AS TO THE ADMISSIBILITY OF

Application No. 27823/95
by Marlen SIBBEL-BECKER
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 16 October 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

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 24 March 1995 by Marlen SIBBEL-BECKER against Sweden and registered on 7 July 1995 under file No. 27823/95;

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 1962, resides at Piteå. 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 September 1992 the Social Insurance Office (försäkrings-kassan) of the County of Norrbotten rejected the applicant's application for an increase of her disability allowance (handikapp-ersättning) under the Social Insurance Act (Lagen om allmän försäkring, 1962:381). The allowance thus remained at 36 per cent of a basic amount (basbelopp) geared to the price index.

The applicant appealed to the County Administrative Court (länsrätten) of the County of Norrbotten, claiming that she had additional costs which had not been taken into account by the Social Insurance Office. Referring to medical certificates, she stated that, on account of her intestinal illness, she was prescribed a low-fat diet and was required to have extra meals. She did not request the Court to hold an oral hearing in the case.

By judgment of 23 February 1993, the County Administrative Court found that the applicant, due to the costs she had specified, was entitled to a disability allowance amounting to 53 per cent of the basic amount. Accordingly, the Court annulled the Social Insurance Office's decision and referred the case back to the Office for implementation of the judgment.

Both the applicant and the National Social Insurance Board (Riksförsäkringsverket) appealed to the Administrative Court of Appeal (kammarrätten) in Sundsvall. Again, the applicant did not request an oral hearing.

On 22 February 1994 the Administrative Court of Appeal found against the applicant and annulled the County Administrative Court's judgment. The appellate court stated that the applicant did not have additional costs to such an extent that she was entitled to an allowance exceeding 36 per cent of the basic amount.

The applicant appealed to the Supreme Social Insurance Court (Försäkringsöverdomstolen). She requested the Court to hold an oral hearing and to order the National Social Insurance Board to clarify its position with respect to certain aspects of the case.

On 19 October 1994 the Supreme Social Insurance Court informed the applicant that it found no reason to request observations from the National Social Insurance Board before deciding whether to grant the applicant leave to appeal. The Court further stated that it rarely holds oral hearings and invited the applicant to submit further observations in writing within a month.

On 3 March 1995 the Supreme Social Insurance Court refused the applicant leave to appeal.

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

Invoking Article 6 of the Convention, the applicant claims that the Supreme Social Insurance Court was not impartial. She further complains of the refusal to hold an oral hearing.

THE LAW

The applicant complains of violations of 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 an ... impartial tribunal ..."

The applicant claims that the National Social Insurance Board was given preferential treatment by the Supreme Social Insurance Court, as the Court refused leave to appeal without having held an oral hearing and without having obtained further observations from the Board and so based its decision on the Board's unconfirmed and incorrect submissions. At the hearing, the applicant would allegedly have shown that the Board's submissions were groundless.

The Commission first considers that the applicant, in applying for an increase of her 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 applied to these proceedings (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 Supreme Social Insurance Court decided on 3 March 1995, without entering on the merits, not to grant 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 or the Court's preceding examination.

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 oral hearings in the County Administrative Court and the Administrative Court of Appeal, the Commission notes that the applicant did not request these courts to hold hearings in the case.

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 County Administrative Court and the Administrative Court of Appeal to hold hearings 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 before these courts. 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	G.H. THUNE
Secretary	President
to the Second Chamber	of the Second Chamber