AS TO THE ADMISSIBILITY OF

Application No. 30200/96
by Maj-Britt NYBERG
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 9 April 1997, 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
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
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 November 1995 by Maj-Britt NYBERG against Sweden and registered on 15 February 1996 under file No. 30200/96;

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 1937, resides in Lidingö. Before the Commission she is represented by Mr Anders Samuelsson, a lawyer practising in Stockholm.

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

By decision of 14 June 1995, the District Court (tingsrätten) of Södra Roslag, petitioned by a creditor company, declared the applicant with her registered business firm Maj-Britts Baby & Barn Shop bankrupt. The court, which held an oral hearing at which the applicant was represented by her cohabitee, found that the creditor had a claim based on goods delivered to the said firm. At the time of the delivery the firm was registered on the applicant's son. The court found, however, that the applicant, by declaration in a letter of 17 February 1995 to the creditor, had assumed liability for the debt in question. As the applicant had failed to pay the debt although she had been requested by the creditor to do so, she was considered insolvent.

The applicant appealed to the Svea Court of Appeal (Svea hovrätt). Subsequently, by letter of 22 June 1995, the court requested the applicant to submit, before 26 June 1995, any evidence she wished

to adduce in reply to the creditor's observations.

On 30 June 1995 the Court of Appeal rejected the appeal without having held a hearing in the case. It had at its disposal the case-file of the District Court, including the applicant's letter of 17 February 1995 and the minutes of the latter court's hearing.

Later the same day, the appellate court received a telefax from a lawyer the applicant had appointed as her representative. The lawyer stated that the applicant requested the Court of Appeal to hold an oral hearing during which she and her cohabitee should be heard concerning the letter of 17 February 1995. This telefax was treated as an appeal against the Court of Appeal's decision and, accordingly, was forwarded to the Supreme Court (Högsta domstolen).

In a letter to the Supreme Court of 5 July 1995, the applicant, in addition to her appeal against the declaration of bankruptcy, claimed that the Court of Appeal had made a procedural error. She maintained that the judge in charge of the case at the appellate court, by telephone, had granted her cohabitee an extension of the time-limit for submission of further observations until 30 June 1995 at 2 pm. The observations were faxed at 1.29 pm that day, but to the District Court which later the same day faxed them to the Court of Appeal. Although these observations, including the request for an oral hearing, had been submitted within the extended time-limit, they had not been taken into account by the Court of Appeal in its decision of 30 June 1995.

On 3 October 1995 the Supreme Court refused leave to appeal.

COMPLAINT

The applicant complains of the lack of an oral hearing in the Court of Appeal. She invokes Article 6 para. 1 of the Convention.

THE LAW

The applicant complains of the lack of an oral hearing in the Court of Appeal. She claims that her request for a hearing was disregarded although it was submitted within the applicable time-limit. The applicant invokes Article 6 para. 1 (Art. 6-1) of the Convention which, in relevant parts, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ..."

The Commission first finds that the proceedings in question, in which the applicant was found responsible for the debt in question, related to her "civil rights" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention, which provision is thus applicable to her complaint (cf. No. 11941/86, G. v. France, Dec. 5.10.88, D.R. 57, p. 100).

The Commission recalls that the manner of application of Article 6 para. 1 (Art. 6-1) to proceedings before courts of appeal depends on the special features of the proceedings involved. The main question is whether a departure from the principle that there should be a public hearing could, in the circumstances of the case, be justified at the appeal stage by the special features of the domestic proceedings as a whole (cf., e.g., Eur. Court HR, Helmers v. Sweden judgment of 29 October 1991, Series A no. 212-A, p. 15, paras. 31-32).

In the present case, the Commission notes that at the time when the Court of Appeal decided the case, no request for an oral hearing had been received by the court within the time-limit fixed by the letter of 22 June 1995. The applicant claims that, by telephone, she had been granted an extension of the time-limit for submission of further observations in the case and that the request for a hearing had

been submitted within this time-limit. However, she has not submitted any evidence in respect of this contention.

In these circumstances, the question is whether the Court of Appeal should have decided to hold an oral hearing on its own motion. The Commission notes that a hearing had been held at first instance. The appellate court was called upon to examine the case as to both the facts and the law. The main question raised by the applicant's appeal was the significance of the applicant's letter to the creditor. This letter was available to the Court of Appeal, together with the minutes of the District Court's hearing and the other material in the case. It appears that the Court of Appeal was able to consider the significance of the letter and the other questions raised by the applicant's appeal on the basis of these documents. Thus, the applicant's and her cohabitee's physical attendance was not necessary. Accordingly, the Court of Appeal could, as a matter of fair hearing, properly examine the case without holding an oral hearing.

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.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber