AS TO THE ADMISSIBILITY OF

Application No. 27074/95
by Lars Göran NORDIGÅRD
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 4 September 1996, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
L. LOUCAIDES
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ

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 20 March 1995 by Lars Göran Nordigård against Sweden and registered on 21 April 1995 under file No. 27074/95;

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 1957 and residing at Malung, is a lorry-driver. Before the Commission, he is represented by Ruby Harrold-Claesson and Sören Alfredsson, lawyers practising at Olofstorp and Tavelsjö respectively.

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

The applicant was in the past living together with a woman who had two children, born in 1979 and 1980 respectively. The children were placed in public care at the home of their paternal grandparents by the Social Council (socialnämnden) of Forshaga on 7 February 1991, following accusations against the applicant of having beaten them. The County Administrative Court (länsrätten) of the County of Värmland decided by judgment of 8 August 1991 to take the children into care in accordance with Sections 1 and 2 of the 1990 Act with Special Provisions on the Care of Young Persons (lag med särskilda bestämmelser om vård av unga). The mother appealed but the Administrative Court of Appeal (kammarrätten) of Göteborg upheld the judgment. The Supreme

Administrative Court (Regeringsrätten) refused leave to appeal.

On 12 March 1991 the applicant was found guilty of assault on the two children and was sentenced to one year's imprisonment by the District Court (tingsrätten) of Karlstad. His appeals against this judgment were unsuccessful.

The events in connection with the taking into public care of the children led to some telephone calls on 11 December 1992 from the applicant to the social worker involved in the public care proceedings. The applicant was subsequently accused of having made illegal threats against the social worker during one of these telephone calls. The Social Council reported the incident to the police and the applicant was arrested and detained from 16 December 1992 until 23 December 1992. He was charged with illegal threats against a civil servant (hot mot tjänsteman) in violation of Chapter 17, section 1 of the Penal Code (Brottsbalken), and accused of having said inter alia the following to the social worker:

> "Förresten, tänk på att det kan gå för dej som det gick för Inger Stark."
>
> (Translation)
>
> "By the way, you should be aware that what happened to Inger Stark may happen to you." (Inger Stark was a social worker who had been murdered.)

Defence counsel for the applicant was appointed ex officio by the District Court of Karlstad where a hearing was held on 23 December 1992, during which the Court heard three witnesses. Furthermore, the applicant, assisted by counsel, was heard. Following this hearing and on the basis of an evaluation of the available evidence the District Court found the applicant guilty in accordance with the charges and sentenced him to four months' imprisonment.

The applicant appealed to the Court of Appeal of Western Sweden (Hovrätten för Västra Sverige). He also requested the Court of Appeal to dismiss the court-appointed counsel and to replace him by another lawyer. As a reason for this request, the applicant referred to difficulties in co-operating with counsel.

On 7 October 1993 the Court of Appeal rejected the applicant's request for a replacement of the court-appointed counsel as it did not consider such a measure justified. Leave to appeal against this decision was refused by the Supreme Court (Högsta domstolen) on 9 February 1994.

Subsequently, the applicant's court-appointed counsel requested to be relieved from his duties in view of the applicant's lack of confidence in him and the difficulties caused thereby. On 8 April 1994 the Court of Appeal rejected the request. Leave to appeal against the decision was refused by the Supreme Court on 25 May 1994.

In this situation the applicant engaged private counsel to assist him during the trial in the Court of Appeal which subsequently, on 2 June 1994, at the applicant's request dismissed the court-appointed counsel whose fees until then had been paid by the State. The applicant also requested that his case be moved to another chamber of the Court of Appeal as the judges who had dealt with the question of the appointment of counsel had allegedly shown bias in his regard. On 7 July 1994 the applicant's request was rejected by the Court of Appeal.

The case was heard by the Court of Appeal on 11 July 1994. During the hearing the applicant was not allowed to put such questions to the injured party (the social worker) as concerned the public care

proceedings involving the two children. As these matters fell under the rules of professional secrecy, the Court considered that the witness should not answer such questions.

By judgment of 18 July 1994 the Court of Appeal upheld the District Court's judgment.

On 29 and 30 August 1994 the applicant lodged an appeal with the Supreme Court. He complained of the fact that legal aid had not been granted by the Court of Appeal, which meant, in particular, that the costs for the privately engaged counsel had not been reimbursed. He considered this to be contrary to Article 6 of the Convention. He also complained that the Court of Appeal was not an impartial tribunal, that he had not been allowed to put questions concerning the public care proceedings to the injured party and that the Court had not made a full investigation of the case. He maintained, under Article 6 para. 1 of the Convention, that he had not had a fair trial.

Leave to appeal was refused by the Supreme Court on 30 September 1994.

COMPLAINTS

1. The applicant complains, under Article 6 of the Convention, that he did not have a fair trial. In particular he refers to the following points in support of his complaint:

a) the Court of Appeal refused to replace the court-appointed counsel by appointing ex officio a new lawyer;
b) during the proceedings before the Court of Appeal he was not allowed to put certain questions to the injured party, and
c) the Court of Appeal relied on testimony from witnesses who could not be considered to be impartial and, thus, the Court did not make a full examination of the case.

2. The applicant also complains that the Supreme Court's refusal to grant leave to appeal against the judgment of the Court of Appeal amounts to a violation of Article 6 of the Convention.

3. Furthermore, the applicant maintains that Article 6 para. 3 (c) of the Convention has been violated due to the fact that the costs for his private counsel were not covered by the State.

4. Finally, the applicant maintains that his right to freedom of expression has been violated as he was convicted for merely expressing his opinion on the work and the conduct of a social worker. In this respect he invokes Article 10 of the Convention.

THE LAW

1. The applicant complains that, in various respects during the criminal proceedings against him, he was denied a fair trial. He invokes in this respect Article 6 (Art. 6) of the Convention which in so far as relevant reads as follows:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law ...".

The Commission recalls that the question whether a trial conforms with the standard laid down by Article 6 (Art. 6) of the Convention must be assessed on the basis of the court proceedings as a whole including, in the present case, not only the court proceedings in the Court of Appeal but also those in the District Court. In the latter proceedings the Commission finds no element which could give rise to

misgivings as regards the fairness of the trial or the applicant's right to a proper defence.

As regards the proceedings before the Court of Appeal, the Commission notes as follows.

a) The applicant first refers to the fact that the Court of Appeal refused to replace, at his request, his court-appointed counsel.

The Commission recalls that Article 6 (Art. 6), and more specifically Article 6 para. 3 (c) (Art. 6-3-c), guarantees to an accused person that the proceedings against him shall not take place without an adequate representation of the case for the defence. A right is guaranteed to an effective defence either in person or through a lawyer. However, if the applicant is represented by an officially appointed defence counsel, Article 6 (Art. 6) cannot be interpreted so as to secure to the accused a right to have a new lawyer appointed at public expense, without well-founded and substantiated reasons (cf. Eur. Court HR, Croissant v. Germany judgment of 25 September 1992, Series A no. 237-B, pp. 32-33, para. 29).

In the present case, it has not been shown that the court-appointed counsel was unable to provide the applicant with an adequate defence. Moreover, the applicant was free to defend himself with the assistance of another lawyer, albeit at his own expense. The Commission thus finds that the applicant was not denied an effective legal assistance in the proceedings before the Court of Appeal as required by Article 6 (Art. 6).

b) The applicant also complains of the fact that he was not allowed to put certain questions to one of the witnesses.

In this respect the Commission recalls that the admissibility of evidence is primarily a matter for regulation by national law. As a rule it is for the national courts to assess the evidence before them and also to decide whether for specific reasons the parties should not be allowed to put certain questions to witnesses.

In the present case the Commission recalls that the questions which the Court of Appeal did not allow concerned matters which were subject to professional secrecy. Moreover, it would not seem that they were essential for the examination of the charge against the applicant. In such circumstances, the Commission cannot find that the Court of Appeal, by not allowing such questions, denied the applicant a fair trial.

c) Finally, the applicant complains that the Court of Appeal relied on the testimony of witnesses who could not be considered impartial in the case.

In this respect the Commission recalls that it is not its task to substitute its own assessment of the evidence for that of the domestic courts. The facts of the present case do not show that the evaluation of the evidence by the Court of Appeal was arbitrary or unfair.

Having regard to these various elements, the Commission cannot find that the proceedings before the Court of Appeal were unfair or that the applicant's rights of defence were in any way violated during those proceedings. Consequently, there is no appearance of a violation of Article 6 (Art. 6) in the proceedings before the Court of Appeal.

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 complains that the Supreme Court's refusal to

grant leave to appeal against the judgment of the Court of Appeal amounts to a violation of Article 6 (Art. 6) of the Convention.

The Commission recalls that the right to appeal to a third level of jurisdiction does not feature among the rights and freedoms guaranteed by the Convention. No provision of the Convention, therefore, requires a State to grant persons under its jurisdiction an appeal to a Supreme Court acting as a third instance court. If a State makes provisions for such an appeal it is entitled to lay down the conditions for such an appeal (cf. No. 6916/75, Dec. 12.3.76, D.R. 6 p. 101 and No. 10515/83, Dec. 2.10.84, D.R. 40 p. 258).

The Commission notes that the proceedings before the Supreme Court only concerned the question whether or not leave to appeal should be granted. A full examination of the charge against the applicant would have taken place only if leave to appeal had been granted. According to Swedish law, leave to appeal could only be granted if an examination by the Supreme Court was of importance for the development of the case-law of if there were other extraordinary reasons, such as an obvious incorrect application of the law by the Court of Appeal or a serious procedural mistake. When deciding on the question as to whether or not leave to appeal should be granted, the Supreme Court thus did not determine a criminal charge against the applicant, and Article 6 para. 1 (Art. 6-1) of the Convention was therefore not applicable to these proceedings (cf. No. 11855/85, Dec. 15.7.87, D.R. 53 p. 190).

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

3. With reference to Article 6 para. 3 (c) (Art. 6-3-c) of the Convention, the applicant complains that the costs of his private counsel were not covered by the State.

The Commission recalls that a system whereby a convicted person is in principle bound to pay the costs of the proceedings, including the fees of his court-appointed counsel, is not incompatible with Article 6 (Art. 6) of the Convention, provided this does not adversely affect the fairness of the proceedings (cf. the above-mentioned Croissant judgment, pp. 34-35, paras. 33-38).

In the present case the Commission also notes that the applicant was provided with free legal assistance through a court-appointed counsel, and it was his own choice not to avail himself of this facility.

In these circumstances the Commission finds that the facts of the present case concerning this particular issue disclose no appearance of a violation of Article 6 para. 3 (c) (Art. 6-3-c) 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.

4. The applicant finally complains, under Article 10 (Art. 10) of the Convention, that his right to freedom of expression has been violated as he was convicted for merely expressing his opinion on the work and the conduct of a social worker.

The Commission recalls that the applicant was found guilty of illegal threats contrary to Chapter 17, section 1 of the Penal Code. Even assuming that the applicant's conviction could be regarded as an interference with his right to freedom of expression, the Commission has no doubt that this interference was justified under Article 10 para. 2 (Art. 10-2) of the Convention as being based on law and necessary in a democratic society for the protection of the rights of

others.

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.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber