AS TO THE ADMISSIBILITY OF

Application No. 22504/93
by Asbjörn SKJOLDAGER
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 17 May 1995, the following members being present:

Mrs. G.H. THUNE, Acting President
Mr. H. DANELIUS
MM. G. JÖRUNDSSON
S. TRECHSEL
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

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 May 1993 by Asbjörn Skjoldager against Sweden and registered on 23 August 1993 under file No. 22504/93;

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, is a psychologist born in 1948 and resident at Karlshamn. He states that he represents three disabled patients, Tommy Varenhed as well as two persons named Lars and Ann-Kristin, who were staying at the Lindemo nursing home at Asarum until the end of 1994.

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

In November 1991 the applicant, working as a psychologist of the Authority for the Care of Disabled Persons (handikappomsorgen) of the County Council (landstinget) of Blekinge, carried out an inspection of the Lindemo nursing home. He concluded that a number of patients were being locked up in their rooms without permission. In certain sections of the nursing home the front doors of the buildings were also locked. The applicant brought his findings to the attention of the manager of the nursing home.

On 10 February 1992 the applicant was temporarily suspended from his post.

On 31 March 1992 the National Board of Health and Welfare (socialstyrelsen) carried out an inspection of the Lindemo nursing home. It found that in one section ("Boken 2") patients could only open the front door of the building with assistance from staff members in possession of the necessary key.

On 1 April 1992 the County Council ordered the applicant to undergo a psychiatric examination prior to considering whether to reinstate him in office.

The applicant refused to undergo the examination.

At the request of the County Council the National Board of Health and Welfare then instituted proceedings against the applicant before the Disciplinary Board of Health Care (hälso- och sjukvårdens ansvarsnämnd). The National Board of Health and Welfare requested that his certification as a psychologist be temporarily withdrawn due to, among other things, alleged cooperation difficulties.

On 10 April 1992 the National Board of Health and Welfare requested the County Council to indicate when the locking-up of patients at the Lindemo nursing home would end.

On 4 June 1992 the County Council replied that patients were no longer locked up, as new locks had been installed. These locks had a protective cap, thus enabling everyone to open them.

In a letter to the applicant of 11 June 1992 the National Board of Health and Welfare stated that it had concluded its investigation at the Lindemo nursing home. It had found that patients were no longer being locked up and, accordingly, refrained from taking any further action. In October 1992 the applicant complained about the locking-up to the Disciplinary Board of Health Care. No action was allegedly taken by the Board.

In response to a further petition by the applicant relating to the manner in which patients in the Lindemo nursing home were allegedly being locked up, the Government (Ministry of Social Welfare) on 18 January 1993 referred to the advice issued by the National Board on protective measures to be taken in the treatment of patients suffering from dementia (socialstyrelsens allmänna råd, socialstyrelsens författningssamling 1992:17). The Government pointed out that according to the advice the locks shall be such that the patients themselves can unlock a door.

On 22 January 1993 the Disciplinary Board of Health Care rejected the request of the National Board of Health and Welfare that the applicant's certification as a psychologist be revoked.

On 17 January 1994 the National Board of Health and Welfare refused to disclose to the applicant the names of the patients staying at the Lindemo nursing home.

The Lindemo nursing home was closed at the end of 1994.

COMPLAINTS

The applicant complains that the locks which were installed on the doors of the patients' rooms in the Lindemo nursing home in 1992 could not be opened by a disabled person due to their protective caps. Given that no compulsory care orders had been issued in regard to the patients, at least the three patients referred to by the applicant were de facto detained in violation of Article 5 para. 1 of the Convention. The detention allegedly also endangered the patients' health. The applicant also invokes Article 14 of the Convention and Article 2 of Protocol No. 4.

The applicant submits that the three patients referred to by him are unable to lodge an application on their own and that the authorities have refused to disclose information enabling him fully to identify all of them and to procure powers of attorney either from the patients themselves or from their possible guardians, showing that

he is entitled to represent them before the Commission. He nevertheless considers that, although he is temporarily suspended from his post as a psychologist of the County Council of Blekinge, he remains ethically and professionally responsible for the care of his patients. He therefore considers himself competent to bring an application on their behalf.

THE LAW

The applicant complains that the nature of the locks which were installed on the doors of the patients' rooms in the Lindemo nursing home in 1992 resulted in the de facto detention of at least the three patients referred to by him. Their detention was allegedly in violation of Article 5 para. 1 (Art. 5-1) of the Convention and also endangered their health. The applicant also invokes Article 14 (Art. 14) of the Convention and Article 2 of Protocol No. 4 (P4-2).The applicant submits that the three patients referred to by him are unable to lodge an application on their own. He therefore considers himself competent to bring an application on their behalf.

The Commission recalls that under Article 25 para. 1 (Art. 25-1) of the Convention it may receive petitions from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Under Article 27 para. 1 (a) (Art. 27-1-a) of the Convention the Commission shall furthermore not deal with any petition submitted under Article 25 (Art. 25) which is anonymous.

The Commission observes that the applicant does not claim that he himself is the direct victim of a violation of his Convention rights. He has lodged the application on behalf of patients in a nursing home which he inspected in 1991 in his capacity as a psychologist of the Authority for the Care of Disabled Persons of the competent County Council. He submits that none of the patients are able to lodge an application on their own and has fully named one of them. He has been unable, however, to procure powers of attorney either from any of the patients themselves or from any of their possible guardians, showing that he is entitled to represent the patients before the Commission.

The Commission recalls that, in principle, a person who does not have the right to represent a person under domestic law may nevertheless, in certain circumstances, represent this person before the Commission (cf., e.g., Eur. Court H.R., Nielsen judgment of 28 November 1988, Series A no. 144). However, the representative should normally submit evidence showing that he is empowered to appear before the Convention organs on an applicant's behalf. If this condition is not met, the Commission can only consider the application in so far as the representative himself claims to be a victim, either in his direct or indirect capacity (cf. No. 8612/79, Dec. 10.5.79, D.R. 15 pp. 259, 263).

The Commission furthermore recalls that in exceptional circumstances it has accepted that a third party can be accepted as an "indirect victim" at least in the initial stage of the Commission proceedings, for instance if he has a valid personal interest in the welfare of the person on whose behalf he has lodged the application (No. 7011/75, Dec. 3.10.75, D.R. 4 pp. 215, 232). A close connection is required, however, between the indirect and the direct victim as well as between them and the act complained of (cf. No. 8416/79, Dec. 13.5.80, D.R. 19 pp. 244, 248).

The Commission assumes that the patients named by the applicant could themselves claim status as direct victims under Article 25 para.

1 (Art. 25-1) of the Convention. It notes that at least one of them has been identified by the applicant. It finds no evidence, however, showing that the applicant has been authorised by any of the patients or their possible guardians to act on the patients' behalf in the Convention proceedings. Nor has it been shown that the patients were unable to lodge an application in their own names, for instance by authorising the applicant to act as their representative. The Commission can therefore only consider the application in so far as the applicant claims to be an indirect victim of the situation complained of.

The Commission notes that as a psychologist for the Authority for the Care of Disabled Persons the applicant carried out an inspection of the nursing home in 1991, that is prior to the installation of the new locks which he complains about. There is no indication that he was at any time entrusted with the everyday care of the patients whom he has referred to in his application. In these circumstances the Commission cannot find a sufficiently close connection between him and those patients. The present case can therefore be distinguished from Application No. 7011/75 referred to above. Accordingly, the applicant cannot be accepted as an indirect victim of the situation complained of.

The Commission concludes that the applicant has failed to meet the requirements under Article 25 para. 1 (Art. 25-1) of the Convention. It follows that the application is incompatible ratione personae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber	Acting President of the Second Chamber
(M.-T. SCHOEPFER)	(G. H. THUNE)