AS TO THE ADMISSIBILITY OF

Application No. 21607/93
by Peter WEDBERG and Mette HILLBLOM
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 11 April 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 26 July 1992 by Peter WEDBERG and Mette HILLBLOM against Sweden and registered on 31 March 1993 under file No. 21607/93;

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

Having regard to the observations submitted by the respondent Government on 11 April and 3 July 1995 and the observations in reply submitted by the applicants on 2 June and 29 August 1995;

Having deliberated;

Decides as follows:

THE FACTS

The first applicant, a student born in 1957, and the second applicant, a gardener born in 1958, are Swedish citizens and reside at Uppsala.

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

In November 1990 a medical examination at the Academic Hospital in Uppsala revealed that the applicants' son Victor, born in May 1989, was suffering from a malignant tumour in the liver. Chemotherapy was initiated at the hospital under the supervision of doctor A.K. At the same time, Victor was, on the applicants' initiative, given homeopathic treatment, initially by doctor P.A. at Järna and later by doctor D.R. in Copenhagen. Doctor A.K. was in contact with these doctors.

Following an examination at the Academic Hospital on 30 January 1991, it was decided that Victor should undergo surgery on 26 February. According to doctor A.K., Victor could not be cured by means of medicine but had to undergo surgery. An operation was necessary to remove the remains of the tumour, as there was a risk that

the tumour would grow and reduce the chance of further successful treatment. This view was shared by doctor P.A. and by physicians at the Children's Clinic at the University Hospital in Lund with whom doctor A.K. had discussed the case. Doctor A.K. had also consulted colleagues at the Karolinska Hospital in Stockholm. He deemed that with an operation there were good prospects of completely curing Victor's disease.

However, after having discussed the operation with doctor A.K. on several occasions, the applicants decided not to allow it. They instead relied on doctor D.R., who found the operation inexpedient and wanted to continue with homeopathic treatment. On 26 February 1991 the applicants left the ward at the Academic Hospital together with Victor and did not return.

On 27 February 1991, as a consequence of the applicants' refusal, doctor A.K. sent a report on the matter to the Social Council (Socialnämnden) at Uppsala and requested that Victor immediately be taken into public care for the purpose of carrying out the operation. The report was filed with the Council on 1 March. The Council initiated an investigation, during which it contacted the applicants and doctors A.K. and D.R.

The applicants stated, inter alia, that it was difficult for Victor to cope with the chemotherapy and that if he also had to go through an operation he might give up. They were also afraid of the risks involved in removing a major part of his liver and felt that an operation might prove to be unnecessary as tests allegedly had shown that there was very little activity in the tumour. As they strongly believed in alternative medicine, they wanted to continue with the treatment given by doctor D.R. for some time before operating.

In his statement to the Social Council, doctor A.K. claimed that Victor should undergo an operation as soon as possible, since his life was otherwise at risk. Every delay was allegedly disadvantageous to Victor. According to doctor A.K., there were clear indications of increased activity in the tumour. He based this assessment on Victor's AFP values, an indicator used to determine the activity of cancer tumours. In November 1990 the AFP value was over 1 million, as compared to the normal value of less than 10. As a result of chemotherapy, it had fallen to 1,530 on 7 February 1991. On 7 March the AFP value was 4,420. Doctor A.K. deemed that there was less than a ten per cent risk in operating and that the risk that Victor might die was much greater if the operation was not performed.

Doctor D.R. submitted to the Social Council a taped statement in English on his contacts with the applicants and Victor and on Victor's medical records. He further stated that he had observed a considerable improvement in Victor's health and that he wanted him to be continuously examined and observed at the Academic Hospital at the same time as he received alternative treatment in Copenhagen. According to doctor D.R. it was not necessary, at the time, to let Victor undergo surgery.

The Social Council included the above statements in a report and concluded that if the physicians at the Academic Hospital, after further tests, would find that Victor should be operated on within a few days and the applicants would refuse, the primary consideration would have to be the child and Victor should thus, in these circumstances, be taken into care.

On 7 March 1991 the County Administrative Court (Länsrätten) of the County of Uppsala, at the request of the Social Council, appointed public counsel for the applicants and for Victor.

On 12 March 1991 the Social Council held a meeting with the applicants, assisted by their counsel. After the meeting, the Council

decided to apply to the County Administrative Court for a care order concerning Victor under Section 2 of the Act with Special Provisions on the Care of Young Persons (Lagen med särskilda bestämmelser om vård av unga, 1990:52; "the 1990 Act"). This Section provides that a child may be taken into care if, inter alia, its health is endangered because of insufficient care. The Council considered that the applicants were subjecting Victor's health to serious risks by preventing the operation from taking place.

On 12 March 1991 the application was sent by telefax to the Court. The Social Council further sent its investigation and report, the minutes from the meeting on 12 March, letters from doctor A.K. and the tape received from doctor D.R.

