AS TO THE ADMISSIBILITY OF

Application No. 16031/90
by Monika and Peter TENNENBAUM
against Sweden

The European Commission of Human Rights sitting in private on 3 May 1993, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
M.A. NOWICKI

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 3 December 1989 by Monika and Peter Tennenbaum against Sweden and registered on 22 January 1990 under file No. 16031/90;

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 21 June 1991, the observations in reply submitted by the applicants on 20 September and 21 October 1991 and the documents submitted by the respondent Government on 28 January 1993;

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case, as they appear from the parties' submissions and the documentary evidence at the Commission's disposal, may be summarised as follows.

The applicants are Swedish citizens, born in 1945 and 1948 respectively. They reside at Malmö.

A. The particular facts of the case

The first applicant was born in Sweden. As from 1984 she received financial support from the social authorities due to illness

(sjukbidrag). In 1988 this was changed into an early retirement pension (förtidspension). It appears that she has certain problems which have been described as a strong disturbance in her personality (kraftig personlighetsstörning) - a borderline type of condition which cannot be rehabilitated. Since her birth she belonged to the Swedish State Church, but apparently converted to catholicism in 1980. The applicants submit that she has now converted to judaism.

The second applicant is of Polish origin. He emigrated from Poland to Israel in 1967 and acquired Israeli citizenship. He came to Sweden in 1974 and acquired Swedish citizenship in 1983. Except for approximately 3 1/2 months in 1975 the second applicant has been unemployed since he came to Sweden. Like the first applicant he also receives an early retirement pension due to mental problems and has been admitted to mental hospitals both in Israel and in Sweden. According to medical certificates the second applicant cannot be rehabilitated either, due to his particular mental problems. He has been described as having extreme difficulties in co-operating with other people and a tendency to become aggressive (persona patologica explosiva).

As regards the mental problems the applicants submit that the conclusions reached are partly based on very old examinations and partly due to the fact that they knowingly deceived the doctors who had to decide on whether or not to grant them an early retirement pension for which reason they actually receive such pensions on incorrect grounds.

The second applicant's father was a catholic and his mother was jewish. He was baptised in a catholic church and belonged to it until he emigrated to Israel. The second applicant submits that due to the fact that his mother was jewish he has been jewish since birth. When he came to Sweden in 1974 he referred to his catholic certificate of baptism, but he belonged to the Mosaic congregation in Malmö from 1976 to 1978 when he reverted to the catholic congregation. The applicants submit that they officially lived as catholics as a security measure against anti-semitism. Since August 1987 the second applicant belongs again to the Mosaic congregation in Malmö.

The applicants met in 1980 and were married the same year. Their two daughters were born on 5 February 1985 and 18 July 1986 respectively. They christened their children Mary Christine and Ann Therese in a catholic church in Malmö, also, they submit, as a security measure against anti-semitism. In 1987, i.e. after their daughters had been taken into care, the applicants changed their children's first names into the corresponding jewish names, Miriam and Hannah.

When the applicants married in 1980 it appears that they lived at Halmstad. It also appears that they had considerable housing problems and that the social authorities made several attempts to solve them. The offers made by the authorities were, however, unacceptable to the applicants who apparently then stayed in different hotels.

In April 1985, following the birth of their daughter Miriam, the applicants moved to Malmö. As from the end of 1985 they lived in a flat in Malmö, paid for by the social authorities, but they were forced to leave in May 1986 which, according to the documents submitted, was because the second applicant had caused disturbances in the house which "clearly overstepped the limits for what other occupants ought to tolerate in a building meant for several families". The applicants were then offered a house at Bunkeflostrand near Malmö, an offer which, however, they turned down for which reason they apparently continued to live in various hotels.

In particular due to the family's living conditions and the applicants' attitude in this respect the Social District Council of

Malmö (Malmö kommun, sociala distriktsnämnden) on 15 April 1986 initiated an investigation as to Miriam's development. For the same reasons an investigation was initiated concerning Hannah following her birth on 18 July 1986. The applicants submit that these investigations were a form of blackmail, aimed at forcing them to accept the social authorities' proposals concerning residence.

The housing dispute appears to have culminated on 2 July 1986, i.e. 16 days before the birth of Hannah, when the applicants asked the social authorities to take care of Miriam, who was taken into custody the same day by decision of the Social District Council of Malmö. On 10 July 1986 the County Administrative Court (länsrätten) of the County of Malmö quashed the decision and the care was terminated.

On 18 July 1986, when Hannah was born, the applicants lived in a hotel room and they submit that on 3 August 1986 they had to take her to hospital due to their living conditions combined with an infection she developed.

