AS TO THE ADMISSIBILITY OF

Application No. 23977/94
by Heinz STOMBROWSKI and Others
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 5 April 1995, the following members being present:

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

Mr. K. ROGGE, 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 30 March 1994 by Heinz STOMBROWSKI and Others against Sweden and registered on 26 April 1994 under file No. 23977/94;

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

a. The particular circumstances of the case

The applicants are a married couple, Heinz and Margareta Stombrowski, born in 1935 and 1945 respectively, their children Anne-Marie, Elisabeth and Tomas Stombrowski, born in 1968, 1978 and 1982 respectively, and the children's uncle Gerhard Stombrowski, born in 1937. They are all Swedish citizens. Elisabeth Stombrowski resides at Karlskoga, Tomas Stombrowski at Västerfärnebo and the other applicants at Edane. Before the Commission they are represented by Mrs. Siv Westerberg, a lawyer practising in Gothenburg.

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

Taking of the children into public care

On 2 April 1985 the County Administrative Court (Länsrätten) of the County of Värmland decided, at the request of the Social Council (Socialnämnden) of Arvika, that the above three children and the applicant's other child, Katarina, born in 1975, should be immediately taken into public care on a provisional basis under Section 6 of the 1980 Act with Special Provisions on the Care of Young Persons (Lagen med särskilda bestämmelser om vård av unga, 1980:621). The main purpose of this decision was to provide the basis for an investigation into the

children's situation by the Children's and Juveniles' Psychiatric Clinic at Arvika. On 18 April 1985 the decision was upheld on appeal by the Administrative Court of Appeal (Kammarrätten) of Gothenburg.

By judgment of 28 May 1985, the County Administrative Court granted, pursuant to Section 1 of the 1980 Act, the Social Council's request for a care order in respect of the four children. The Court relied on the report of the psychiatric clinic, according to which the children's development was disturbed due to the parents' inadequate care. On 7 October 1985 the care order was upheld on appeal by the Administrative Court of Appeal. On 19 December 1985 the Supreme Administrative Court (Regeringsrätten) refused leave to appeal.

Placement of the children

Immediately after the County Administrative Court's provisional decision, the children were, with the exception of Anne-Marie, placed in a children's home in Karlstad. Anne-Marie remained at the boarding-house in Karlstad where she had stayed since August 1984. The public care of her came to an end in December 1986, when she attained her majority, and she moved back to her parents with whom she is still living. Elisabeth remained at the children's home until February 1986, when she was placed in a foster home at Karlskoga where she still resides. In July 1985, Katarina and Tomas were placed with foster parents at Filipstad, where they stayed until August 1992. After having received reports of possible sexual assault committed by the foster father against Katarina, the Social Council, on 3 August 1992, placed Katarina and Tomas temporarily with other foster parents and then, on 12 August 1992, placed them in a children's home in Karlstad. When Katarina came of age in January 1993, the compulsory care of her was discontinued. Instead, she was placed in a foster home on a voluntary basis. Tomas remained at the children's home until August 1993, when the Social Council decided to move him to a foster home at Västerfärnebo, where he presently lives.

The Social Council's decision to place Tomas in the foster home at Västerfärnebo was appealed to the County Administrative Court by his parents. The Court held a hearing at which the parents, their lawyer, Tomas' public counsel, representatives of the Social Council and several witnesses proposed by the parents were present and heard. By judgment of 18 November 1993, the Court, referring to Section 11 of the 1990 Act with Special Provisions on the Care of Young Persons (1990:52), rejected the appeal, stating that Tomas was mentally retarded and in need of qualified care which the foster home in question could provide, as it had a great experience of taking care of children with Tomas' needs. With respect to the parents' allegation that Tomas would be at risk of being infected with the HIV virus due to the foster home's acceptance of HIV positive children, the Court noted that the foster home had assured that it would not accept any HIV positive children as long as Tomas was placed there.

The parents appealed to the Administrative Court of Appeal which, on 10 March 1994, upheld the County Administrative Court's judgment. It noted that the County Administrative Board (Länsstyrelsen) had investigated the conditions in the foster home after a former employee of the foster home had reported that the conditions were unsatisfactory. On 31 January 1994 the Board had struck the case off its list of cases after having instructed the foster home to provide for some further training of its staff. After the parents' further appeal, the Supreme Administrative Court, on 2 May 1994, refused leave to appeal.

Parental access

During the public care several decisions on parental access have been taken. Initially, the parents were allowed to meet their children once every two months. On 11 December 1990 the Social Council rejected

the parents' request for access to Elisabeth and Tomas once a month. The Council further decided that access should take place at the respective foster homes. The Council's decision was upheld on appeal by the County Administrative Court. On 13 August 1992, after Katarina and Tomas had been moved from their foster home, the Council decided to prohibit their father from meeting them, as, according to the Council, there was a risk that he would abduct them, endanger their health and development or otherwise obstruct the public care. The Council further decided not to disclose Katarina's and Tomas' whereabouts. The mother was, however, allowed to meet them at a place designated by the Council. On 21 December 1992 the Council decided to prohibit both parents' meetings with Tomas during his stay in the children's home. This decision was renewed on 11 March 1993, on which date the Council also decided to prohibit the father from visiting Elisabeth, but to let the mother meet her once every two months in the presence of her foster parents and a third person appointed by the Council. On 5 August 1993, after Tomas' placement in the foster home at Västerfärnebo, the Council decided to allow the mother access to him with the same restrictions as those applicable to her access to Elisabeth. Tomas' father was, however, still prohibited from meeting him.

Requests for termination of care

By two decisions of 9 December 1993, the Social Council rejected the parents' request for a termination of the care of Elisabeth and Tomas. It also renewed its access decisions of 11 March and 5 August 1993.

The parents appealed against the Council's decisions to the County Administrative Court in so far as they concerned termination of care. The Court held a hearing at which the parents, their lawyer, the children's counsel and representatives of the Social Council were present and heard. The former employee who had criticised the conditions in Tomas' foster home at Västerfärnebo was heard as a witness. The parents also submitted transcriptions of the testimonies given in the previous hearing in the case concerning the placement of Tomas in the said foster home.

By two judgments of 15 April 1994, the County Administrative Court, referring to Section 2 of the 1990 Act, rejected the appeals. It recalled that the initial decision to take the children into care had been based on the aggressive behaviour of their father and uncle, who was living with the family, their parents' inability to realise the children's special needs and give them the necessary stimulation and their father's fierce attitude towards, inter alia, the social authorities, which rendered voluntary measures impossible. Finding that these deficiencies still existed, the Court concluded that there was still a clear risk of impairment of Elisabeth's and Tomas' health and development due to the conditions in their parents' home. The Court further had regard to Elisabeth's express wish not to return to her parents and to a psychiatric statement according to which Tomas would be in need of assistance for many years due to his mental retardation.

The parents appealed to the Administrative Court of Appeal, which held a hearing, during which it heard the same persons as the County Administrative Court with the exception of the former foster home employee. It further heard three witnesses proposed by the parents. By two judgments of 20 June 1994, the Administrative Court of Appeal upheld the appealed judgments. It shared the views of the County Administrative Court as regards the conditions in the parents' home. It further noted that Elisabeth at the time was almost 16 years of age and had expressed her wish not to return to her parents. It also found that Tomas had special needs that could not be met by the parents. On 7 November 1994 the Supreme Administrative Court refused leave to appeal.

Requests to study public documents

On 11 October 1993 the Social Council refused the parents' request to study the Council files on the original investigations of Katarina's, Elisabeth's and Tomas' different foster homes. The parents appealed to the Administrative Court of Appeal which, by judgment of 1 December 1993, decided that the parents should be allowed to study the documents in question except for a few passages concerning two of the foster homes. With respect to the exceptions, the Court referred to the protection of private life under Chapter 7, Section 4 of the Secrecy Act (Sekretesslagen, 1980:100).

By separate decisions of 17 November 1993, the Public Prosecution Authority (Åklagarmyndigheten) and the police authorities in Kristinehamn refused the parents permission to study the records concerning the foster father who had been accused of sexual assault of Katarina. The parents appealed against both decisions to the Administrative Court of Appeal, where the appeal against the Public Prosecution Authority's decision is apparently still pending. As concerns the police authorities' decision, the Court, by judgment of 15 December 1993, found that some documents could be handed over to the parents and referred the case back to the police authorities to enforce the judgment. Some documents could, however, not be handed over, as they contained information the disclosure of which could harm the persons concerned. The Court referred to Chapter 9, Section 17 of the Secrecy Act.

On 18 March 1994 the Supreme Administrative Court upheld the judgments of the Administrative Court of Appeal of 1 and 15 December 1993.

Issuing of passports for Elisabeth and Tomas

By decisions of 14 December 1989 and 30 January 1990, the police authorities in Karlskoga and Kristinehamn issued passports for Elisabeth and Tomas. The passport applications had been approved by the Social Council. After being informed of this, the parents sought to have the passports revoked. Sometime in early 1994 the Karlskoga police authorities notified the parents that Elisabeth's passport had been reported stolen and that it therefore could not be revoked. The police authorities had, however, responded to the parents' request by blocking the passport. No further action was taken by the parents in this matter. With respect to Tomas' passport, the Kristinehamn police authorities, on 29 March 1994, rejected the parents' request for a revocation. This decision was upheld on appeal by the County Administrative Board of Värmland on 23 May 1994 and by the Administrative Court of Appeal on 30 June 1994. The parents then appealed to the Supreme Administrative Court, where the case is apparently still pending.

Various

During the public care, the parents have allegedly been prevented from telling their children that they would like them to move back home. Furthermore, the applicants claim that Tomas has not been informed of the reasons for his removal, in August 1992, from the foster home at Filipstad. Moreover, the children have allegedly had several accidents and illnesses while in public care. The social authorities and the foster parents have, according to the applicants, withheld information on this from the parents. The parents have thus been unable to claim damages on behalf of the children.

b. Relevant domestic law

The taking of children into public care without the consent of the parents is governed by the 1990 Act with Special Provisions on the Care of Young Persons. It entered into force on 1 July 1990 and

replaced the 1980 Act. Section 2 of the 1990 Act provides that care is to be provided if there is a clear risk of impairment of the health or development of a person under eighteen years of age due to ill-treatment, exploitation, lack of care or any other condition in the home.

Once public care has been ordered, it is executed by the Social Council, which decides on the particular details of the care. Section 11 of the 1990 Act provides that the Council shall decide on how the care should be arranged and where the child should live. With respect to parents' and other custodians' access, the Council may, pursuant to Section 14 of the 1990 Act, decide on how this access should be arranged. Swedish law does not afford any access rights to siblings or uncles.

Section 41 of the 1990 Act determines the right of appeal. It reads, in relevant parts, as follows:
(translation)

> "The Council's decisions may be appealed to the County Administrative Court, if the Council has
> 1. decided where the care of the young person is to begin or decided on the removal of the young person from the home where he or she is living,
> 2. decided on the continuation of care in accordance with the Act,
> 3. decided on access in accordance with Section 14 ...
> ..."

The decisions of the County Administrative Court may, pursuant to Section 33 of the Administrative Procedure Act (Förvaltnings-processlagen, 1971:291), be appealed to the Administrative Court of Appeal and the Supreme Administrative Court.

The Secrecy Act contain provisions on secrecy in public services and prohibitions on disclosure of public documents. Within the social services information is, according to Chapter 7, Section 4 of the Act, secret unless it is clear that it can be disclosed without any harm to the individual concerned or persons close to him or her. According to Chapter 9, Section 17 of the Act, information obtained in a preliminary investigation is secret if it is presumed that the disclosure would harm the individual concerned or persons close to him or her.

COMPLAINTS

1. Heinz and Margareta Stombrowski complain on their own behalf and on behalf of their children Elisabeth and Tomas that the taking into care of Elisabeth and Tomas for the purpose of carrying out a psychiatric investigation gave rise to violations of Articles 5, 8 and 13 of the Convention.

2. Anne-Marie Stombrowski and the parents, on their own behalf and on behalf of Elisabeth and Tomas, allege that the initial decision to take the children into care violated Article 8 of the Convention. As Elisabeth and Tomas are still in public care, they claim that there is a continuing violation of the said Article.

3. The parents complain, under Article 8 of the Convention, of the placement of Katarina in a foster home where she was allegedly sexually assaulted.

4. The parents complains on their own behalf and on behalf of Elisabeth that she was placed in a deficient foster home which prevents her from making contacts with her parents. They invoke Article 8 of the Convention.

5. The parents complain on behalf of Tomas that he was beaten in the

foster home at Filipstad in violation of Article 3 of the Convention. They further claim that his placement in the foster home at Västerfärnebo violates his rights under Articles 2, 3 and 8 of the Convention and the parents' rights under Article 8.

6. The parents complain on their own behalf and on behalf of Elisabeth and Tomas that the restrictions on and the arrangements of the parental access violate Article 8 of the Convention.

7. Anne-Marie and Gerhard Stombrowski and the parents on behalf of Elisabeth and Tomas maintain that they have not been able to bring before a court the questions of Anne-Marie and Gerhard Stombrowski's access to Elisabeth and Tomas. They invoke Articles 8 and 13 of the Convention.

8. Invoking Articles 10 and 13 of the Convention, the parents maintain that they have not been allowed to study all the documents pertaining to the sexual assault allegedly committed by Katarina's foster father.

9. Further under Article 10 of the Convention, the parents claim on their own behalf and on behalf of Elisabeth and Tomas that they have been prevented from telling the children that they would like them to move back home. On behalf of Tomas, the parents further claim that Article 10 has been violated in that Tomas has not been informed of the reasons for his removal, in August 1992, from the foster home at Filipstad.

10. The parents complain on their own behalf and on behalf of Elisabeth and Tomas that the issuing of passports for the children against the will of the parents violated Article 8 of the Convention.

11. Finally, invoking Articles 8, 10 and 13, the parents allege on their own behalf and on behalf of Elisabeth and Tomas that they have not been informed of accidents the children have had and that, for this reason, they have not been able to claim damages on behalf of the children in respect of these accidents.

THE LAW

1. The parents complain on their own behalf and on behalf of their children Elisabeth and Tomas that the taking into care of Elisabeth and Tomas for the purpose of carrying out a psychiatric investigation gave rise to violations of Articles 5, 8 and 13 (Art. 5, 8, 13) of the Convention.

The Commission, however, is not required to decide whether or not the facts alleged by the applicants disclose any appearance of a violation of the Articles invoked as, under Article 26 (Art. 26) of the Convention, it "may only deal with the matter ... within a period of six months from the date on which the final decision was taken". The Commission recalls that the psychiatric investigation was made possible by the County Administrative Court's decision of 2 April 1985 to provisionally take the children into care and that the Supreme Administrative Court on 19 December 1985 refused the parents leave to appeal against the subsequent care order. The present application was introduced on 30 March 1994, which is more than six months after this decision.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. Anne-Marie Stombrowski and the parents, on their own behalf and on behalf of Elisabeth and Tomas, allege that the initial decision to take the children into care violated Article 8 (Art. 8) of the Convention. As Elisabeth and Tomas are still in public care, they claim

that there is a continuing violation of Article 8 (Art. 8), which reads as follows:

> "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."

Having regard to its above conclusion under 1, the Commission finds that it may not, pursuant to Article 26 (Art. 26) of the Convention, examine this complaint in so far as it concerns the initial decision to take the children into care. The Commission's examination will therefore be confined to the Social Council's decisions of 9 December 1993 not to terminate the care of Elisabeth and Tomas and the subsequent court decisions on this matter.

