AS TO THE ADMISSIBILITY OF

Application No. 32700/96
by Loore PURTONEN
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 9 September 1998, the following members being present:

MM	N. BRATZA, Acting President
	M.P. PELLONPÄÄ
	E. BUSUTTIL
	A. WEITZEL
	C.L. ROZAKIS
Mrs	J. LIDDY
MM	L. LOUCAIDES
	B. MARXER
	B. CONFORTI
	I. BÉKÉS
	G. RESS
	A. PERENIČ
	C. BÎRSAN
	K. HERNDL
	M. VILA AMIGÓ
Mrs	M. HION
Mr	R. NICOLINI

Mrs M.F. BUQUICCHIO, 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 1 July 1996 by Loore PURTONEN against Finland and registered on 21 August 1996 under file No. 32700/96;

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 is an Estonian citizen, born in 1955 and resident in Lappeenranta. Before the Commission she is represented by Mr Henrik K. Dahlman, a lawyer practising in Lappeenranta.

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

The applicant married her husband (X), who is Finnish, in Estonia in 1986. The applicant moved to Finland in 1987 and gave birth to a baby boy on 7 June 1988. The applicant and her family lived on a farm owned by X.

Due to arguments between the spouses, the applicant moved to Helsinki on 6 June 1994 and later to Lappeenranta. She did not take the child with her.

On 27 June 1994 the social services office in X's municipality gave an official statement regarding the custody of the applicant's son. In the statement it was noted that the applicant had no permanent address in Helsinki and that X had all the necessary resources to take care of the child. X also had plans for the future of the child. It was also noted that, as the parents had arguments with each other, there was no basis for joint custody. It was recommended that custody should be awarded to X.

On 8 July 1994 X applied for a divorce before the Lappeenranta District Court (käräjäoikeus, tingsrätt), seeking for custody of his son. X submitted the social services office's statement to the District Court in support of his claim. The applicant sought joint custody and that the child should be ordered to live with her.

There was a hearing before the District Court on 11 August 1994.

On 1 November 1994 the social services office of X's municipality submitted another statement to the District Court; this time the statement had been requested by the District Court. In this statement it was mentioned that the applicant had moved to Lappeenranta and had a permanent address and a job. It was stated that there was no criticism to be made of the applicant's situation but that it was in the interests of the child for his present position to be maintained. Joint custody was not recommended as there were problems, different cultural backgrounds and, especially, different opinions about the bringing up of children between the spouses.

On 11 May 1995 the social services office of Lappeenranta (the applicant's municipality) gave an official statement regarding the custody of the child to the District Court. In the statement it was noted that both spouses were good parents and that custody could be awarded to either of them.

There was a hearing before the District Court on 29 May 1995 in which both parties submitted evidence.

In its judgment of 29 May 1995 the District Court granted the divorce and awarded custody of the child to X. The District Court had found both parents to be suitable to have custody of the child. However, it was noted that the child had lived all his life on his father's farm and that there had been no problems according to the social services office's statement. Therefore the District Court found it to be in the interests of the child to maintain the status quo.

On 27 June 1995 the applicant appealed to the Kouvola Court of Appeal (hovioikeus, hovrätt), claiming that the social services office's statement dated 27 June 1994 had been given unlawfully as it had been requested by X and not by the District Court. According to the Decree on Custody and Visiting Rights with regard to Children (asetus lapsen huollosta ja tapaamisoikeudesta, förordning ang. vårdnad om barn och umgängesrätt) a social services office can give an official statement only at the request of the court. The applicant submitted that the social services office, by giving a statement favouring X, and the District Court, by admitting it, had put X in a better position from the start. She had had no possibility of challenging that statement afterwards.

On 27 September 1995 the Court of Appeal upheld the District Court's judgment and its reasoning.

On 27 November 1995 the applicant requested leave to appeal to the Supreme Court (korkein oikeus, högsta domstolen), claiming that the social services office's statement had been unlawful. She also claimed that she had been discriminated against on the basis of her nationality as wrong aspects had been given priority in the custody case.

On 23 January 1996 the Supreme Court refused the applicant leave to appeal.

In the meantime the applicant complained to the Parliamentary Ombudsman (eduskunnan oikeusasiamies, riksdagens justitieombudsman), submitting that the social services office's statement was unlawful and that the social services office had influenced the court in favour of the applicant's husband. The complaint was communicated to the social office in question. In its observations it noted that three different statements had been submitted to the District Court and that all those three had been given at the request of the court. On 29 November 1995 the Deputy Parliamentary Ombudsman (eduskunnan apulaisoikeusasiamies, riksdagens biträdande justitieombudsman) refused to investigate the case further as it was still pending before the Supreme Court at the time. However, he found that there had been misconduct on the part of the social office and the director of that social office was noted of this finding.

COMPLAINTS

1. The applicant claims a violation of her right to enjoy equality of rights and responsibilities of a private law character between spouses in the event of the dissolution of the marriage as the applicant's former husband was favoured by the social office and

the courts regarding the custody of the child. She invokes Article 5 of the Protocol No. 7 to the Convention in this respect.

2. The applicant also complains that she was discriminated against on the basis of her nationality as her nationality, in her opinion, was taken into account in the custody case. In this respect she invokes Article 14 of the Convention.

THE LAW

1. The applicant claims a violation of her right to enjoy equality of rights and responsibilities between spouses in their relations with their child when her marriage was dissolved as the applicant's former husband was favoured by the social office and the courts regarding the custody of the applicant's child. She invokes Article 5 of Protocol No. 7 to the Convention which reads as follows:

"Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children."

The Commission considers that this provision relates to rights and responsibilities in private law only. Accordingly, the State's obligation under Article 5 involves essentially a positive obligation to provide a satisfactory legal framework under which spouses have equal rights and obligations concerning such matters as their relations with their children. In the present case the reason for requesting an official statement from the social services authority was to get an impartial statement concerning the interests of the child in question. While it is true that this statement was requested at initiative of the applicant's adversary, the Commission notes that other statements were requested by the court and several witnesses were heard.

The Commission further recalls that the final sentence of Article 5 of Protocol No. 7 to the Convention provides that the Article shall not prevent States from taking such measures as are necessary in the interests of children. It is not for the Commission to reassess what is in the interests of the child in the present case. That is for the national authorities to evaluate. The Commission notes that the final judgment was based on the interests of the child. There is nothing indicating that the conclusion reached by the court was unreasonable and thus fell outside the legitimate margin of appreciation of national authorities.

Thus, having regard to the circumstances of the case, the Commission finds that the custody proceedings do not disclose any appearance of a violation of Article 5 of Protocol No. 7 to the Convention.

It follows that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The applicant also complains that she was discriminated against on the basis of her nationality. She invokes Article 14, which reads as follows:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

In view of the nature of the allegations made, the Commission considers it appropriate to examine this part of the application in conjunction with Article 5 of Protocol No. 7 to the Convention.

In the enjoyment of the rights and freedoms guaranteed by the Convention, Article 14 affords protection against different treatment, without an objective and reasonable justification, of persons in similar situations.

In awarding parental rights - claimed by both parties - to the father in preference to the mother, the domestic courts had to deal with the question whether the applicant was fit to bear responsibility for the child's care and upbringing. In so doing they took account of the practical consequences of the actual situations of the spouses and also their cultural backgrounds. However, the judgment was based on the practical questions, inter alia, the fact that the child had lived all his life in the same place and it was found to be in his interest not to move. The aim pursued by the domestic courts was a legitimate one, namely the protection of the interests of the child (see Eur. Court HR, Hoffmann v. Austria judgment of 23 June 1993, Series A no. 255-C, pp. 58-60, paras. 31-36).

In these circumstances the Commission does not find it established that the judgment discriminated against the applicant on the basis of her nationality or that the social services office's statements were influenced unduly by her nationality. Thus, the Commission finds that the proceedings against the applicant do not disclose any appearance of a violation of Article 14 of the Convention taken in conjunction with Article 5 of Protocol No. 7 to the Convention.

It follows that this part of the application must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

N. BRATZA
Acting President
of the First Chamber