AS TO THE ADMISSIBILITY OF

Application No. 19992/92
by S.
against Norway

The European Commission of Human Rights sitting in private on 5 May 1993, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI

Mr. K. ROGGE, Secretary to the Second 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 27 January 1992 by S. against Norway and registered on 14 May 1992 under file No. 19992/92;

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

The applicant is a Norwegian citizen, born in 1951. He resides at K., Norway. Before the Commission he is represented by Mr. Sigurd Knudtzon, a lawyer practising in Oslo.

On 11 June 1987 the applicant married a British citizen in Norway. A son was born out of this marriage on 5 June 1989. The family moved from Norway to the United Kingdom in early 1990 and took up residence there. Due to problems in the marriage the applicant moved to Norway in March 1991. His wife and son remained in the United Kingdom. On 19 August 1991 the applicant returned to the United Kingdom and on 27 August he succeeded in having the name of his son entered in his passport at the Norwegian Embassy in London by using a forged declaration of approval from his wife.

On 6 September 1991 the applicant returned to Norway together with his son, without informing his wife thereof. Realising what had happened she informed the British authorities, and furthermore obtained legal advice as to what action to take. The British authorities issued a warrant of arrest against the applicant, who was now, according to British law, suspected of kidnapping. On 14 September 1991 the mother instituted proceedings in the Eiker, Modum and Sigdal Enforcement Court (Namsrett) requesting the immediate return of the child, referring inter alia to the Hague Convention of 25 October 1980 concerning child

abduction. The British authorities furthermore submitted a request to the Norwegian Ministry of Justice for the extradition of the applicant. This request was forwarded to the Court.

On 19 September 1991 the Enforcement Court ordered the return of the child to the mother on the basis of the mother's request and the other material submitted, inter alia by the British authorities. It did not hear the applicant prior to the decision being taken.

The applicant then requested the Norwegian social authorities to take the child into public care, claiming that the child would be subjected to ill-treatment if returned to the mother. By decision of 25 September 1991 the social authorities at Korgen took the child into temporary care. This decision was, however, repealed by the County Governor (fylkesmannen) on the same day and the child was returned to the mother.

COMPLAINTS

The applicant complains that the court proceedings in the Enforcement Court did not comply with the requirements of Article 6 para. 1 of the Convention as he was not heard before the decision was taken.

Furthermore, he alleges that he was deprived of the opportunity to appeal against the decision as such an appeal would have been meaningless, the child having been returned to the mother immediately.

THE LAW

1. The applicant complains that the proceedings in the Enforcement Court did not comply with the requirements of Article 6 para. 1 (Art. 6-1) of the Convention as he was not heard before the Court decided on the matters at issue. He invokes Article 6 para. 1 (Art. 6-1) of the Convention which, in so far as is relevant, reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Commission recalls the constant jurisprudence of the Convention organs, according to which Article 6 para. 1 (Art. 6-1) applies only to the "determination" of "civil rights and obligation" or any "criminal charge". As the Convention organs have held on several occasions, there are cases which are not included in either of these categories and which thus fall outside the scope of Article 6 para. 1 (Art. 6-1) (see e.g. No. 10144/82, Dec. 11.5.83, D.R. 33 p. 276).

Since there is no question of a "criminal charge" in the present case, the issue to be decided is whether there was a "determination" of a "civil right or obligation" in the proceedings before the Enforcement Court.

Having regard to the issue which that Court had to consider the Commission finds that it did not involve a determination of the applicant's civil rights or obligations within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. It may be that subsequent disputes between the spouses might involve civil rights, such as for example matrimonial matters or child custody issues. The applicant has not, however, referred to such disputes, nor has it been alleged that such matters could not be brought before a tribunal which would satisfy the requirements of Article 6 (Art. 6) of the Convention.

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains that he could not appeal against the decision of the Enforcement Court as the child was returned to the mother immediately.

However, the Commission recalls that, except for a certain right of review in criminal cases guaranteed by Article 2 of Protocol No. 7 (P7-2) to the Convention which is not relevant in the present case, the right to appeal does not feature among the rights and freedoms guaranteed by the Convention.

It follows that this part of the application is also incompatible ratione materiae with the provisions of the Convention and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)