AS TO THE ADMISSIBILITY OF

Application No. 27122/95
by Tinna ROMLIN
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 13 January 1995 by Tinna ROMLIN against Sweden and registered on 25 April 1995 under file No. 27122/95;

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 1965, resides at Sollentuna. Before the Commission she is represented by Mr. Georg Antal, a lawyer practising in Stockholm.

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

On 14 December 1989 the applicant applied for a disability allowance (handikappersättning) under Chapter 9, Section 2 of the Social Insurance Act (Lagen om allmän försäkring, 1962:381) on the grounds of incapacity due to rheumatoid arthritis and asthma.

On 20 March 1991 the Social Insurance Office (Försäkringskassan) of the County of Stockholm rejected the application, finding that the applicant's need for assistance and her additional costs due to her handicap did not attain the level required under the above provision.

Upon appeal, the Administrative Court of Appeal (Kammarrätten) in Stockholm, on 7 December 1992, upheld the Social Insurance Office's decision. The applicant did not request an oral hearing in the

appellate court nor did the court order one of its own motion.

The applicant then appealed to the Supreme Social Insurance Court (Försäkringsöverdomstolen). She requested the court to hold an oral hearing. She did not, however, complain about the lack of an oral hearing before the Administrative Court of Appeal.

On 13 July 1994 the Supreme Social Insurance Court decided not to hold a hearing and on 30 December 1994 it refused the applicant leave to appeal against the appellate court's judgment.

With regard to the proceedings in the administrative courts, Section 9 of the Administrative Procedure Act (Förvaltningsprocess-lagen, 1971:271) provides that they are generally in writing. An oral hearing may be held, however, if this is for the benefit of the examination of the case or promotes its speedy determination. The Administrative Court of Appeal shall hold an oral hearing, if it is requested by a party and not unnecessary or inexpedient.

COMPLAINT

The applicant claims that the refusal to hold an oral hearing constituted a violation of Article 6 of the Convention.

THE LAW

The applicant complains that she was denied an oral hearing. She invokes Article 6 (Art. 6) of the Convention, which in its relevant parts reads as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a ... public hearing ... by ... [a] tribunal ..."

The Commission first considers that the applicant, in applying for an disability allowance, claimed an individual, economic right under the Social Insurance Act. The Commission finds that the examination of the claim involved a determination of the applicant's civil rights and that, therefore, Article 6 para. 1 (Art. 6-1) of the Convention applies to this examination (cf. Eur. Court HR, Salesi v. Italy judgment of 26 February 1993, Series A no. 257-E, pp. 59-60, para. 19, and Schuler-Zgraggen v. Switzerland judgment of 24 June 1993, Series A no. 263, p. 17, para. 46).

The Commission is of the opinion, however, that when a Supreme Court determines, in a preliminary examination of the case, whether or not the conditions required for granting leave to appeal have been fulfilled, it is not making a decision relating to "civil rights and obligations" (cf. No. 11826/85, Helmers v. Sweden, Dec. 9.5.89, D.R. 61 p. 138).

In the present case, the decision of the Supreme Social Insurance Court of 13 July 1994 not to hold an oral hearing was taken during the proceedings in which that court, without entering on the merits, refused the applicant leave to appeal against the judgment of the Administrative Court of Appeal. It follows that Article 6 para. 1 (Art. 6-1) of the Convention does not apply to this decision.

This part of the application is thus incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

In so far as the applicant's complaint concerns also the lack of an oral hearing in the Administrative Court of Appeal, the Commission recalls that the applicant neither requested that court to hold an oral hearing nor complained to the Supreme Social Insurance Court about the appellate court's failure to hold a hearing.

In this respect, the Commission recalls that the right to a "public hearing" in the sense of Article 6 para. 1 (Art. 6-1) may entail an entitlement to an "oral hearing" (cf., e.g., Eur. Court HR, Fredin v. Sweden (no. 2) judgment of 23 February 1994, Series A no. 283-A, p. 10, para. 21). However, neither the letter nor the spirit of this provision prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to have his case heard in public, but any such waiver must be made in an unequivocal manner and must not run counter to any important public interest (cf., e.g., the above-mentioned Schuler-Zgraggen v. Switzerland judgment, pp. 19-20, para. 58).

In the present case, Section 9 of the Administrative Procedure Act provided that an oral hearing should be held if a party so requested and if it was not unnecessary or inexpedient. As the proceedings in the administrative courts, as indicated by that provision, are generally in writing, the applicant could be expected to request the Administrative Court of Appeal to hold an oral hearing if she attached importance to it. She did not do so, however. It may reasonably be considered, therefore, that she unequivocally waived her right to a hearing in the appellate court. Moreover, it does not appear that the dispute in question raised issues of public importance such as to make a hearing necessary.

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.

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