On 5 August 1986, the applicants received copies of the reports prepared on the basis of the social authorities' investigation into the developments of their daughters and the same day they took Miriam to the offices of the social authorities. After an exchange of views the chairman of the Social District Council decided to take both Miriam and Hannah, who was in hospital, into care on a provisional basis, pursuant to Section 1, para. 2, sub-section 1 and Section 6 of the 1980 Act with Special Provisions on the Care of Young Persons (lagen med särskilda bestämmelser om vård av unga), hereinafter "the 1980 Act". This decision was brought before the County Administrative Court and counsel was appointed for the applicants on 11 August 1986. On 15 August 1986 the County Administrative Court confirmed the care decision and it was subsequently upheld by the Administrative Court of Appeal (kammarrätten) of Gothenburg on 25 September 1986. In the meantime, on 15 August 1986, the applicants had left Sweden and moved to Israel. The children remained in Sweden. Miriam was placed in a children's home whereas Hannah was placed in a foster home.

On 20 August 1986 the Social District Council decided that the children's address should not be disclosed to the applicants (Section 16, sub-section 2, of the 1980 Act). Furthermore the Social District Council applied to the County Administrative Court for the taking into care of the applicants' two daughters pursuant to Section 1, para. 2, sub-section 1 of the 1980 Act.

While the case was pending before the County Administrative Court the applicants submitted requests, either directly or through their appointed counsel, that the children be placed with a jewish family, if possible English-speaking, stressing their wish to have the children brought up in accordance with jewish traditions.

On 6 October 1986, the Social District Council decided to contact the jewish congregation in Malmö to investigate the possibilities of meeting the parents' wishes regarding placement of the children. Contact was made with the Rabbi who considered, however, that it would be extremely difficult to find a jewish family which would be willing to bring up the children.

On 27 November 1986, the Rabbi informed the authorities that he considered it impossible to find a jewish family in southern Sweden who would be able to bring up the children in the jewish faith. He also noted that there was a more orthodox attitude in southern Sweden than in other parts of the country. He proposed, however, that the Institute for Jewish Education and Culture in Lund should be contacted.

In the meantime, on 7 November 1986, the applicants had returned from Israel and were accordingly able to participate in the hearing held in the County Administrative Court on 11, 12 and 16 December 1986

concerning the question of public care. The Social District Council maintained its position but stated in respect of Miriam that, as her address had become known to the applicants, there was no longer any need for a decision to keep it secret. The applicants, who were present at the hearing and assisted by officially appointed counsel under the 1972 Legal Aid Act (rättshjälpslagen), inter alia alleged that the investigation was incorrect and false, and that there was no relevant ground for taking the children into care. The children were represented by officially appointed counsel under the Legal Aid Act.

During the proceedings, which were held in camera, the Court had at its disposal several written statements. The Chief Doctor Ö.J., the Deputy Chief Doctor P.V. and the manageress of Enebackens Children's Home B.A. were heard. Furthermore, the applicants were heard as well as two doctors and 14 witnesses, among others trained nurses and social welfare officers called by the applicants. The applicants requested that further witnesses be heard and more written statements be brought before the Court. Their request was rejected by the Court, which considered this to be superfluous and no further investigation to be necessary in order to decide the case.

In its judgment of 27 January 1987 the Court stated inter alia the following:

(translation)

"No remarks have been made in the case in respect of the personal physical care of [Miriam]. According to the statements of the witnesses, Monika Tennenbaum has shown an understanding of the needs of children. However, concerning the conditions of [Miriam], it appears that the parents have let interests other than the care of her dominate the life of the family. The family has moved frequently during the last years. The Social Councils of Halmstad and Malmö have made several attempts to solve the housing problems of the family, without any success. Peter Tennenbaum has emphasised his methods of deceiving and manipulating different authorities in order to obtain above all financial but also other advantages. It appears that this has not improved the social situation of the family, or prevented the family from getting into social and financial distress. Regularly, the parents have spent all their money and repeatedly they have put themselves in situations of need in their daily way of life. At the same time they have, with the financial aid from relatives, made trips abroad which, according to Peter Tennenbaum, have cost tens of thousands of Swedish crowns. It must be considered that the spouses Tennenbaum were evicted because of their behaviour as tenants in spite of strong social reasons to prolong their lease, and that, by maintaining their own claims, they have not been able to accept the proposals of the Social Councils for assistance to find suitable housing. In view of what has been established it must be considered that the spouses through their own behaviour caused the family's homelessness.