The Commission finds that the refusal to terminate the care of Elisabeth and Tomas interfered with the parents', Elisabeth's and Tomas' right to respect for their family life as ensured by Article 8 para. 1 (Art. 8-1) of the Convention. It must therefore be examined whether this interference was justified under the terms of Article 8 para. 2 (Art. 8-2). In this respect, the Commission recalls that three conditions must be satisfied: the interference must be "in accordance with the law", it must pursue one or more of the legitimate aims enumerated in para. 2 and it must be "necessary in a democratic society" for that or those aims.

As regards the first condition, the Commission finds that the relevant decisions were in conformity with Swedish law, namely Section 2 of the 1990 Act.

The Commission further finds that the interference had a legitimate aim under Article 8 para. 2 (Art. 8-2), namely the interests of the children, which in this case fall under the expressions "for the protection of health or morals" and "for the protection of the rights and freedoms of others".

It thus remains to be determined whether the interference was "necessary in a democratic society" in the interests of the children.

According to the established case-law of the Commission and the European Court of Human Rights, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society", the Commission furthermore has to take into account that a margin of appreciation is left to the Contracting States. That does not mean, however, that the Commission's review is limited to ascertaining whether the respondent State has exercised its discretion reasonably, carefully and in good faith. Furthermore, it cannot confine itself to considering the relevant decisions in isolation but must look at them in the light of the case as a whole. It must determine whether the reasons adduced to justify the interference at issue are "relevant and sufficient" (cf. Eur. Court H.R., Olsson judgment of 24 March 1988, Series A no. 130, pp. 31-32, paras. 67-68).

In the present case, the Commission recalls that the County Administrative Court, in its judgments of 15 April 1994, found that the deficiencies on which the initial care decisions had been based still existed and that, thus, there was still a clear risk of impairment of

Elisabeth's and Tomas' health and development due to the conditions in their parents' home. The Court referred to the father's and the uncle's aggressive behaviour, the parents' inability to realise the children's special needs and give them the necessary stimulation and the father's fierce attitude towards, inter alia, the social authorities, which rendered voluntary measures impossible. On appeal, the Administrative Court of Appeal, by judgments of 20 June 1994, shared the views of the County Administrative Court as regards the conditions in the parents' home and further noted that Elisabeth, at the time almost 16 years of age, had expressed her wish not to return to her parents. The Administrative Court of Appeal also found that Tomas, due to his mental retardation, had special needs which could not be met by the parents. The Commission further recalls that the courts, before giving their judgments, had held hearings, at which the parents, their lawyer, the children's counsel, representatives of the Social Council and several witnesses were present and heard. The courts further had regard to the parties' written submissions. Thus, the courts cannot be said to have intervened without adequate knowledge of the cases.

In the light of the foregoing the Commission finds that the refusal to terminate care was supported by relevant and sufficient reasons and that, having regard to their margin of appreciation, the Swedish authorities were reasonably entitled to think that it was necessary for the care decisions to remain in force. Accordingly, the Commission concludes that the decisions not to terminate care can reasonably be regarded as "necessary in a democratic society" within the meaning of Article 8 para. 2 (Art. 8-2) 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.

3. The parents complain, under Article 8 (Art. 8) of the Convention, of the placement of Katarina in a foster home where she was allegedly sexually assaulted.

The Commission is, however, not required to decide whether or not the facts alleged by the applicants disclose any appearance of a violation of the Article invoked as, under Article 26 (Art. 26) of the Convention, it "may only deal with the matter ... within a period of six months from the date on which the final decision was taken". The Commission recalls that Katarina was removed from the foster home in question on 3 August 1992, which is more than six months before the introduction of the present application.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

4. The parents complain on their own behalf and on behalf of Elisabeth that she was placed in a deficient foster home which prevents her from making contacts with her parents. They invoke Article 8 (Art. 8) of the Convention.