After considering whether to hold a hearing in the case on 19 or 21 March 1991, the Court, apparently due to the fact that the operation had already been scheduled for the latter date, decided to hold the hearing on 19 March. On 13 March, the Court summoned the applicants and their counsel, the public counsel appointed for Victor, doctor A.K., the representatives of the Social Council and a social welfare consultant (socialkonsulent) from the County Administrative Board (Länsstyrelsen) to appear at the hearing. Also on 13 March the Court sent doctor D.R.'s tape for translation and transcription.

The applicants wanted to hear doctor D.R. as a witness during the hearing, but he could not appear at such short notice. He was, however, able and willing to appear on 21 March 1991. According to the applicants, the first applicant and their counsel contacted the Court and requested that the hearing be postponed so that doctor D.R. would be able to appear. This request was apparently refused. As an alternative to attending the hearing, doctor D.R. wished to submit a written statement on the question of the urgency of the operation. The applicants allege that he was not given an opportunity to do so.

On 19 March 1991, between 9.00 am and 12.10 pm, the hearing took place in the presence of those who had been summoned to appear. The Government submit that, according to the minutes of the hearing, the chairman of the Court informed the parties that the Court's members had read the written submissions and the documentation in the case, including doctor D.R.'s taped statement which had now been translated and transcribed.

At the hearing, the applicants stated that, for the reasons given to the Social Council, they wanted to wait with the operation. They would accept an operation at a later date, if there were greater chances of survival with an operation. Doctor A.K., heard as an expert witness, stated, inter alia, that recent examinations on Victor indicated that the tumour was growing (on 13 March 1991 the AFP value was 6,450) and that if an operation was not carried out immediately there was a great risk that the tumour would grow so much as to make an operation impossible. In such a situation, the chances of curing Victor would be extremely slim. The social welfare consultant and Victor's public counsel supported the Social Council's application.

By judgment of 19 March 1991, the day of the hearing, the County Administrative Court, having regard to doctor A.K.'s statement, found that the only reasonable treatment of Victor was an immediate operation. For the protection of his health, the Court therefore ordered that Victor be taken into care pursuant to Section 2 of the 1990 Act. The Court further decided that the judgment was immediately enforceable. The judgment was sent to the applicants' public counsel by telefax on the same day at 16.47 pm.

The applicants informed their counsel the same day of their wish to appeal. In the late afternoon or in the evening of 20 March 1991, counsel sent the appeal to the County Administrative Court by telefax. It was apparently found in the Court's telefax machine in the morning

of 21 March. At 10.16 am the same day, it was forwarded by telefax to the Administrative Court of Appeal (Kammarrätten) in Stockholm.

The applicants requested the Administrative Court of Appeal to terminate the public care of Victor and to stay the execution of the County Administrative Court's judgment. They further requested that a hearing be held and that doctor D.R. be heard as an expert witness.

On 21 March 1991, at 15.00 pm, the judge in charge of the case at the Administrative Court of Appeal was in contact with doctor A.K. The judge was informed that an operation had been going on since 8.00 am that day. Initially the operation went according to the plans, but after some hours bleeding occurred which were impossible to control. Victor was declared dead at 16.15 pm due to loss of blood.

On 22 March 1991 it was noted in the case-file of the Administrative Court of Appeal that Victor had died during the operation and that the applicants' counsel had withdrawn the request for a stay of the execution of the County Administrative Court's judgment.

On 27 June 1991 the Administrative Court of Appeal decided not to take any further action in the case, as there was no reason to examine the request for termination of the public care in view of Victor's death. Thus, the Court did not hold a hearing or hear doctor D.R. The proceedings of Swedish administrative courts are, however, principally of a written nature and the courts shall, according to Section 30 of the Administrative Procedure Act (Förvaltningsprocesslagen, 1971:291), take into account both written and oral testimony.

On 6 February 1992 the Supreme Administrative Court (Regeringsrätten) refused the applicants leave to appeal.

COMPLAINTS

1. The applicants allege that they were denied a fair hearing in the County Administrative Court in violation of Article 6 of the Convention.

2. The applicants further allege that their rights under Article 6 have been violated, as they were not given reasonable time in which to file an appeal to the Administrative Court of Appeal.

3. The applicants claim that Article 6 has been violated also in that the Administrative Court of Appeal refused to try their appeal on the merits and so refused to give them an oral hearing and to hear their expert witness.

4. The applicants complain, alternatively or additionally, that their right to respect for their family life under Article 8 of the Convention has been violated because no adequate right of appeal against the judgment of the County Administrative Court was provided for in practice and because the Administrative Court of Appeal did not examine the case.

5. The applicants finally contend that there were no relevant and sufficient reasons justifying the decision to take their son into public care. They invoke Article 8 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 26 July 1992 and registered on 31 March 1993.

On 11 January 1995 the Commission (Second Chamber) decided to communicate the application to the respondent Government pursuant to

Rule 48 para. 2 (b) of the Commission's Rules of Procedure.

The Government's written observations were submitted on 11 April 1995 after an extension of the time-limit fixed for that purpose. The applicants replied on 2 June 1995. Additional observations were submitted by the Government on 3 July 1995 and by the applicants on 29 August 1995.

THE LAW

1. The applicants allege that they were denied a fair hearing in the County Administrative Court in violation of Article 6 (Art. 6) of the Convention, which in relevant parts reads as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing by [a] ... tribunal"

The Government maintain that, on 26 February 1991, it must have been clear to the applicants that the physicians responsible for the treatment of Victor deemed an operation necessary, as the operation was initially scheduled for that date. On 7 March, at the latest, the applicants must have fully understood the situation, as the County Administrative Court on that day appointed counsel for them and for Victor. The Government further submit that it was necessary for the Court to deal with the Social Council's application expeditiously, as a delay risked to cause a situation where an operation would serve no purpose. In view of the circumstances, the Government thus hold that the Court's speedy handling of the case was justified. With regard to the fact that doctor D.R. was not heard at the hearing, the Government claim that his opinion was clear to the Court from his taped statement. As the Court did not summon doctor D.R., it evidently considered that it was not necessary to hear him. This assessment allegedly falls within the discretionary power of a court in a case of the present character. In this respect, the Government refer to the judgment of the European Court of Human Rights in the Bricmont case (Eur. Court H.R., Bricmont judgment of 7 July 1989, Series A no. 158). The County Administrative Court's failure to hear doctor D.R. as an expert witness does not therefore constitute a violation of Article 6 (Art. 6) of the Convention.

The applicants claim that they were not given adequate time and facilities to prepare their case, as they were summoned to the hearing of the County Administrative Court only six days in advance. This was not sufficient time to assemble evidence and expert testimony to challenge doctor A.K.'s opinion and the diagnostic technique on which it was based. The applicants further allege that the urgency with which the Court dealt with the case was not supported by medical evidence. In this respect, they contend that the small increase of the AFP value did not conclusively show that the tumour was growing. The real reason for the urgency was allegedly the administrative convenience of the hospital which, having assembled a medical team, was determined not to let anything delay the operation. Moreover, by holding the hearing on a date when the applicants' expert witness, doctor D.R., was unable to appear and by not giving him an opportunity to submit written testimony on the urgency of the operation, the Court allegedly violated the principle of equality of arms. As the only evidence before the Court was medical evidence and the Court was bound to attach decisive importance to the evidence presented by an expert witness in the court room, the applicants maintain that this principle required that both parties had a real possibility to present their arguments and to support these arguments by referring to competent medical opinion. The applicants also claim that the Court did not properly consider the taped statement of doctor D.R., as the transcripts of the proceedings allegedly fail to show that it took this evidence into account.

The Commission notes that it is implicit in the right to a fair

hearing that parties to proceedings must be allowed to present their case under conditions which do not place them at a substantial disadvantage vis-à-vis their opponent (cf., e.g., No. 2803/66, Dec. 16.7.78, Collection 27 p. 61). According to its established case-law, in order to determine whether Article 6 para. 1 (Art. 6-1) of the Convention has been complied with the Commission must examine the proceedings as a whole. As concerns the right to have witnesses heard, the Commission would point out that the Convention does not explicitly secure this right to persons whose civil rights and obligations are determined. It is secured, under Article 6 para. 3 (d) (Art. 6-3-d) of the Convention, only to persons charged with criminal offences. That does not mean, however, that the questioning of witnesses is irrelevant to Article 6 para. 1 (Art. 6-1) of the Convention. In determining whether the applicants' right to a fair hearing was infringed by the fact that their expert witness neither appeared at the hearing of the County Administrative Court nor submitted a written statement directly to the Court, regard must be had to the circumstances of the case.

The Commission recalls that, according to doctor A.K., Victor's chances of surviving were extremely slim if an immediate operation was not carried out. This view was apparently shared by doctor P.A. who had initially treated Victor on the applicants' initiative and by physicians at the University Hospital in Lund with whom doctor A.K. had been in contact. Moreover, an operation scheduled for 26 February 1991 had already been cancelled, as the applicants had refused to allow it. Thus, whether or not the opinion of doctor A.K. was shared by doctor D.R., the Commission considers that the matter before the County Administrative Court was such that it required a prompt examination.