From P.V.'s written and oral statements at the hearing and B.A.'s testimony it must be concluded that [Miriam] shows signs of damage in respect of her mental and social progress. P.V. has expressly stated that the insecure housing conditions and the separation from the parents following the taking into care on a provisional basis between 2 and 10 July 1986 as well as the taking into care now to be considered, are not a sufficient explanation for her condition.

The statements of the witnesses and the investigation show

that the reasons for [Miriam's] behaviour should be found in her parents' emotional relationship to her and not, as stated by her parents, in her physical environment. Even if Monika Tennenbaum has shown a certain understanding of the children's needs, she has not been able to defend her views against Peter Tennenbaum and to influence the family's situation.

It is clear in this case that the spouses Tennenbaum lacked the will and capacity to provide for [Miriam's] primary needs of a permanent place to live, emotional contact, security and care and that this has impaired [Miriam's] development. The birth of [Hannah] has not brought about any changes in the parents' attitude to the needs of children in this respect. Therefore, it must be considered that the conditions of the parents also endanger [Hannah's] development."

As regards keeping the children's address secret to the applicants the Court stated inter alia:

(translation)

" The Social District Council has emphasised that it is desirable that the parents meet both children and has also made offers to this effect. However, the parents have rejected this for reasons of principle. According to the Court's assessment, there are reasons to presume that Peter Tennenbaum would interfere in the care of [Hannah] so that the foster parents would be prevented from giving [Hannah] the care she needs. In this matter Monika Tennenbaum is not regarded as capable of influencing the behaviour of Peter Tennenbaum. It must therefore be considered that the Social District Council had relevant reasons for its decision."

The County Administrative Court decided that Miriam and Hannah be taken into care under Section 1, para. 1 and para. 2, sub-section 1, of the 1980 Act and that the decision should have immediate effect. It also upheld the decision to keep Hannah's address secret whereas it was not found necessary to decide on the question of secrecy in respect of Miriam's address, as it was known to the applicants.

Following the County Administrative Court's above judgment of 27 January 1987, the social authorities approached the Institute for Jewish Education and Culture in Lund, which had contacts with families where one member of the family was of jewish origin. It turned out, however, that while there were indeed families who might possibly be interested in adoption, none could be found who would be willing to accept a foster home arrangement.

The Social District Council then decided that a meeting should be arranged between the responsible personnel and the Rabbi in order to discuss the matter further. This meeting took place on 13 February 1987, following which the Social District Council considered that there was no justification for continuing to look for a jewish foster home, since such a home was apparently very hard to find. Continuing the search would thus mean that the placement of the children would be considerably delayed and, furthermore, if the search would prove to be successful, the children might have to be placed far away from the parents.

On 21 April 1987, the result of the Social District Council's investigation regarding the children's placement was formally communicated to the applicants, who were invited to submit orally to the Council their views on the investigation. Following that, the Council decided on 6 May 1987 to place Miriam and Hannah together in a protestant foster home and to keep the children's new address secret

from the applicants for the time being. On 1 June 1987 they appealed against this to the County Administrative Court which upheld the decision in a judgment of 10 July 1987.

On 2 February and 27 July 1987 respectively, the applicants appealed to the Administrative Court of Appeal against the judgments of the County Administrative Court of 27 January 1987 (question of taking into care) and of 10 July 1987 (question of placement).

As indicated above, the applicants returned from Israel on 7 November 1986. They were provided with a one-room flat but submit that this was part of the social authorities' policy towards them in order to make them divorce. They also submit that the social authorities made them understand that by divorcing the first applicant had a chance of getting the children back.

In 1987 the applicants divorced. Whereas the second applicant stayed in the one-room flat, the first applicant was provided with another flat. They submit, however, that the social authorities did not accept this pro forma divorce for which reason the second applicant in August 1988 married a woman from Poland thereby enabling her to come to Sweden. A son was born out of this marriage in 1989.

In the meantime the proceedings in the Administrative Court of Appeal continued. As regards the taking into care of the applicants' two daughters the social authorities were requested, on 17 February 1987, to submit their observations on the appeal. These observations were submitted on 23 March 1987. Certain problems as to the applicants' representation arose. Eventually on 26 May 1987 the Court appointed a new counsel for the applicants. However, on 9 June 1987 the first applicant requested to have her own counsel who was then appointed on 29 June 1987. On 12 August 1987, the Court suggested 19-21 October 1987 as preliminary dates for the hearing, dates which were subsequently vacated as the first applicant's counsel was unable to appear. Further problems with the applicants' representation appeared, but whereas the Court refused to replace the first applicant's counsel the Court appointed a new counsel for the second applicant on 19 February 1988. On 1 July 1988 the second applicant's counsel requested that the hearing be postponed until January 1989. On 20 September 1988 the Court accordingly notified the parties that the hearing would take place from 17 to 19 January 1989.

As regards the proceedings concerning the placement in the foster home the social authorities were requested, on 29 July 1987, to submit their observations on the appeal. These observations were submitted on 14 August 1987. From 17 August until 11 September 1987 the file remained with the Parliamentary Ombudsman. From 23 March until 2 September 1988 a number of written submissions were exchanged between the parties through the Court. On 28 October 1988, the Court decided to include the placement question for consideration during the hearing concerning the public care issue scheduled for 17-19 January 1989.

Accordingly the Administrative Court of Appeal held a public hearing on both issues from 17 to 19 January 1989.

The applicants were present and both were assisted by officially appointed counsel under the Legal Aid Act. The children were represented by counsel as in the lower court. The Administrative Court of Appeal had at its disposal the case-file including written statements of Chief Doctor K.S., Authorised Psychologist G.S., Deputy Chief Doctor P.V. and Psychologist S.S. A total of 12 witnesses were heard, including K.S., P.V. and S.S. It appears that the Court decided not to hear a number of other witnesses requested by the second applicant.

In its judgment of 13 February 1989 the Administrative Court of Appeal stated inter alia:

(translation)

"All in all the Court finds that at the time of the care order in August 1986 Monika Tennenbaum and Peter Tennenbaum lacked the ability to take care of Miriam and Hannah to such an extent that the children's health and development were in danger.

However, the Court must determine whether such a danger still exists. It is to be noted that Monika Tennenbaum and Peter Tennenbaum are now divorced and that their housing problems have found a reasonably acceptable solution. They have declared that the children would live with Monika, in her flat containing two rooms and a kitchen, and that she would take care of them with considerable assistance from Peter. They intend to emigrate to Israel as soon as possible.

As established by the investigation, Monika Tennenbaum's and Peter Tennenbaum's inability to provide safe and harmonious conditions for their children while they are growing up constitutes a great danger to the children's health and development. The determining factor in this respect is hardly how the housing problems are solved, but rather the general attitude, shown by the parents, in questions concerning their children. The investigation in this matter does not indicate any changes worth mentioning on the part of Monika Tennenbaum and Peter Tennenbaum. On the contrary, it is remarkable that they have not had any contact at all with their children since the taking into care, even considering the fact that a meeting must be arranged on the conditions of the social authorities. The conclusion of the Court is therefore that there still is a need to provide care for the children outside their home.

Clearly, the conditions to provide the necessary care voluntarily are not at hand.

Consequently, the Court finds, like the County Administrative Court, that Miriam and Hannah must be provided care pursuant to the 1980 Act of Special Provisions on the Care of Young Persons.

...

Monika Tennenbaum and Peter Tennenbaum have submitted several letters to the Court concerning ethical, cultural and religious questions, which are all of importance in the matter of choosing a suitable foster home. In the light of the fact that on the side of the father, the children are to be regarded as jewesses, that the father has a Polish-jewish culture and belongs to the jewish church at Malmö and that the mother is converting to judaism, it is their clear opinion that the foster home should be jewish with Polish as its home language. Monika Tennenbaum and Peter Tennenbaum have further alleged that the Social District Council has not done enough to find a suitable foster home.

...

The Social District Council has in this matter pointed out the following. The foster home for Miriam and Hannah has been selected according to current routines at the family care section (familjevårdssektionen). This means advertising, meetings with foster parents and co-operation with other Social District Councils. At the beginning

> purposeful attempts were made to find a jewish home according to the parents' wish. The Social District Council inter alia contacted the Rabbi in Malmö. In his opinion the children are not jewish, because their mother is not a jewess. The parents' religious affiliation can be described as confusing ... The request for a Polish-speaking foster home was lodged for the first time after the children had been placed in the foster home. The search was limited to the southern part of Sweden in order to give the parents a realistic possibility of meeting the children, in accordance with the so-called principle of nearness (närhetsprincipen).
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> ...
>
> The plan for the care includes placing the children in a foster home. Thus, it has been the Social District Council's duty to find one suitable foster home for both of them, without any unnecessary waste of time. The Social District Council made some efforts to find a foster home corresponding to Monika Tennenbaum's and Peter Tennenbaum's wishes. Considering what was known about the children's needs at the time, the Court finds that no well-founded criticism can be made of the Social District Council's decision of 6 May 1987 to place the children in the foster home in question.
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> ...
>
> According to the Social District Council the main reason for keeping the address of the children secret is that otherwise Monika Tennenbaum and Peter Tennenbaum would interfere with the care in a way which would make it impossible for the foster home to give the children the necessary care. The Court shares the opinion of the Social District Council that the children's address should not be disclosed to the parents. In this regard there is reason to emphasise that such a decision does not deprive the parents of the possibility of meeting their children."

