AS TO THE ADMISSIBILITY OF

Application No. 14451/88
by Kjell and Gärdh PERSSON
against Sweden

The European Commission of Human Rights sitting in private on 2 July 1993, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A. WEITZEL
H.G. SCHERMERS
H. DANELIUS
Mmes. G.H. THUNE
J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
B. MARXER
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 2 September 1988 by Kjell and Gärdh PERSSON against Sweden and registered on 8 December 1988 under file No. 14451/88;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to the written observations submitted by the Government on 29 July 1991 and the applicants' written observations in reply submitted on 22 September 1991 and 11 February 1992;

Having regard to the further information submitted by the Government on 5 January 1993 and the applicants' comments in reply on 5 February 1993;

Having regard to the parties' further submissions at the hearing on 2 July 1993;

Having deliberated;

Decides as follows:

THE FACTS

The first applicant, Kjell Persson, was a Swedish citizen born in 1965. He died in 1992. The second applicant, Gärdh Persson, is a Swedish citizen born in 1937 and resident at Spånga. She was Kjell Persson's mother and appointed guardian (god man) and is now the administrator of his estate.

The application was initially lodged by both applicants. Following Kjell Persson's death Gärdh Persson declared that she wished to pursue the application both on his and her own behalf.

Before the Commission the applicants are represented by Mrs. Siv Westerberg, a lawyer practising in Gothenburg.

The facts of the case, as they appear from the parties' submissions, may be summarised as follows.

Particular circumstances of the case

a. The care order

Kjell Persson was seriously disabled from birth, both mentally and physically. He was born, inter alia, with his tongue grown to his palate, resulting in a lack of faculty of speech and great eating difficulties, for which reason he needed to be fed. He was somewhat mobile, but only with assistance.

In 1983 several physicians found that Kjell Persson was extremely underweight and that Gärdh Persson had not satisfactorily managed to nourish him in their home. His severe mental retardation combined with his physical disablement and the feeding problems therefore warranted his placement in compulsory care in accordance with the 1967 Act on the Care of Certain Mentally Handicapped Persons (lag 1967:940 angående omsorger för vissa psykiskt utvecklingsstörda; hereinafter "the 1967 Act").

On 20 December 1983 the Chairman of the Administrative Board (beslutsnämnden) of the County Council (landstinget) of Stockholm provisionally placed Kjell Persson in compulsory care pursuant to Section 35, subsection 1 (b) of the 1967 Act.

On 28 December 1983 the Administrative Board confirmed the Chairman's decision, having found that Kjell Persson was mentally retarded, that as a consequence of his retardation he was unable to take care of himself, and that, in view of the degree of his retardation, care in a nursing home was absolutely necessary.

On 29 December 1983 Kjell Persson was admitted to the Rosenhill nursing home in Stockholm.

b. Kjell Persson's stay at the Rosenhill nursing home from 29 December 1983 to 21 March 1988

aa. The conditions in the nursing home

The applicants allege that in the Rosenhill nursing home Kjell Persson lived in a very small room with large windows facing a corridor, where other patients and visitors would pass frequently. The window lacked curtains. The only reason for his placement in this room was allegedly that the staff members were lazy and found it more comfortable to glance through the window than to supervise his state of health more closely. The fact that the window had no curtains was allegedly not necessitated by the need to keep him under constant supervision in view of his bad state of health, as his room was situated quite far away from the nurses' room and hours could pass without anybody attending to him.

The applicants further allege that they could only meet inside the nursing home, either in Kjell Persson's room or in the living room or dining room in the company of other patients, visitors and staff members. The dining room had a large window towards the kitchen, from where staff members would supervise the applicants. Staff members would further enter into the dining room for the same reason.

The applicants also allege that when Gärdh Persson would see her son in his own room the manager of the nursing home would

demonstratively enter the room and embrace him. Kjell Persson disliked this so much that he was struck by panic and started screaming.

The applicants finally allege that Gärdh Persson would be slandered by staff in her absence, but in the presence of Kjell Persson.