The Commission, noting that the parents did not appeal against the initial decision to place Elisabeth in the said foster home, finds that their submissions fail to substantiate the present complaint.

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.

5. The parents complain on behalf of Tomas that he was beaten in the foster home at Filipstad in violation of Article 3 (Art. 3) of the Convention. They further claim that his placement in the foster home at Västerfärnebo violates his rights under Articles 2, 3 and 8 (Art. 2, 3, 8) of the Convention and the parents' rights under

Article 8 (Art. 8).

Article 2 para. 1 (Art. 2-1) of the Convention reads, in so far as relevant, as follows:

"Everyone's right to life shall be protected by law. ..."

Article 3 (Art. 3) of the Convention reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Commission, recalling that Tomas was removed from the foster home at Filipstad on 3 August 1992, i.e. more than six months before the introduction of the present application, confines its examination of the present complaint to the conditions in the foster home at Västerfärnebo.

In regard to the foster home at Västerfärnebo the applicants submit that it is run by people who are not qualified to take care of mentally retarded children and that it accepts HIV positive children for which reason Tomas is at risk of being infected with the HIV virus. They further submit that a former employee has criticised the conditions in the foster home, finding them unsatisfactory.

The Commission recalls that the placement of Tomas in the foster home at Västerfärnebo has been examined by the administrative courts. In its judgment of 18 November 1993, the County Administrative Court found that Tomas, being mentally retarded, was in need of qualified care which the foster home in question could provide, as it had a great experience of taking care of children with Tomas' needs. The Court further noted that the foster home would not accept any HIV positive children as long as Tomas was placed there. The judgment was upheld by the Administrative Court of Appeal which, in its judgment of 10 March 1994, noted that the former employee's criticism of the conditions in the foster home had been examined by the County Administrative Board, which had only instructed the foster home to provide for some further training of its staff. The Commission further recalls that the County Administrative Court held a hearing at which the parents, their lawyer, Tomas' public counsel, representatives of the Social Council and several witnesses proposed by the parents were present and heard.

In view of the above, the Commission finds that the applicants' submissions in respect of this complaint do not disclose any appearance of a violation of the rights and freedoms of the Convention and in particular the Articles invoked.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

6. The parents complain on their own behalf and on behalf of Elisabeth and Tomas that the restrictions on and the arrangements of the parental access violate Article 8 (Art. 8) of the Convention.

The Commission is, however, not required to decide whether or not the facts alleged by the applicants disclose any appearance of a violation of the Article invoked as, under Article 26 (Art. 26) of the Convention, it "may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ...". The Commission notes that, with the exception of the decision of 11 December 1990, the parents have not appealed against any Social Council decision concerning access. The decision of 11 December 1990 was appealed to the County Administrative Court but not further to the Administrative Court of Appeal. The Council decision of 9 December 1993 concerning continuation of the public care and restrictions on parental access was only appealed in

respect of the care issue. Furthermore, an examination of the complaint does not disclose the existence of any special circumstance which might have absolved the applicants from exhausting the remedies at their disposal.

It follows that this part of the application must be rejected for non-exhaustion of domestic remedies under Article 27 para. 3 (Art. 27-3) of the Convention.

7. Anne-Marie and Gerhard Stombrowski and the parents on behalf of Elisabeth and Tomas maintain that they have not been able to bring before a court the questions of Anne-Marie and Gerhard Stombrowski's access to Elisabeth and Tomas. They invoke Articles 8 and 13 (Art. 8, 13) of the Convention.

The Commission recalls that the right of access to court is contained in Article 6 para. 1 (Art. 6-1) of the Convention, which in its relevant parts reads as follows:

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

The Commission recalls that in order for Article 6 para. 1 (Art. 6-1) to apply to the proceedings in question it must first be ascertained whether there was a dispute over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law (cf., e.g., Eur. Court H.R., W v. the United Kingdom judgment of 8 July 1987, Series A no. 121-A, p. 32-33, para. 73). Under Swedish law Anne-Marie and Gerhard Stombrowski, Elisabeth's and Tomas' sister and uncle, have no right of access to Elisabeth and Tomas. Thus they cannot claim on any arguable ground that they have a right under domestic law, for which reason Article 6 (Art. 6) does not apply in the present case (cf. No. 12763/87, Dec 14.7.88, D.R. 57 p. 216).