On 20 February 1989, the applicants appealed against this judgment to the Supreme Administrative Court (Regeringsrätten) which, by decision of 30 June 1989, refused to grant leave to appeal.

As indicated above, the first applicant was at that moment living alone whereas the second applicant had married another woman with whom he had a child. In the summer of 1990, however, he divorced her and returned to the first applicant. They submit that they were subsequently, on 26 September 1990, evicted from their apartment and considered themselves homeless in Sweden from that date onwards.

Later in the autumn of 1990 they decided to move to Berlin where, however, they could only live as tourists, three months at a time. In December 1990 they therefore moved to Poland and considered staying there. However, the conditions in Poland were such that the first applicant could not adapt to them for which reason they returned to Malmö in April 1991. On 4 May 1991 they re-married. It appears that they lived in various hotels in Malmö and, subsequently, in Copenhagen. On 1 December 1992 the applicants returned to Malmö where the social authorities have provided them with an apartment. They have only met their children once since 1986, as a matter of principle, they refuse to meet the children in "a neutral place" outside the foster home.

B. Relevant domestic law

A. Care decisions

The basic rules on public responsibility for young persons are laid down in the Social Services Act 1980 (socialtjänstlagen 1980:620). This Act contains provisions regarding supportive and preventive measures taken with the approval of the individuals concerned. At the relevant time of the present case, where parents did not give their consent to the necessary measures, compulsory care could be ordered under the 1980 Act containing Special Provisions on the Care of Young Persons. The 1980 Act was replaced by new legislation in 1990.

Section 1 of the 1980 Act read:

(translation):

"Care is to be provided pursuant to this Act for persons under eighteen years of age if it may be presumed that the necessary care cannot be given to the young person with the consent of the person or persons having custody of him and, in the case of a young person aged fifteen or more, with the consent of the young person.

Care is to be provided for a young person if

1. lack of care for him or any other condition in the home entails a danger to his health or development, or

2. the young person is seriously endangering his health or development by abuse of habit-forming substances, criminal activity or any other comparable behaviour. ..."

It is primarily the responsibility of municipalities to promote a positive development for the young. For this purpose each municipality has a Social Council, composed of lay members assisted by a staff of professional social workers, which operates under the supervision and control of the County Administrative Board (länsstyrelsen) and the National Board of Health and Welfare (socialstyrelsen).

The 1980 Act specified that, if the Social Council deemed it necessary to take a child into care, the Council had to apply to the County Administrative Court for a decision to this effect (Section 2).

B. Implementation of care decisions

Once a decision on public care has been taken, the Social Council executes the decision, takes care of the practical details regarding the placement of the child and decides what education and other treatment he should be given etc. (sections 11-16).

Pursuant to section 11 of the 1980 Act,

(translation):

"... the Social Council shall decide how care is to be arranged for the young person concerned and where he is to reside during the period of care.

The Social Council may consent to the young person residing in his own home if this may be presumed to be the most appropriate way of arranging care, but care pursuant to this Act is always to commence away from the young person's home.

The Social Council or the person charged with care of the young person by the Council shall keep the young person under

surveillance and make such decisions concerning his personal conditions as are necessary for the discharge of care."

With regard to the nature of the functions entrusted to the Social Council under the 1980 Act, the following is stated in the preparatory work to this Act, as reproduced in the Government Bill (1979/80: 1, Part A, pp. 596-597):

"After a decision on public care has been taken the Social Council exercises parental responsibility alongside with the parents or in their place. It should assume such parental authority and responsibility as is necessary to implement the care measures. Thus, like the parents, the Council may take the necessary measures to prevent the young person from harming himself or others ... [or] from running away [and] ... may also take decisions ... concerning [his] private affairs. This may include matters relating to medical care or treatment, permission for the young person to travel or to take up employment. According to the principles which govern the cooperation between the social welfare authorities and the individuals [concerned] on the implementation of public care measures, the Council should consult the parents in such matters, if the circumstances so allow. Therefore, the fact that the Council has taken over the responsibility for the care of the young person must not result in the parents being deprived of all influence. The parents and the young person himself should as far as possible take part in making the care arrangements. Thus, it is only in so far as it is necessary for the implementation of public care measures that the Council, through the decision of the County Administrative Court, takes over the parental responsibility of the person."

C. Provisions related to the length of proceedings

Basic provisions concerning the proceedings to be followed in, inter alia, county administrative courts, administrative courts of appeal and the Supreme Administrative Court are contained in the 1971 Act on Administrative Procedure (förvaltningsprocesslag 1971:291). There is no provision in the Act laying down time-limits within which cases brought before the courts are to be decided.

It is generally considered to be the courts' duty to ensure that adequate progress is made in cases pending before them, an obligation which, on 1 January 1988, was explicitly laid down for the ordinary courts through an amendment to the Code of Judicial Procedure (rättegångsbalken).

The proceedings complained of in the present case concerned the taking into care of children under the 1980 Act and issues related to the taking into care. Section 9 of that Act read at the relevant time as follows:

(translation):

"Cases concerning care pursuant to this Act are to be dealt with promptly.

If the young person is in custody, the County Administrative Court is to hold hearings in the case within two weeks of the day on which the application for care was received. The Court may prolong this period if such prolongation is necessitated by further investigation or any other special circumstance."

COMPLAINTS

The applicants complain of the fact that their children were

taken into care. They maintain that there was no pertinent reason for taking such a step and consider this to be in violation of their right to respect for their family life. They invoke in this respect Articles 3 and 8 of the Convention.

The applicants also complain that the placement of their children in a protestant foster home violates their rights under Article 9 of the Convention and Article 2 of Protocol No. 1 to the Convention in that their right to ensure their children's education and teaching in conformity with their own religion and philosophical conviction has been disregarded.

Under Articles 12 and 14 of the Convention the applicants complain that the taking into care of their children prevented them from founding a family and from living in accordance with their religion and philosophy.

They furthermore complain, under Article 6 of the Convention, that their case was not heard by an impartial tribunal, that the court hearings were not public, that the witnesses proposed by them were not heard, that the Administrative Court of Appeal did not investigate the case promptly and that the case was not determined within a reasonable time.

Finally, they complain, under Article 13 of the Convention, of the lack of an effective remedy.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 3 December 1989 and registered on 22 January 1990.

On 8 April 1991 the Commission decided to bring the application to the notice of the respondent Government inviting them to submit written observations on admissibility and merits of certain parts of the application.

The Government's observations were submitted on 27 June 1991 and the applicants' observations in reply were submitted on 20 September and 21 October 1991.

Legal aid was granted to the applicants on 12 July 1991.

On 8 July 1992 the Commission decided to adjourn the case in order to obtain further documentary evidence.

On 28 January 1993 the Government submitted such documentary evidence.

THE LAW

1. The applicants complain that their right to respect for their family life has been interfered with in a manner unjustifiable under Article 8 para. 2 (Art. 8-2) of the Convention. In particular they have pointed out that the social authorities' handling of their case was improper and that the care order concerning their daughters was issued without it having been established that there was a need to do so. The applicants refer in this respect also to Article 3 (Art. 3) of the Convention.

The Commission finds it appropriate first to examine the applicants' complaint under Article 8 (Art. 8) of the Convention which reads:

"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 Commission finds that the taking into care of the applicants' children interfered with their 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 of Article 8 (Art. 8-2) and it must be "necessary in a democratic society" for that or those legitimate aims.

As regards the first condition, the Commission finds that the relevant provisions in Swedish law satisfy the requirements as to the quality of the law (cf. Eur. Court H.R., Olsson judgment of 24 March 1988, Series A no. 130, pp. 30-31, paras. 60-63). Furthermore, the issue of care was examined by the competent administrative courts up to the Supreme Administrative Court which refused to grant leave to appeal, and there is nothing to suggest that the decisions taken by the courts in the present case were contrary to Swedish law.

The Commission also 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 expression "for the protection of health or morals" and "for the protection of the rights and freedoms of others" (cf. also above-mentioned Olsson judgment, p. 31, paras. 64-65).

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 (cf. above-mentioned Olsson judgment, pp. 31-32, para. 67). 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. Olsson judgment, p. 32, para. 68).

In the present case, the Commission recalls that the applicants allege that the care order was based on irrelevant circumstances.

Before considering the substance of this issue, the Commission recalls that both the County Administrative Court and the Administrative Court of Appeal held oral hearings. The applicants were present at both hearings and were assisted by counsel. Before these courts, the applicants had the possibility of presenting the views which in their opinion would be decisive for the outcome of the case. Having regard to these facts, the Commission finds that, in so far as certain procedural requirements are implicit in Article 8 (Art. 8),

these requirements were satisfied since the applicants were involved in the decision-making process to a degree sufficient to provide them with the requisite protection of their interests.