The Government submit that the Rosenhill nursing home was originally designed for children placed in public care due to their parents' social problems. Such children needed considerable supervision. This was the reason for the windows in the doors to the patients' rooms. During the period when Kjell Persson was placed at Rosenhill the nursing home accommodated twelve young and severely retarded persons. Four persons would share a living room and a kitchenette. Their private rooms measured 8-10 square metres.

The Government submit that the applicants could meet in the nursing home without being disturbed. They contend that Kjell Persson's state of health was very poor, necessitating around the clock supervision. They further contend that the window in the door to Kjell Persson's room did have curtains. These could be opened whenever he was ill and needed to be attended to during the night. This enabled staff to supervise his health by glancing through the window.

The Government further contend that Kjell Persson was in no way confined to his room. He needed to rest somewhat during the day, but was otherwise engaged in a number of activities in the school room, the living room or in the garden.

bb. The administration and spending of Kjell Persson's pension

On 31 January 1984 a decision authorising, as from 1 February 1984, the collection of Kjell Persson's pension payments in accordance with the 1962 Ordinance on the Right in Certain Cases of a Municipality or Other Body to Collect Pension Payments (kungörelse 1962:393 om rätt i vissa fall för kommun eller annan att uppbära folkpension; hereinafter "the 1962 Ordinance") was made by the local Social Insurance Office (allmänna försäkringskassan), thereby authorising the County Council to deduct the fees for Kjell Persson's care at Rosenhill from his pension and to pay the remainder to his bank account. The decision was not appealed against.

Gärdh Persson alleges that when Kjell Persson was provisionally discharged on 21 March 1988 she was given some 2.000 SEK by the manager of the nursing home, who claimed that to be the remaining amount of the pension paid out to Kjell Persson. She was further shown a bankbook showing that staff members of the nursing home had regularly withdrawn considerable sums of money from his account. She then stated that she had never consented to those withdrawals and reported the matter to the Mental Welfare Committee (styrelsen för omsorger om psykiskt utveckingsstörda) of the County Council.

In a letter of 5 December 1988 the Acting Director of Mental Welfare Services (vårdchefen) and the Head of the Finance Department of the Mental Welfare Committee informed Gärdh Persson that the administration of the patients' means had been subjected to regular audits by the auditors of the Mental Welfare Committee as well as to random audits by external auditors. It was further noted that from 1 January 1984 to 31 March 1988 41.847 SEK, corresponding to some 25 per cent of the total amount of his pension payments for that period, had been paid out to Kjell Persson. For the years 1986 to 1988 an account was given of how this money had been used. Due to the closing down of Rosenhill in the summer of 1988 it had not been possible to find the verifications pertaining to the administration of Kjell Persson's means in 1984 and 1985. The remainder, 3.438,20 SEK, had been handed over to Gärdh Persson when Kjell Persson had been provisionally discharged from Rosenhill.

Gärdh Persson then lodged a complaint with the police alleging that a large part of Kjell Persson's pension payments had been stolen by nursing staff.

The police investigation, including a control of the verifications available, disclosed nothing to support Gärdh Persson's allegations, and on 20 December 1988 the Public Prosecutor decided to close the investigation. The decision was upheld by the Regional Prosecutor of Stockholm and Gotland (regionåklagaren) on 14 April 1989 and by the Prosecutor-General (riksåklagaren) on 27 April 1989.

cc. The restriction on Gärdh Persson's visiting rights

The applicants allege that in the beginning of January 1984 Gärdh Persson was orally informed by the nursing staff at Rosenhill that her right to visit Kjell Persson would be restricted to two hours twice a week. Soon after this her visiting rights were restricted to two hours once a week. Kjell Persson was not allowed to leave the nursing home to see her. The restriction was confirmed in writing on 27 June 1984.

The Government submit that the restriction was imposed by the Director of Mental Welfare Services, together with other officials, and notified to Gärdh Persson in writing on 27 June 1984. It did not enter into force until 2 July 1984, it was to be applied until the end of August 1984 and allowed the applicant to visit the nursing home twice a week, i.e. Thursdays and Sundays from 1 p.m. to 3 p.m. According to the notification the restriction was imposed in view of the difficulties caused by Gärdh Persson's daily visits at Rosenhill, her lack of confidence in the nursing staff and her frequent questioning of his care there. It was not aimed at limiting her possibility of following Kjell Persson's care, but to improve the conditions for providing him with adequate care. It appears from the notification that the matter had been discussed with her on 8 June 1984.

c. The discharge proceedings

Following the applicants' request for a discharge of Kjell Persson the Discharge Board (utskrivningsnämnden) of Southern Stockholm on 25 February 1988 held a hearing, at which an inspection of his conditions in the nursing home was carried out. The Director of Mental Welfare Services, the manager of the nursing home and the Senior Medical Officer, Dr. M. B., were heard as well as Mr. K.-E. G. at the applicants' request. The Board found no reason to question the conditions at the nursing home or the manner in which Kjell Persson's care was being implemented.

Following a further hearing on 14 March 1988 the Discharge Board found no grounds for finally discharging Kjell Persson, but granted him a provisional discharge as from 16 March 1988 for a period of six weeks.

On 21 March 1988 Kjell Persson returned to the applicants' home. His provisional discharge was subsequently extended.

d. Kjell Persson's admission to the Björnkulla nursing home and his stay there (from 27 December 1988 to 29 September 1989)

aa. The revocation of Kjell Persson's provisional discharge

During the summer and autumn of 1988 Kjell Persson's condition deteriorated continuously.

Following a hearing on 15 December 1988 the Discharge Board revoked his provisional discharge.

On 27 December 1988 he was taken to the Björnkulla nursing home in Stockholm.

bb. The restrictions on Gärdh Persson's visiting rights

The applicants allege that upon Kjell Persson's admission to Björnkulla Gärdh Persson was orally informed by a nurse that her visiting rights would be restricted to two hours on Wednesdays and two hours on Sundays. She received no written confirmation of the restriction.

The Government submit that the restriction was imposed in a letter of 22 February 1989 from a representative of the Mental Welfare Committee to the Discharge Board. According to the letter Gärdh Persson's visiting rights had been restricted to two hours on Wednesdays and two hours on Sundays. It appears from the letter that the aim of the restriction was to give the staff members in charge of Kjell Persson's care a possibility to acquaint themselves properly with him. Moreover, Gärdh Persson had attempted to interfere with his care, e.g. by objecting to him undergoing dental treatment when he had been suffering from tooth ache.

cc. The administration and spending of Kjell Persson's pension

On 7 February 1989 the Social Insurance Office again decided to authorise the collection of Kjell Persson's pension payments pursuant to the 1962 Ordinance. The decision was reviewed on 6 March 1989 and upheld.

The decision was upheld on appeal by the Regional Social Insurance Court for Central Sweden (försäkringsrätten för Mellansverige) on 24 April 1990. That decision was not appealed against.

e. Kjell Persson's final discharge from Björnkulla

On 29 September 1989 Kjell Persson was finally discharged from Björnkulla. As from then on he lived with Gärdh Persson until 21 June 1992, when he died at a hospital in Stockholm, where he had been taken for emergency treatment.

Relevant domestic law

a. The 1967 Act

aa. General provisions

The 1967 Act, in force up to 1 July 1986, related to the care of mentally handicapped persons (Section 1).

Nursing homes were to be provided for mentally handicapped in need of special care. In certain circumstances care could be given in their own homes (Section 4, subsections 1 and 2).

The management of the care rested with a Mental Welfare Committee of the County Council. In each County Council at least one Administrative Board was to be established (Section 6, subsections 1 and 5).

Each Mental Welfare Committee appointed a Chief Education Officer (särskolchef), a Director of Mental Welfare Services and a Senior Medical Officer (Section 7).

Every nursing home was to have an appointed manager and physician (Section 11, subsections 1 and 2).

The National Board of Education (skolöverstyrelsen) and the National Board of Health and Welfare (socialstyrelsen) were to supervise the activities carried out under the 1967 Act (Section 13, subsection 1).

bb. Admission to and discharge from a nursing home

A mentally handicapped person who had attained the age of fifteen could be given compulsory care in a nursing home, if such care was absolutely necessary in view of the degree of his mental handicap and the fact that due to this handicap he was, inter alia, incapable of taking care of himself (Section 35, subsection 1).

A person admitted to a nursing home under the provisions of Section 35 was to be immediately and finally discharged, if the conditions under which care could be provided no longer existed (Section 40).

cc. Right of appeal

Under Section 44, subsection 1 an appeal could be lodged with the Psychiatric Council (psykiatriska nämnden) referred to in the 1966 Act on Mandatory Institutional Psychiatric Care in Certain Cases (lag 1966:293 om beredande av sluten psykiatrisk vård i vissa fall, hereinafter "the 1966 Act") against, inter alia, decisions whereby a person had been admitted to a nursing home.

Under Section 45, subsection 1 no appeal lay against a decision of the Psychiatric Council or a decision pursuant to Section 44 of the chief supervisory authority.

b. The 1985 Act on Special Care of Mentally Handicapped Persons and Others and the Transitional Act

The 1985 Act on Special Care of Mentally Handicapped Persons and Others (lag 1985:568 om särskilda omsorger om psykiskt utvecklingsstörda m.fl.) and the Transitional Act to that Act (lag 1985:569 om införande av lagen 1985:568 om särskilda omsorger om psykiskt utvecklingsstörda m.fl.) entered into force on 1 July 1986.

The 1985 Act does not provide for any committal to an institution irrespective of consent. Upon its entry into force, the 1967 Act was repealed with certain exceptions provided for in the Transitional Act. As regards nursing homes, Section 6 of the Transitional Act provided that Section 35 and some related provisions - Sections 36-37a and 39-54 - of the 1967 Act were to remain in force. This meant that care in a nursing home could still be imposed on a person without his consent where the conditions laid down in Section 35 of the 1967 Act were satisfied.

According to Section 7 of the Transitional Act, the duties which had been incumbent upon the Senior Medical Officer and the Director of Mental Welfare Services under the 1967 Act were to be carried out by officials appointed by the County Council. Decisions which had been taken by an Administrative Board under the 1967 Act were now to be taken by a Discharge Board under the 1966 Act in certain cases. Appeals could still be lodged with the Psychiatric Council.

As from 1 January 1992 the tasks of the Discharge Boards and the Psychiatric Board have been transferred to the County Administrative Courts (länsrätter) and the Administrative Courts of Appeal (kammarrätter).

c. The legislation and directives governing the administration of patients' means

If a patient entitled to pension payments stays in a nursing home for at least a whole month, the provider of the care may collect his pension payment for that month (Chapter 10, Section 3 of the 1962 Social Security Act; lag 1962:381 om allmän försäkring, and Section 2 of the 1962 Ordinance).

The collector of the pension payments shall hand over a certain amount of the payments received to the patient. However, if the patient himself is unable, due to his state of health, to make use of the money, it shall be used to improve his comfort or otherwise be spent for his personal benefit (Section 4 of the 1962 Ordinance).

A decision allowing for a person's pension payments to be collected is to be taken by the competent Social Insurance Office. The decision could, under the rules in force at the relevant time, be appealed to a Regional Social Insurance Court (försäkringsrätten) and, ultimately, to the Supreme Social Insurance Court (försäkrings-överdomstolen).

In a circular letter by the National Board of Health and Social Welfare of 4 January 1972 (socialstyrelsens cirkulär om medel för pensionsberättigade psykiskt utvecklingsstördas personliga behov, MF 1972:5) it is confirmed that a patient who is capable of administering cash has an absolute right to spend the money received as he wishes. A deduction from this sum of money to be spent on the general comfort in the nursing home can, thus, only take place with his consent. While there are no formal requirements for such a consent it shall, on the other hand, not be assumed to exist for certain purposes. Under no circumstances shall money be deducted for a purpose which the patient cannot benefit from.

The circular letter further prescribes that even those patients who are incapable of administering cash themselves shall receive a certain amount of money to be spent on their behalf in order to improve their comfort or otherwise for their personal benefit. In these cases it is, in principle, up to the manager of the nursing home to administer the patient's means, provided that he can benefit from any money being spent. It is "important" (angeläget) that, whenever possible and expedient, the administration and spending of money is based on consultations with the parents, the custodian or the guardian of the patient.

A general directive issued by the National Board of Health and Social Welfare on 31 January 1983 (socialstyrelsens allmänna råd om förvaltning av privata medel m.m. inom socialtjänsten, sjukvården och omsorgerna om psykiskt utvecklingsstörda, SOSFS 1983:4) prescribes that the administration of a patient's private means shall be governed by a written agreement between the provider of the care and the patient or his legal representative. Such an agreement may include a consent to withdrawals from the patient's bank account and may at any stage be renounced by the patient or his representative. Private means shall be registered, kept and administered in an adequate manner. Staff shall not keep private possessions on a patient's behalf, except when necessary for the purpose of his social training.

d. Control mechanisms, civil and criminal liability, etc.

The activities carried out under the 1967 Act are subject to supervision by the National Board of Health and Welfare which may carry out inspections of, inter alia, nursing homes. This applies equally to activities carried out before 1 July 1986 and, by virtue of the 1985 Transitional Act, after that date.

Medical care provided by, or under the responsibility of, a physician of a nursing home falls under the 1980 Act on the Supervision of Health and Medical Care Staff and Others (lag 1980:11 om tillsyn

över hälso- och sjukvårdspersonalen m.fl.; hereinafter "the 1980 Act"). The 1980 Act contains provisions on the duties of such staff, as well as on disciplinary sanctions that may be imposed in case of a failure to comply with those duties. Questions concerning disciplinary sanctions are to be determined by the Disciplinary Board of Health and Medical Care. A decision of this Board may be appealed to an Administrative Court of Appeal and, ultimately, to the Supreme Administrative Court (regeringsrätten).

An incident shall, for the purpose of criminal charges being brought, be reported to the police either by the National Board of Health and Social Welfare or the Disciplinary Board in cases where an official can reasonably be suspected of having committed an offence for which imprisonment is prescribed.

The authorities responsible for, and public officials carrying out, activities under the 1967 Act and the 1985 Transitional Act are subject to supervision also by the Parliamentary Ombudsman (riksdagens justitieombudsman). The task of the Ombudsman is to ensure that public authorities and officials comply with their duties and, in particular, that fundamental rights and freedoms are not violated. As a last resort, the Ombudsman is empowered to institute criminal proceedings, or disciplinary proceedings where disciplinary sanctions are provided for, against an official who has, by act or omission, wilfully or through negligence disregarded his duties.

The State, a municipality or a similar public organ such as a County Council is liable for, inter alia, pecuniary damages caused by a fault or negligence committed by an official when carrying out an activity for which the organ is responsible (Chapter 3, Section 2 of the 1972 Tort Liability Act; skadeståndslag 1972:207).

## COMPLAINTS

Following the Commission's partial decision on admissibility of 3 May 1993 (see below) the applicants' remaining complaints are as follows:

1.(a) Kjell Persson complains under Article 8 of the Convention of the alleged lack of privacy in the Rosenhill nursing home, in particular due to the fact that the window of the room in which he was staying had no curtains and was facing a corridor in frequent use by patients and visitors.

(b) At the hearing before the Commission Gärdh Persson, also invoking Article 8 of the Convention, specified that she also complains in her own name of the deprivation of Kjell Persson's privacy in the Rosenhill nursing home, as the alleged lack of privacy also interfered with her private and family life during her visits.

(c) Gärdh Persson further complains under Article 8 of the Convention of the restrictions on her right to visit Kjell Persson in the nursing homes.

2. Under Articles 6 and 13 of the Convention Gärdh Persson also complains that she could not obtain a court review of the restriction on her visiting rights in both nursing homes.

3. The applicants finally complain that during Kjell Persson's stay at the Rosenhill nursing home money was withdrawn from his bank account without their consent and spent mostly for unknown purposes. They invoke in this respect Article 1 of Protocol No. 1 to the Convention.

## PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 2 September 1988 and registered on 8 December 1988.

On 15 April 1991 the Commission decided to communicate the application to the respondent Government, with the exception of the complaint regarding the justification of the care order.

The Government's observations were submitted on 29 July 1991 and the applicants' observations in reply were submitted on 22 September 1991. Additional observations were submitted by the applicants on 11 February 1992.

On 13 September 1991 the Commission granted the applicants legal aid.

On 9 November 1992 the Commission was informed of the death of Kjell Persson and Gärdh Persson's wish to pursue the application both in her personal capacity and on his behalf.

On 11 December 1992 the Government were invited to submit further information. The information was submitted on 5 January 1993. The applicants' comments in reply were submitted on 5 February 1993.

On 3 May 1993 the Commission adjourned its examination of the complaint under Article 8 of the Convention relating to Kjell Persson's alleged lack of privacy at the Rosenhill nursing home, the complaint under Article 8 of the Convention relating to the alleged restrictions on Gärdh Persson's visiting rights, the complaints under Article 6 para. 1 and Article 13 of the Convention relating to the absence of a right to a court review of the restriction of Gärdh Persson's visiting rights as well as the complaint under Article 1 of Protocol No. 1 relating to the administration and spending of Kjell Persson's pension income. The remainder of the application, as submitted under Articles 3, 5, 6 and 8 of the Convention, was declared inadmissible. The Commission further invited the parties to a hearing on the admissibility and merits of the adjourned complaints.

At the hearing, which was held on 2 July 1993, the parties were represented as follows:

The Government

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| Ms. Eva Jagander | Agent, Ministry for Foreign Affairs |
| Ms. Eva Hammar | Adviser, Ministry of Health and Social Affairs |

The applicants

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| Mrs. Siv Westerberg | Counsel |
| Ms. Birgitta Hellwig | Assistant |

The second applicant, Mrs. Gärdh Persson, was also present.

THE LAW

1. (a) Kjell Persson complains under Article 8 (Art. 8) of the Convention of the alleged lack of privacy in the Rosenhill nursing home, in particular due to the fact that the window of the room in which he was staying had no curtains and was facing a corridor in frequent use by patients and visitors.

The Commission observes that Kjell Persson died in 1992, but that Gärdh Persson has expressed the wish to pursue the complaint on his behalf.

The Government argue that the complaint is not transferable, as the alleged lack of privacy directly affected only Kjell Persson himself. Gärdh Persson cannot therefore claim that Kjell Persson's original interest in having the alleged violation of the Convention established may be considered as an interest now vested in her.

Gärdh Persson contends that, as Kjell Persson's alleged lack of privacy also affected her when the applicants met in the nursing home, the complaint is so closely linked to her own person that it must be considered transferable.

The Commission recalls that under Article 25 (Art. 25) of the Convention "the Commission may receive petitions ... from ... individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in [the] Convention ...". An heir of a deceased applicant may not claim any general right to have the examination of a complaint brought by the deceased continued. The essential point is whether the particular nature of the complaint allows it to be, in the circumstances of the case, considered as transferable (cf. No. 10828/84, Dec. 6.10.88, D.R. 57 p. 5).

The Commission observes that the complaint now at issue relates to the factual conditions affecting exclusively the privacy of the late Kjell Persson in the Rosenhill nursing home. In these circumstances the Commission considers the complaint to be so closely related to his own person that Gärdh Persson does not have a sufficient legal interest in pursuing it on his behalf (cf. Kofler v. Italy, Comm. Report 9.10.82, D.R. 30 p. 5).

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

(b) As regards the alleged lack of respect for the applicants' private and family life Gärdh Persson further submits that the total deprivation of Kjell Persson's privacy in the Rosenhill nursing home also interfered with her private and family life during her visits. The Commission accepts that Gärdh Persson's complaint of the conditions in the Rosenhill nursing home during her visits also falls to be considered.

The Commission has proceeded to a preliminary examination of this complaint in the light of the parties' submissions. It considers that the complaint raises questions of fact and law of such a complex nature that their determination requires an examination on the merits. The complaint cannot therefore be declared inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other reason for declaring the complaint inadmissible has been established.

(c) The next complaint under Article 8 (Art. 8) of the Convention relates to the restrictions on Gärdh Persson's right to visit her son in the nursing homes. In this respect the Commission notes the Government's objection that the complaint is inadmissible for non-exhaustion of domestic remedies, as Kjell Persson did not avail himself of the possibility under Section 44 of the 1967 Act of requesting permission to leave the nursing home in order to meet Gärdh Persson.

The Commission recalls that under Article 26 (Art. 26) of the Convention, it may only deal with a complaint after all domestic remedies have been exhausted, according to the generally recognised rules under international law. An applicant must make normal use of remedies likely to be effective and adequate in respect of the matters complained of (cf. No; 10978/84, Dec. 14.10.86, D.R. 49 pp. 149, 155). The burden of proving the existence of available and sufficient

remedies lies upon the State (Eur. Court H.R., Deweer judgment of 27 February 1980, Series A no. 35, p. 15, para. 26).

The Commission notes that the object of the present complaint is the alleged interference with Gärdh Persson's visiting rights under Article 8 (Art. 8) of the Convention. The remedy referred to by the Government would therefore not have been an adequate one as regards the substance of the complaint. It follows that the Government's preliminary objection must be rejected.

The Commission has proceeded to a preliminary examination of the complaint in the light of the parties' submissions. It considers that it raises questions of fact and law of such a complex nature that their determination requires an examination on the merits. The complaint cannot therefore be declared inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other reason for declaring the complaint inadmissible has been established.

2. The Commission has also proceeded to a preliminary examination of the complaint under Articles 6 and 13 (Art. 6, 13) of the Convention relating to the absence of a right to a court review of the restriction of Gärdh Persson's visiting rights. It considers that it raises questions of fact and law of such a complex nature that their determination requires an examination on the merits. The complaint cannot therefore be declared inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other reason for declaring the complaint inadmissible has been established.

3. As regards the complaint relating to the administration and spending of Kjell Persson's pension income in the Rosenhill nursing home the Government argue that domestic remedies have not been exhausted, as the substance of the complaint could have been raised in civil proceedings for the purpose of claiming that the money withdrawn and spent be restored. The applicants did not avail themselves of this possibility, nor did they institute private prosecution proceedings against those suspected of embezzlement.

The applicants contend that civil proceedings or private prosecution would lack any prospect of success, as it is impossible for them to know which of the staff members in the nursing home embezzled part of Kjell Persson's pension. The County Council in charge of the nursing home could only be held responsible for paying damages, if it could be established that one of its officials had committed an offence. The police and the prosecutors refused, however, to conduct an effective investigation. Finally, some of the book-keeping is no longer to be found. The remedies invoked by the Government would therefore not be effective within the meaning of Article 26 (Art. 26) of the Convention.

The Commission again recalls that under Article 26 (Art. 26) of the Convention, it may only deal with a complaint after all domestic remedies have been exhausted, according to the generally recognised rules under international law (see para. 1 b above). Where doubts exist as to the effectiveness of a remedy, that remedy must be tried (No. 10148/82, Dec. 14.3.85, D.R. 42 p. 98; cf. also Eur. Court H.R., Cardot judgment of 19 March 1991, Series A no. 200, p. 18, para. 34).

The Commission observes that the applicants failed to institute civil damage proceedings against the County Council in order to claim the restoration of part of Kjell Persson's pension.

The Commission therefore concludes that the applicants have not exhausted the remedy available to them under Swedish law. Moreover, an examination of the complaint does not disclose the existence of any

special circumstance which might have absolved the applicants, according to the generally recognised rules of international law, from exhausting the domestic remedy at their disposal.

It follows that this complaint must be rejected for non-exhaustion of domestic remedies under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES ADMISSIBLE, without prejudging their merits,

Gärdh Persson's complaint under Article 8 (Art. 8) of the Convention relating to the conditions in the Rosenhill nursing home during her visits to Kjell Persson;

her complaint under Article 8 (Art. 8) of the Convention relating to the restrictions on her right to visit Kjell Persson in the Rosenhill and Björnkulla nursing homes; and

her complaint under Article 6 para. 1 and Article 13 (Art. 6-1, 13) of the Convention of the absence of a right to a court review of the restrictions on her visiting rights; and

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)