CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 36745/97
by Anne-Lise PEDERSEN
against Sweden

The European Court of Human Rights (First Section) sitting on 23 February 1999 as a Chamber composed of

Mr J. Casadevall, *President,*
Mrs E. Palm,
Mr L. Ferrari Bravo,
Mr G. Jörundsson,
Mr R. Türmen,
Mr C. Bîrsan,
Mrs W. Thomassen, *Judges*,

with Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 5 June 1997 by Anne-Lise Pedersen against Sweden and registered on 30 June 1997 under file no. 36745/97;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

FACTS

The applicant, a Norwegian citizen born in 1964, resides in Tanumshede, Sweden. Before the Court she is represented by Mr Jan Palmblad, a lawyer practising in Strömstad, Sweden.

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

The applicant and A.V. have two children: a son, A, born in 1983, and a daughter, H, born in 1984. Following the parents' divorce in 1990, the children lived with their mother, the applicant, and had regular contacts with A.V. who lives in Norway. The applicant later started a relationship with H.E. who moved in with the applicant and the two children. In September 1995 it was discovered that he had sexually assaulted H and in November 1995 he was convicted and sentenced to one year in prison. As a consequence, during the period of September 1995 – May 1996 the social authorities in Tanum made an investigation of the family's situation.

On 16 June 1996 A.V. removed the children from their home against the applicant's will. The applicant then instituted proceedings in the Court of Enforcement (*namsretten*) of Hadeland and Land, invoking the 1980 Hague Convention on the Civil Aspects of International Child Abduction and requesting that the children be returned to her. On 31 July 1996 the court gave a decision in her favour and on 11 August 1996 the children were returned to Sweden.

On 20 November 1996 A.V. instituted custody proceedings in the District Court (*tingsrätten*) of Strömstad, requesting that custody of H be transferred to him. The District Court ordered the social authorities in Tanum to submit an opinion in the case, which they did on 5 December 1996. The opinion contained factual information on the family's situation but did not express any preference as to which parent should be awarded custody.

The District Court held an oral hearing on 10 December 1996. The applicant, A.V. and their respective lawyers were present at the hearing. By an interim decision of 17 December 1996 the court decided that, pending the final determination of the custody issue, H should continue to live with the applicant.

A.V. appealed against the interim decision to the Court of Appeal (*hovrätten*) for Western Sweden. The applicant requested that the appellate court hold a further hearing in the case.

On 23 January 1997 the Court of Appeal rejected the request for a hearing, finding it unnecessary. It further quashed the District Court's decision and prescribed that H should live with A.V. on an interim basis. No appeal lay against the appellate court's decision.

On 19 February 1997 the applicant filed a petition with the Supreme Court (*Högsta domstolen*), requesting that the Supreme Court reopen the interim issue or decide that the lack of a hearing in the Court of Appeal constituted miscarriage of justice (*domvilla*).

By a decision of 28 February 1997 the Supreme Court rejected the applicant's petition.

On 29 May 1997 the social authorities submitted its opinion on the custody issue to the District Court. Noting that the social authorities recommended that A.V. be awarded custody of H, the applicant considered that there were little prospects of success in the case. She proposed therefore that she and A.V. should continue to have joint custody of H but that H should live with A.V. An agreement to this effect was signed by the applicant and A.V. on 30 June 1997. Subsequently, at the request of both parties, the District Court struck the case out of its list of cases.

COMPLAINT

The applicant claims that the lack of an oral hearing before the Court of Appeal violated her rights under Article 6 § 1 of the Convention. She states that the interim decision prescribing where H should live pending the final determination of the custody case was of great importance, as the courts and the social authorities are very reluctant to change an already established situation and as the social authorities' final opinion on the custody issue was based on the fact that, at the time, H was living with her father. Further, the information available to the appellate court was of a limited nature and the applicant should thus have been given an opportunity to appear before the court.

THE LAW

The applicant complains of the fact that, before taking its interim decision of 23 January 1997, the Court of Appeal did not hold an oral hearing. She invokes Article 6 § 1 of the Convention which, in relevant parts, provides the following:

> "In the determination of his civil rights …, everyone is entitled to a fair and public hearing … by [a] tribunal"

The Court recalls that the manner of application of Article 6 § 1 of the Convention 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 (see, among other authorities, the Helmers v. Sweden judgment of 29 October 1991, Series A no. 212-A, p. 15, §§ 31-32).

In the present case, the Court notes that the District Court held an oral hearing at which the parties and their lawyers were present. The minutes of that hearing as well as the social authorities' first opinion in the case, delivered on 5 December 1996, was available to the Court of Appeal when it took its decision of 23 January 1997. Further, that decision did not concern the issue of custody but only the question where H should live pending the final determination of the case. The Court does not overlook that the decision, in some way, could influence the outcome of the custody issue. However, having regard to the limited nature of the decision and the information available to the Court of Appeal, the Court considers that that court could, as a matter of fair hearing, properly examine the question before it without holding an oral hearing. In this connection, the Court notes also that the custody issue was later settled by an agreement between the parties.

It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Josep Casadevall
President