances, an adequate reaction.
...
[A parent's] mental illness cannot always be said to influence a child negatively ... [M]any children develop quite normally .. Certain circumstances, however, strongly increase the risk of a negative development.

...[A]bove all, the degree of the personality disturbance is decisive for the parents' ability to care for their children. Another important factor is whether the parent is aware of [his or her] illness and [whether] the children are being affected by [his or her] morbid thoughts.

Another important factor is the social network of the family. Children who do well live in families which have contacts with outside persons who can assist when necessary ...

... In the present case there are ... serious indications of a risk [of a negative development] ... . Jonas and [the applicant] have lived a very isolated life. [The applicant] has been unable

to cooperate with the school and the school health care ... Much seems to indicate that [she] has a morbid reality perception which she is passing on to [Jonas]. She has cut off [his] contact with his biological father ... [a]nd does not allow [him] to create contacts with adults outside the family. She has not understood the importance of the fact that Jonas should be allowed to play ... freely. She has kept him inside whenever he has been free ...

On the other hand, she well understands Jonas' physical needs and his need of linguistic stimulation ... It is clear that [she] is very fond of Jonas ... In her opinion she does everything in [his] interest.

[The applicant] has now, for the first time, been undergoing psychiatric treatment and medication [to this effect] ...

[In conclusion,] [the applicant] is suffering from a chronical paranoid psychosis alternatively a serious personality disturbance with paranoid features. As a result she has been unable to satisfy [Jonas'] needs adequately ... [D]ue to her inability to have normal social relations Jonas has developed a serious behavioural disturbance including an inability to relate to other children as well as an aggressive [and occasionally dangerous] behaviour. It is too early to determine whether ... the disturbance is caused by ... Jonas' adaptation to isolation and [the applicant's] reality perception or whether it is based on a personality disturbance. A fresh assessment subsequent to his placement in an environment supporting his need of contacts with adults and friends could clarify this.

[The applicant's] ability to change is also difficult to assess. [A positive sign is] that her state of health seems to have improved to some extent as a result of her medication and treatment ... [A negative sign] is her lack of recognition of her illness and her [simulation capacity] as a result of which one cannot fully trust that a change in her behaviour will occur ...
...
In view of the above we find that there are very strong reasons for applying [the 1980 Act] even without [the applicant's] consent."

In a further opinion of 8 May 1989 submitted to the Administrative Court of Appeal by Dr. V.R., Senior Medical Officer at the psychiatric clinic of the General Hospital of Malmö, at the request of the Social District Council, the following was stated :

(translation from Swedish)

"[Jonas] and [the applicant] were admitted to ... [our] clinic for child and youth psychiatry from 21 March to 5 April 1989.

This opinion is based on observations of Jonas and [the applicant] in everyday social intercourse on the ward and on interviews with [the applicant].

Jonas' contact with [the applicant] is characterised by a lack of emotional attachment. The contact is superficial and intellectual. Jonas' mental development is seriously threatened. He was showing clear difficulties in his contacts with people ... In contacts with other children [he] was somewhat directed by jealousy. [The applicant] could, in these situations, not support him, [n]or could she [prevent] his [occasional] destructive behaviour. Despite support from the staff [the applicant] was ... totally helpless ... .

At this stage it is not possible to assess with certainty what

> the disturbances in Jonas' personality are caused by. [His] difficulties seem to a large extent to stem from [the applicant's] lack of ability to enter into emotions ... and the fact that she has not allowed him to have normal contacts with other adults and children. In order to give Jonas a possibility to develop in a positive way he is in absolute need of individual psychotherapeutic [treatment] for a longer period of time. In view of his age this treatment must start immediately.
>
> During [his] stay on the ward Jonas showed, [when left alone with another adult], an ability to concentrate and use his curiosity and imagination. This supports the theory that [he] is able to absorb psychotherapeutic treatment. This requires that he has a stable home environment with adults who understand and support him ... Until now [the applicant] has not been able to support [him] in his need to have contacts outside his home. On the contrary, she has prevented him from having normal contacts ... [S]he would [therefore] probably not be able to support him emotionally during [his] treatment. [T]his could put Jonas in an unacceptable loyalty conflict.
> ...
> In view of the above .... Jonas should continue to receive care under [the 1980 Act]."

Initially Jonas was placed in the children's home of Enebacken. On 1 February 1991 he was placed in the children's home of Lund.

On 14 November 1991 the Social District Council in accordance with Section 11 of the 1990 Act on the Care of Young Persons (lag 1990:52 med särskilda bestämmelser om vård av unga, hereinafter "the 1990 Act") decided to transfer Jonas from the children's home of Lund to a foster home at Helsingborg, some 50 kilometres from Malmö.

The applicant appealed, requesting that Jonas' further care under the 1990 Act be implemented in her home, alternatively that Jonas not be transferred to the particular foster home at issue.

On 18 February 1992 the County Administrative Court held a hearing, where the applicant referred to an alleged statement by Jonas, then 12 years old, that he wished to live with her and attend his old school. On 5 February 1992 he had allegedly asked how much longer he would have to stay with his foster parents. He had seemed anxious. Allegedly he had feared to tell the staff at the children's home and his official counsel the truth and therefore said that he wished to stay with his foster parents. He had seemed sad, while previously he had been in a happy mood. He had been transferred very abruptly from the children's home. The applicant had visited the foster home in Jonas' absence and had seen alcohol bottles in several places. Jonas' room had been isolated from the other rooms. The foster parents seemed to project the loss of their late son on Jonas and had had Jonas' hair cut in the same way as his. Thus, the particular foster parents chosen were not suitable. Instead Jonas could have been placed in a foster home at Lund or Malmö. This would have allowed him to attend his old school and meet the applicant more often.

The Social District Council argued that Jonas enjoyed staying with his foster parents. It would be easy for the applicant to see Jonas in the foster home. Meetings could also be arranged in the children's home of Lund. During Jonas' public care there had been no satisfactory social intercourse between him and the applicant. Jonas did not wish to go back to the applicant. When stating this he had shown no signs of fear. Implementation of the care in the applicant's home was therefore out of the question. Further efforts would, however, be made in order to create social intercourse between the applicant and Jonas.

Jonas' official counsel supported the Social District Council's view and added, inter alia, that while staying in the foster home Jonas had expressed a wish that the applicant come and visit him there. Four such visits had been planned, but the applicant had never attended any of them.

On 24 February 1992 the County Administrative Court rejected the applicant's appeal, stating the following :

(translation from Swedish)

> "It appears in the case that [Jonas] ... has shown signs of mental and social disturbances. He is therefore in need of special care. As the circumstances warranting his placement [in public care under the 1990 Act] partly continue ... and as it has not been possible to arrange longer meetings between Jonas and [the applicant] during his stay in the children's home[s], his further care [under the 1990 Act] cannot take place in [the applicant's] home. Having regard to [Jonas'] development and [his] need to live in as normal circumstances as possible, the [Court] shares the Social District Council's assessment that Jonas' need of care can, at present, best be secured by his placement in a foster home. Jonas' need of security and care seems to be well satisfied in the foster home at issue. [T]he geographical distance would not seem to create any real obstacle to social intercourse between Jonas and [the applicant].
> ..."

The applicant appealed, arguing that she could not be blamed for the lack of longer meetings between her and Jonas. Until March 1992 she had very rarely been given the possibility to meet Jonas alone. Following his transfer to the children's home at Lund he had not been allowed to visit her. As from February 1990 she had no longer needed to see a doctor for mental problems. The circumstances previously warranting the public care of Jonas therefore no longer existed. She further accepted to cooperate with the social authorities if Jonas were allowed to move back home.

On 7 May 1992 the Administrative Court of Appeal upheld the County Administrative Court's decision.

Leave to appeal was refused by the Supreme Administrative Court on 2 July 1992.

In the proceedings before the administrative courts the applicant was represented by official counsel.

The applicant has submitted an opinion of 6 April 1989 by Dr. A.S., a psychiatrist at the psychiatric clinic of the General Hospital of Malmö, stating the following:

(translation from Swedish)

> "[The applicant] was admitted for care [here] from 18 January to 21 March 1989. During this period [she] showed no signs of a serious mental illness.
>
> Our assessment is, however, that [the applicant] is suffering from a personality disturbance characterised by suspicions and rigidity - particularly in pressing situations she has a tendency to make paranoid interpretations. She also very strongly denies having any problems.
>
> In connection with her crisis caused by the taking into care of her son [the applicant] has seemed more open and accessible for information and further cooperation."

Relevant domestic law

Under Section 1, subsection 1 of the 1980 Act public care was to be provided inter alia for persons under eighteen years of age, if it could be presumed that the necessary care could not be given to the young person with the consent of the person or persons having custody of him.

Care was to be provided inter alia if lack of care for him or any other condition in the home entailed a danger to his health or development (Section 1, subsection 2, no. 1).

A Social Council could immediately place a person under twenty years of age in public care, if it was probable that the person was in need of care under the 1980 Act and that, inter alia in view of the danger to the person's health or development, the matter could not await a court examination (Section 6, subsection 1).

On 1 July 1990 the 1990 Act entered into force.