As regards the actual care order, the Commission recalls the judgments of the County Administrative Court and the Administrative Court of Appeal of 27 January 1987 and 13 February 1989 respectively. The courts established that the family's social and financial distress was self-inflicted, that Miriam showed signs of damage in respect of her mental and social progress and that her parents impaired her development due to their lack of will and capacity to provide for her primary needs of a permanent place to live, emotional contact, security and care. Such conditions were also found to endanger Hannah's development.

These conditions are clearly relevant to a decision to take a child into care. Furthermore, the Commission recalls that prior to the taking into care of the children the social authorities had been involved for a considerable length of time in supporting the applicants and had initiated an investigation as to Miriam's development after her birth. It cannot therefore be said that the authorities intervened without adequate knowledge of the background.

The Commission also recalls that the judgment of the Administrative Court of Appeal not only considered whether relevant and sufficient reasons were at hand when the children were taken into care, but also found that the subsequent developments and investigations showed that such reasons still existed when judgment was pronounced.

In the light of this the Commission finds that the decision to take the applicants' daughters into 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 is was necessary to take the children into care. Accordingly, the Commission concludes that this decision can be regarded as "necessary in a democratic society" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention in the interest of the children.

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.

2. In so far as the applicants rely on Article 3 (Art. 3) of the Convention in respect of the taking into care of their children the Commission finds that the examination of the case does not disclose any appearance of a violation of this provision. 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.

3. The applicants complain next that the placement of their children in a protestant foster home violates their right to ensure their children's education and teaching in conformity with their own religion and philosophical conviction. They invoke Article 9 (Art. 9) of the Convention and Article 2 of Protocol No. 1 (P1-2) to the Convention.

The Commission recalls that, although the right of the parents to ensure their children's education and teaching in conformity with their own convictions, is not removed as a result of a care order, such an order temporarily transfers certain parental rights to the authorities for which reason it is inevitable that the contents of the parents' rights must be reduced. However, the authorities must have due regard to the parents' wishes and, although these do not have an absolute right, the authorities were obliged, in the present case, to take the applicants' wish to have their children placed in a jewish foster home into account (cf. Olsson v. Sweden, Comm. Report 2.12.86, para. 183, Eur. Court H.R., ibid. p. 63).

In the present case certain questions have been raised by the respondent Government as to the religious convictions of the applicants. The Commission does not find it necessary to examine this issue because the applicants' complaints are in any event manifestly ill-founded for the following reasons.

The Commission recalls that under Swedish law the authorities exercise parental responsibility alongside the parents, or in their place, and parents should be consulted in matters concerning the child. In the present case the Commission finds it established that the social authorities took note of the applicants' wish for a jewish foster home and contacted various organisations and persons in order to comply with it and to find a suitable solution. The applicants were kept informed of the investigations and were invited to submit their views thereon. Accordingly, the social authorities clearly explored the possibilities of placing the children in a jewish foster home but their endeavours failed because of other considerations, such as the difficulty to find, without any unnecessary waste of time, a home not so far from the parents as to prevent their having a realistic possibility of meeting their children. In respect of the latter the Commission also notes that the applicants have apparently not found it necessary to take an active part in ensuring that their children's education would be in conformity with their own convictions as they have refused to accept the access offers made by the authorities.

In these circumstances the Commission finds that the examination of the complaint concerning the placement in a protestant foster home does not disclose any appearance of a violation of Article 9 (Art. 9) of the Convention or of Article 2 of Protocol No. 1 (P1-2) to 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.

4. Finally, in respect of the consequences of the taking into care of their children, the applicants invoke Articles 12 and 14 (Art. 12, 14) of the Convention complaining that this prevented them from founding a family and from living in accordance with their religion and philosophy.

The Commission has already found above that the interference with the applicants' family life was justified under paragraph 2 of Article 8 (Art. 8-2) of the Convention. Even assuming that this interference affected their right to found a family within the meaning of Article 12 (Art. 12) of the Convention, this complaint is inadmissible for the same reasons as stated above. Furthermore, the application, as submitted, does not disclose any substantiated allegations which could justify a further examination of the complaint submitted under Article 14 (Art. 14) of the Convention.

This part of the application is accordingly also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5.a. Under Article 6 (Art. 6) of the Convention the applicants complain of a number of procedural shortcomings in respect of the court hearings involved. They maintain that the case was not heard in public by an impartial tribunal, that all the witnesses proposed by them were not heard, that the Administrative Court of Appeal did not investigate the case properly and that the case was not determined within a reasonable time.

Article 6 para. 1 (Art. 6-1) of the Convention 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. Judgment shall be

pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

The Commission notes that the care issue was determined first, on a preliminary basis, by two different courts and subsequently by three different courts. In these proceedings the applicants were assisted by counsel. As already stated above, the Commission finds that the applicants were involved in the decision-making process to a degree sufficient to provide them with the requisite protection of their interests. The Commission has found no substantiation of the allegation that the case was not determined by an impartial tribunal but, whereas the hearing in the Administrative Court of Appeal was public, it is true that the hearing in the County Administrative Court was closed to the public. However, having regard to the subject matter of the case as it was before the domestic courts, the Commission finds that this was in accordance with Article 6 para. 1 (Art. 6-1), second sentence, which inter alia allows for the exclusion of the public where the interests of juveniles or the protection of the private life of the parties so require.

It is also true that the courts refused to hear certain witnesses suggested by the applicants. However, Article 6 (Art. 6) of the Convention does not guarantee parties to the proceedings in question an unlimited right to have witnesses heard. Article 6 (Art. 6) permits the courts to reject proposed evidence which they consider to be irrelevant or unnecessary. This is what happened in the present case and the Commission has not found any indication which could lead it to concluding that this was done in an unfair or arbitrary manner.

Having regard to this and considering the domestic judicial proceedings as a whole, the Commission finds no material to support the conclusion that they were not fair or that the Swedish courts failed to make due and proper enquiries.

5.b. In respect of Article 6 (Art. 6) of the Convention the applicants also complain that their case was not determined within a reasonable time. The Commission recalls that the applicants' children were taken into care on 5 August 1986 by the social authorities and an application for public care under the 1980 Act was lodged with the County Administrative Court on 20 August 1986. On 30 June 1989 the Supreme Administrative Court refused leave to appeal. It follows that these proceedings lasted approximately two years and eleven months. The proceedings concerning the foster home placement commenced on 6 May 1987 and ended with the decision of the Supreme Administrative Court on 30 June 1989, lasting approximately two years and two months.

The Commission recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the parties and the conduct of the authorities dealing with the case (see Eur. Court H.R., Vernillo judgment of 20 February 1991, Series A no. 198, p. 12, para. 30).

The Government submit, which is contested by the applicants, that the proceedings were somewhat complex and that, in assessing the reasonableness of their length, emphasis should be placed on the importance of what was at stake. They furthermore maintain that any delay was attributable to the applicants.

The Commission recalls that the proceedings in the County Administrative Court lasted from 20 August 1986 to 27 January 1987 (care) and from 1 June to 10 July 1987 (placement). The proceedings in

the Administrative Court of Appeal lasted from 2 February 1987 to 13 February 1989 (care) and from 27 July 1987 to 13 February 1989 (placement). Finally, the proceedings in the Supreme Administrative Court lasted from 20 February to 30 June 1989 (both issues). The Commission considers that the duration of the proceedings in the County Administrative Court and in the Supreme Administrative Court do not give rise to any objection.

The proceedings in the Administrative Court of Appeal lasted approximately two years as regards the issue of care and it was joined with the issue of placement. The Commission is of the opinion that the issues at stake in the present case required by their very nature to be dealt with expeditiously. However, it recalls that during the period in question the applicants asked on several occasions for a replacement of their court appointed counsel which, as it turned out, caused considerable delays. Not only was the hearing, scheduled as early as October 1987, vacated but it was furthermore on counsel's request that the hearing was subsequently postponed from July 1988 to January 1989. In these circumstances the Commission finds that the applicants prolonged the proceedings in the Administrative Court of Appeal.

The Commission furthermore notes that, as indicated above, the Administrative Court of Appeal not only examined the appropriateness of the care and placement of the applicants' children at the time when these measures were implemented but also examined whether, at the time of the judgment pronounced, such measures were still necessary on the basis of the continuing developments in the case. Having regard to all these circumstances and to the fact that the proceedings comprised three court levels, the Commission finds that the total period of time was not so long as to warrant the conclusion that it was excessive.

It follows that the applicants' complaints, as submitted under Article 6 (Art. 6) of the Convention, are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

6. Finally, the applicants complain of the lack of a remedy in respect of the complaints submitted. They refer in this respect to Article 13 (Art. 13) of the Convention.

The Commission recalls that Article 13 (Art. 13) 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. for example Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 23, para. 52).

However, having regard to its above conclusions in respect of the Convention complaints submitted, the Commission also considers that the applicants do not have any "arguable claims" of a violation of the provisions invoked for these complaints. Furthermore, the Commission recalls that the domestic courts considered all complaints which the applicants have submitted to the Commission. In these circumstances it finds no appearance of a violation of Article 13 (Art. 13) of the Convention.

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.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)