However, the applicants maintain that the impossibility of bringing the question of Anne-Marie and Gerhard Stombrowski's access to Elisabeth and Tomas before a court constitutes violations of Article 8 and 13 (Art. 8, 13) of the Convention. Article 13 (Art. 13) reads as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

With respect to Article 8 (Art. 8), the Commission finds that, although the said Article provides some procedural safeguards, the lack of access to court does not in the circumstances amount to an interference with the applicants' rights under that Article.

As regards Article 13 (Art. 13), the Commission recalls that this provision has been interpreted by the European Court of Human Rights as requiring a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (cf., e.g., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 23, para. 52). The Commission considers that the present complaint does not concern any such "arguable claim".

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.

8. The parents maintain that they have not been allowed to study all the documents pertaining to the sexual assault allegedly committed by Katarina's foster father. They invoke Articles 10 and 13 (Art. 10, 13) of the Convention. Article 10 (Art. 10) reads, in relevant parts, as

follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Commission recalls that the parents, in 1993, requested permission to study the Social Council files concerning Katarina's, Elisabeth's and Tomas' various foster homes and the files kept at the Public Prosecution Authority and the police authorities concerning the foster father's alleged sexual assault of Katarina. After their requests had been refused, they appealed against all decisions to the Administrative Court of Appeal, where the case concerning the Public Prosecution Authority files are apparently still pending. By judgments of 1 and 15 December 1993, later upheld by the Supreme Administrative Court, the Administrative Court of Appeal decided that, with some exceptions, the documents in the files kept at the Social Council and the police authorities could be handed over to the parents. With respect to the exceptions, the Court referred to the protection of private life under the Secrecy Act.

The Commission, even assuming that the refusal to disclose certain information to the parents interfered with their freedom to receive information under Article 10 (Art. 10) of the Convention, considers that the interference was justified under para. 2 of the said provision "for the protection of the reputation or rights of others".

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

9. Further under Article 10 (Art. 10) of the Convention, the parents claim on their own behalf and on behalf of Elisabeth and Tomas that they have been prevented from telling the children that they would like them to move back home. On behalf of Tomas, the parents further claim that Article 10 (Art. 10) has been violated in that Tomas has not been informed of the reasons for his removal, in August 1992, from the foster home at Filipstad.

The Commission finds that an examination of this complaint as it has been submitted does not disclose any appearance of a violation of the rights and freedoms of the Convention and in particular the Article invoked.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

10. The parents complain on their own behalf and on behalf of Elisabeth and Tomas that the issuing of passports for the children against the will of the parents violated Article 8 (Art. 8) of the Convention.

The Commission recalls that Elisabeth's passport was blocked by

the Karlskoga police authorities in early 1994 and that no further action was taken by the parents in this matter. The case concerning revocation of Tomas' passport is apparently pending in the Supreme Administrative Court. The Commission, therefore, considers that the domestic remedies available to the applicants have not been exhausted.

It follows that this part of the application must be rejected for non-exhaustion of domestic remedies under Article 27 para. 3 (Art. 27-3) of the Convention.

11. Invoking Articles 8, 10 and 13 (Art. 8, 10, 13), the parents allege on their own behalf and on behalf of Elisabeth and Tomas that they have not been informed of accidents the children have had and that, for this reason, they have not been able to claim damages on behalf of the children in respect of these accidents.

The Commission finds that an examination of this complaint as it has been submitted does not disclose any appearance of a violation of the rights and freedoms of the Convention and in particular the Articles invoked.

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.

Secretary to the Second Chamber Acting President of the Second Chamber

(K. ROGGE) (G.H. THUNE)