Under Section 1, subsection 2 of the 1990 Act a child shall be placed in public care in one of the circumstances mentioned in Section 2 if it can be assumed that the necessary care cannot be provided with the consent of that person or those persons who have custody of him.

Public care shall be provided if there is a particular reason to believe that the health or development of the child may be jeopardised because of insufficient care or any other circumstance in the home (Section 2).

The Social Council is to decide how care is to be provided and where the child is to reside. It may consent to the young person residing in his own home, if this may be presumed to be the most appropriate way of arranging the care. Care is, however, always to commence away from his home (Section 11, subsections 1 and 2).

The Social Council's decision to transfer the young person to other premises during the course of the care can be appealed against to the administrative courts (Section 41, subsection 1, no. 1).

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 11 August 1992 and registered on 17 December 1992.

On 19 January 1993 the respondent Government were requested to submit certain information pertaining to the application.

This information was submitted by the Government on 1 February 1993. The applicant submitted comments in reply in February and March 1993.

COMPLAINT

The applicant complains that her son Jonas is unjustifiably kept in public care. She refutes the allegations by the social authorities that she is suffering from a mental illness and refers to the psychiatric opinion of Dr. A.S. The applicant was allegedly accused by a neighbour of using "strange methods" in raising Jonas. She invokes Article 8 of the Convention.

THE LAW

The applicant complains of the keeping in force of the public care order regarding her son Jonas. She invokes Article 8 (Art. 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 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 (see e.g. Eur. Court H.R., Rieme judgment of 22 April 1992, Series A no. 226-B, p. 68, para. 54). The right to respect for family life includes a right to the taking of measures with a view to the parent or parents being reunited with the child (ibid., p. 71, para. 69).

The Commission finds that the taking into care of Jonas interfered and continues to interfere with the applicant's right to respect for her family life. Such an interference constitutes a violation of Article 8 (Art. 8) of the Convention unless it is "in accordance with the law", has one or more aims that are legitimate under Article 8 para. 2 (Art. 8-2) and is "necessary in a democratic society" (ibid., p. 68, paras. 55-56).

It has not been alleged that the interference was not "in accordance with the law". The Commission, for its part, accepts that the interference was in accordance with Swedish law.

The relevant legislation was and continues to be aimed at protecting the health and the rights and freedoms of Jonas. The Commission finds no indication that the provisions were applied for any other purpose. The interference thus had aims that were legitimate under Article 8 para. 2 (Art. 8-2).

The notion of necessity implies that the interference with a right under Article 8 para. 1 (Art. 8-1) must correspond to a "pressing social need" and, in particular, that it must be proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society" a margin of appreciation is to be left to the Contracting State. The Convention organs' review, however, is not limited to ascertaining whether the State exercised its discretion reasonably, carefully and in good faith. Moreover, the Convention organs must look at the impugned decisions in the light of the case as a whole and determine whether the reasons adduced to justify the interference are "relevant and sufficient" (Eur. Court H.R., Olsson no. 2 judgment of 27 November 1992, para. 87, to be published in Series A no. 250). When determining these questions the Convention organs should take into account that Article 8 (Art. 8) includes a procedural requirement that in child-care cases the parents must have been sufficiently involved in the decision-making process (e.g. Eur. Court H.R., W. v. the United Kingdom judgment of 8 July 1987, Series A no. 121, pp. 28-29, paras. 63-65).

The Commission considers that the placing of Jonas in public care

and the keeping in force of the care have been based on careful examination by Swedish administrative courts. The reasons for the placing of Jonas in public care were, in essence, that the applicant had been found to suffer from a mental disturbance involving morbid and paranoid suspicions and therefore, as a single mother, had been unable to care properly for Jonas. Moreover, she had refused Jonas permission to see his father or to establish social contacts outside the home.

These reasons are clearly relevant and in the Commission's view also sufficient to justify the placement of Jonas in public care. The Commission further observes that, although several meetings between her and Jonas have been planned by the authorities at his request, the applicant has refused to attend them.

The Commission also notes that the applicant was represented by counsel throughout the proceedings. There is thus no indication that she was not sufficiently involved in the decision-making process.

Taking all the circumstances of the case into account and having regard to the State's margin of appreciation, the Commission is satisfied that the Swedish authorities had and have relevant and sufficient reasons for placing and keeping Jonas in public care.

The Commission thus concludes that the interference with the applicant's right to respect for her family life, being proportionate to the legitimate aim pursued, could and can at present reasonably be considered as being necessary in a democratic society for the protection of the rights and freedoms of Jonas. It has therefore been, and still is, justified under Article 8 para. 2 (Art. 8-2).

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 reason, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)