AS TO THE ADMISSIBILITY OF

Application No. 24484/94
by Per SÖDERBÄCK
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 27 November 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
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 17 December 1991 by Per SÖDERBÄCK against Sweden and registered on 28 June 1994 under file No. 24484/94;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to the observations submitted by the respondent Government on 5 March 1996 and the observations in reply submitted by the applicant on 29 April 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Swedish citizen born in 1957 and residing in Stigtomta, is a bus driver. Before the Commission he is represented by Mr. Roger Lindh, a law student residing in Haninge.

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

A. Particular circumstances of the case

The applicant met K.W. in 1980. They were friends but did not have a steady relationship. On 19 September 1982 K.W. gave birth to a daughter, M, of whom the applicant was the father. The applicant visited K.W. and the child at the maternity ward on one occasion. He further met M at K.W.'s home a couple of times during the following months. He also attended M's christening. During the spring of 1983, the applicant once looked after M for about an hour. No further contacts took place between him and M in 1983, as K.W. claimed that he

was not sober and therefore found it inappropriate that they meet.

In 1983 K.W. met M.W., whom she and M moved in with in May 1983. K.W. and M.W. married in January 1989.

In 1984 the applicant met A.H., who had a two year old son. They moved in with each other in January 1985.

The applicant met his daughter once in 1984. He further saw her from time to time between 1984 and 1986 when he and A.H. took A.H.'s son to his childminder, who lived close to M's childminder. The applicant further met M in June 1986 when she attended A.H.'s son's birthday party.

As, allegedly, K.W. refused the applicant access to M, the applicant, in June 1987, contacted the social authorities in Nyköping and asked for help in bringing about meetings between him and M. The applicant and K.W. met at the social welfare office once in November 1987 to discuss the matter. K.W. expressed that she did not want the applicant to have access to his daughter yet. The responsible social worker had some further contacts with the applicant and K.W. separately in 1988, but no meetings took place between the applicant and M.

In November 1988, M.W. applied to the District Court (tingsrätten) of Nyköping for permission to adopt M. The applicant did not consent to the adoption. In February 1989, he instead instituted access proceedings against K.W. in the District Court. The court requested the opinion of the Social Council (socialnämnden) of Nyköping and adjourned the question of access pending the outcome of the adoption proceedings.

The Council made an investigation during which it heard the applicant, K.W. and M.W. In an opinion of 31 October 1989, the Council concluded that an adoption was not in the child's best interests. It considered that the applicant's relationship with A.H. and her son was stable and noted, inter alia, that the applicant was permanently employed as a bus driver since November 1987. Further noting that M did not know that M.W. was not her natural father and that K.W. and M.W. did not intend to inform her until she got older, the Council made the following conclusions:
(Translation)

> "The investigators are of the opinion that [M], like all children, has a right to know her descent. It is also important that she is informed as early as possible. Thus, we do not share [K.W.'s] and [M.W.'s] opinion that it is better for [M] to wait. On the contrary, we believe that, in all probability, it will be a traumatic experience for [M] to be told, in her teens or as an adult, that [M.W.] is not her natural father. We also consider that [M] has a right to get to know her father and his family. We do not share [K.W.'s] and [M.W.'s] fears that [M] would become distant from [M.W.], although it would be natural for her to react in one way or another. However, we are of the opinion that it could be beneficial for [M] to get to know her father and his family. Her feeling of belonging to [M.W.] does not, for that reason, have to be changed and [M.W.] will probably always be [M's] psychological father."

The District Court held a hearing on 12 December 1989 during which it heard the applicant and M.W. By decision of 22 December 1989, the court granted M.W. permission to adopt M. The decision was taken in accordance with Chapter 4, Section 6 of the Parental Code (Föräldrabalken). The court gave the following reasons:

(Translation)

"The investigation in the case shows that [M] since birth has lived with [K.W.] and that [M.W.] has taken part in the care of [M] since she was eight months old. According to the information received, [M] sees [M.W.] as her father. [The applicant] appears to have met [M] occasionally in the beginning, but access has thereafter practically ceased. In these circumstances, M cannot be considered to have such a need of contact with [the applicant] that it should be an impediment to adoption.

For these reasons and as, moreover, the adoption must be considered to be in her best interests, the application shall be granted."

On 5 February 1991 the Svea Court of Appeal (Svea hovrätt) upheld the District Court's decision. On 19 June 1991 the Supreme Court (Högsta domstolen) refused leave to appeal.

B. Relevant domestic law

General provisions on custody and access are found in Chapter 6 of the Parental Code. Section 3 provides that, from birth, the custody of a child rests with the child's parents, if they are married, or its mother, if the parents are not married. According to Section 4, unmarried parents may obtain joint custody on application.

Under Chapter 6, Section 15, the child's custodian shall see to it that the child's need of access to, inter alia, a parent who does not have custody is satisfied to the largest possible extent. If the custodian objects to the access requested by a parent who does not have custody, the courts shall, on an action brought by the latter parent, determine the question of access in keeping with the child's best interests.

General provisions on adoption appear in Chapter 4 of the Parental Code. Section 3 provides that a spouse may, with the consent of the other spouse, adopt the other spouse's child. According to Section 5 a, a child who has not attained the age of 18 may not be adopted without the consent of its parents. The consent of a parent who does not have custody of the child is not required, however.

Under Chapter 4, Section 6, the courts shall examine whether it is appropriate for the adoption to take place. Permission is given only if the adoption is to the advantage of the child and the prospective adopter has brought up the child or intends to do so or there are special reasons for the adoption in view of the special relationship between the adopter and the child. Section 10 stipulates, inter alia, that, if the child to be adopted is below the age of 18, the courts shall obtain the opinion of the Social Councils of the municipalities where the adopter and the custodian are registered. Furthermore, a parent whose consent is not required, i.e. a parent who does not have custody of the child, shall be heard, if possible.

COMPLAINTS

1. The applicant contends that the decisions to allow the adoption of his daughter without his consent violated his right to respect for his family life under Article 8 of the Convention.

2. The applicant further claims that he was denied his rights under Article 6 of the Convention, as the District Court and the Court of Appeal allegedly violated the Swedish Constitution.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 17 December 1991 and registered

on 28 June 1994.

On 29 November 1995 the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure. The Government were requested to deal in particular with the complaint submitted under Article 8 of the Convention.

The Government's written observations were submitted on 5 March 1996. The applicant replied on 29 April 1996.

THE LAW

1. The applicant contends that the decisions to allow the adoption of his daughter without his consent violated Article 8 (Art. 8) of the Convention, which provides the following:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others."

The respondent Government submit that they do not object to the complaint under Article 8 (Art. 8) of the Convention being declared admissible. As regards the merits of the complaint, the Government hold, however, that no violation of that Article has occurred in the present case. In this respect, the Government first state that the question could be raised whether the relation between the applicant and his daughter amounted to family life within the meaning of Article 8 (Art. 8). Should the adoption be considered as an interference with the applicant's right to respect for his family life under para. 1 of that Article, the Government maintain that it was in accordance with the provisions of the Parental Code and pursued the legitimate aim of protecting the interests and welfare of the child. As regards the question whether the adoption was "necessary in a democratic society", the Government contend that the decision in question falls within the margin of appreciation left to the Contracting States under Article 8 (Art. 8). The courts had a choice between making a well established, safe and secure family situation permanent or risking this situation by giving the child the possibility of establishing contacts with the natural father of whose existence the child was not aware. It is of importance that the District Court's decision was taken after it had heard the applicant and the adopter. In the Government's view, the courts had the child's best interests as their primary consideration and were entitled to think that the adoption was necessary in order to safeguard those interests.

The applicant submits that he tried to establish good contacts with his daughter. His efforts were, however, constantly frustrated by the child's mother. The Social Council of Nyköping, which conducted the only investigation in the case, found that the adoption was not in the child's best interests. In these circumstances, the decision to allow the adoption violated his right to respect for his family life under Article 8 (Art. 8) of the Convention.

The Commission considers, after a preliminary examination of this complaint in the light of the parties' submissions, that it raises questions of fact and law which require an examination of the merits. This part of the application cannot, therefore, be declared inadmissible as being manifestly ill-founded within the meaning of

Article 27 para. 2 (Art. 27-2) of the Convention. No other grounds for inadmissibility have been established.

2. The applicant further claims that he was denied his rights under Article 6 (Art. 6) of the Convention, as the District Court and the Court of Appeal allegedly violated the Swedish Constitution.

Article 6 (Art. 6) reads, in so far as relevant, as follows:

"1. In the determination of his civil rights ..., everyone is entitled to a fair ... hearing ..."

The Commission, recalling that its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention and that, in particular, it is not competent to deal with a complaint concerning errors of law and fact allegedly committed by domestic courts (cf. No. 21283/93, Tyler v. the United Kingdom, Dec. 5.4.94, D.R. 77 pp. 81, 88), finds that an examination of the applicant's submissions in respect of the present complaint fail to disclose any violation of his rights under Article 6 (Art. 6) of the Convention.

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 ADMISSIBLE without prejudging the merits of the case, the applicants' complaint that the decision to allow the adoption of his daughter without his consent violated his right to respect for his family life;

DECLARES INADMISSIBLE the remainder of the application.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber