AS TO THE ADMISSIBILITY OF

Application No. 26076/94
by Tuula TIID
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 17 January 1996, the following members being present:

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

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 13 October 1994 by Tuula TIID against Sweden and registered on 21 December 1994 under file No. 26076/94;

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

The applicant, a Swedish citizen born in 1960, is a tram driver. She resides at Gothenburg.

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

On 7 December 1993 the Social District Council (Stadsdelsnämnden; hereafter "the Council") of Bergsjön, Gothenburg, decided, pursuant to Section 6 of the Act with Special Provisions on the Care of Young Persons (Lagen med särskilda bestämmelser om vård av unga, 1990:52), immediately to take the applicant's children, A-L, born in 1981, and M, born in 1984, into public care on a provisional basis. The children were the same day placed at a children's home at Kungälv, in the vicinity of Gothenburg.

The Council's decision was later brought before the County Administrative Court (Länsrätten) at Gothenburg, which appointed counsel for the applicant and her husband - the children's father - as well as for the children. On 20 December 1993 the Court confirmed the Council's decision.

The Council later applied to the Court for a care order concerning the children under Section 1, subsection 2 and Section 2 of the above-mentioned Act. These provisions state that compulsory care

is to be provided if there is a clear risk of impairment of the health and development of a person under 18 years of age due to ill-treatment, exploitation, lack of care or any other condition in the home and if the necessary care cannot be provided with the consent of the young person's custodian.

The County Administrative Court held a hearing at which the parents, their counsel, the children's counsel, representatives of the Council and a social expert (socialkonsulent) from the County Administrative Board (Länsstyrelsen) were heard. The Court also heard a witness requested by the parents. It further heard the chief physician who had conducted a psychiatric examination of the children. Moreover, the Court had at its disposal the Council's investigation of the case, which contained statements by teachers, the children's contact family (kontaktfamilj), a Children's Psychiatric Clinic and a Child Welfare Centre.

The Council stated, inter alia, that it had been noted at the children's school that they had great problems in their relationships with other people and serious learning difficulties. Allegedly, the applicant had ill-treated the children. There were also suspicions of incest in the family, although the police investigation had been closed. The parents had, on several occasions, been offered assistance by the social authorities, but had declined. Allegedly, it was not possible to come to any agreements with the parents.

The parents maintained, inter alia, that it was better for the children to live with them than at the children's home. The children needed help with their homework, but required no further support. The parents were, however, willing to accept certain forms of assistance from the social authorities. They contested that any ill-treatment or incest had occurred in their home.

The children's counsel and the social expert supported the Council's application. The chief physician stated that the parents were unable to understand their children's problems. He considered that the care proposed by the Council satisfied the needs of the whole family, especially the children's special needs.

By judgment of 15 February 1994, the County Administrative Court granted the application and ordered that the children be taken into public care. The Court considered that the children needed extensive support which the parents could not provide, as they lacked the necessary ability and understanding. The Court further found that the children had already been harmed by the insufficient care provided by their parents and noted that the parents had not consented to the care proposed by the Council.

The parents appealed to the Administrative Court of Appeal (Kammarrätten) of Gothenburg. The appellate court held a hearing and heard the same persons as the County Administrative Court except for the social expert and the witness. In addition to what they had previously stated, the parents agreed that the children were in need of extensive supportive measures. They maintained, however, that the children should live at home with their parents. The chief physician stated, inter alia, that the children had developed favourably at the children's home and that this confirmed the appropriateness of placing them there.

On 28 April 1994 the Administrative Court of Appeal, agreeing with the findings of the County Administrative Court, rejected the appeal.

On 26 July 1994 the Supreme Administrative Court (Regeringsrätten) refused leave to appeal.

COMPLAINTS

The applicant complains of the public care of her children. She does not invoke any Articles of the Convention.

THE LAW

The applicant's complaint concerns the public care of her children. The Commission considers that it falls to be considered under Article 8 (Art. 8) of the Convention, 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."

The applicant maintains that she and her husband are able to take care of their children and that the children want to come home. She states that since 1 February 1995 the children are placed in separate families. The parents are allowed to visit them twice a month and phone them twice a week.

The Commission finds that the taking into public care of the applicant's children interfered with her right to respect for her 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 1, subsection 2 and Section 2 of the Act with Special Provisions on the Care of Young Persons.

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. However, the Commission's review is not 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 judgment of 15 February 1994, found that the children needed extensive support which their parents could not provide, as they lacked the necessary ability and understanding, and that the children had already been harmed by the insufficient care provided by the parents.

The Commission further recalls that the County Administrative Court and the Administrative Court of Appeal, before giving their judgments, had held hearings at which the parents, their counsel, the children's counsel, representatives of the Council, a social expert and the chief physician who had examined the children had been heard. In addition, the courts had regard to written submissions. Thus, the courts cannot be said to have intervened without adequate knowledge of the case.

In the light of the foregoing the Commission finds that the taking into care of the children 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 to take the children into care. Accordingly, the Commission concludes that the relevant decisions 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 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
(M.-T. SCHOEPFER)	(G.H. THUNE)