The Commission further recalls that the operation had initially been decided on 30 January 1991, after which date it must have been apparent to the applicants that an operation on their son might be carried out in the near future. The Social Council's request for the County Administrative Court to take Victor into public care was, furthermore, preceded by an investigation of the matter by the Council, during which it heard the applicants. Moreover, on 7 March - twelve days before the hearing - the Court appointed public counsel for the applicants. Thus, the question of an operation on their son had been of immediate concern to the applicants for a considerable period of time before they were summoned to the hearing of 19 March. The Commission therefore finds that the period of six days between serving of the summons and the hearing cannot, in the circumstances of the case, be considered as insufficient time for the applicants to prepare their case.

As concerns the applicants' wish to have doctor D.R. heard during the hearing, the Commission first recalls that it is normally for the national courts to decide whether it is necessary or advisable to call a witness. There are, however, exceptional circumstances where the failure to hear a person as a witness is incompatible with Article 6 (Art. 6) (cf. above-mentioned Bricmont judgment, p. 31, para. 89). In the present case, the Commission notes that the County Administrative Court did not refuse to hear doctor D.R., but held its hearing on 19 March 1991 when he was apparently unable to appear. However, the Commission cannot find, in the circumstances of the case, that it was unreasonable to hold the hearing on that date, as a postponement would, irrespective of the outcome of the case, involve a second cancellation of the planned operation which, according to the statements of several physicians, was very urgent. The Commission further recalls that the taped statement made by doctor D.R. to the Social Council had been forwarded to the Court and that doctor D.R. had declared that, as an alternative to appearing at the hearing, he wished to submit a written statement. It has not been shown that the Court refused to receive such a statement. Furthermore, the Commission finds that, because of the urgency of the matter, it was not unreasonable to expect of doctor D.R. to make arrangements enabling him either to appear on the date fixed by the Court or to submit a written statement before that date.

With regard to the applicants' claim that the Court did not properly consider the taped statement of doctor D.R., the Commission notes that the applicants and the Government disagree on the question whether it was taken into account by the Court. However, the proceedings of Swedish administrative courts are principally of a written nature and the courts shall take into account both written and oral testimony. Thus, having regard to the fact that the Court had the tape transcribed and translated from English to Swedish, the Commission finds, irrespective of whether the statement was specifically referred to during the hearing, that there is no evidence of the Court having failed to duly examine the statement. In this connection, the Commission further notes that it has not been shown that the applicants were prevented from referring to the statement during the hearing.

For these reasons, the Commission finds no appearance of a violation of the applicants' right to a fair hearing in the County Administrative Court.

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. The applicants further allege that their rights under Article 6 (Art. 6) of the Convention have been violated, as they were not given reasonable time in which to file an appeal to the Administrative Court of Appeal.

The Government submit that it was clear to the applicants that the consequence of the judgment of the County Administrative Court was that the operation would be performed on 21 March 1991. The judgment was sent by telefax to the applicants' counsel at 16.47 pm on 19 March, the day of the judgment. It was thus possible for the applicants to file an appeal against the judgment and a request to stay the execution thereof on 19 March or early on 20 March. As the appeal was not sent until the late afternoon or evening of 20 March, there was no real chance that it would prevent the execution of the judgment. In view of these circumstances and the urgency of the matter, the Government hold that no violation of Article 6 (Art. 6) has taken place as regards the applicants' possibility to lodge an appeal against the County Administrative Court's care order.

The applicants contend that, in practice, they were denied the right to appeal. They claim that in the circumstances of the case, even if the need for urgency is accepted, a period of 2-3 days in which to file an appeal would have been reasonable.

The Commission recalls at the outset that Article 6 (Art. 6) of the Convention does not as such guarantee the right of appeal to a higher court, but that where the opportunity to seek appeal is provided under domestic law, the guarantees of Article 6 (Art. 6) continue to apply to the proceedings on appeal (cf., e.g., Eur. Court H.R., Delcourt judgment of 17 January 1970, Series A no. 11, pp. 14-15, para. 25). The Commission further recalls that the right to a fair hearing includes the right of access to the courts. This does not, however, debar Contracting States from making regulations governing the access of litigants to an appellate court, provided that such regulations serve the purpose of ensuring the proper administration of justice (cf. No. 8407/78, Dec. 6.5.80, D.R. 20 p. 179).

In the present case, the applicants had access to the appellate court. The applicants, however, claim that they were in practice denied a right to appeal because of the short time between the judgment of the County Administrative Court and the operation. To decide whether in this respect Article 6 (Art. 6) of the Convention has been violated, the Commission needs to look at the proceedings as a whole.

As has been stated above, the case before the administrative courts required a prompt examination. According to several physicians, an immediate operation was called for. Moreover, at the time when the applicants were summoned to the hearing of the County Administrative Court, the operation had already been scheduled for 21 March 1991. When the applicants' counsel received the Court's judgment in the late afternoon of 19 March, it was thus clear that the operation would be carried out if a request to have the execution of the judgment stayed was not lodged immediately. However, this request, together with the applicants' appeal against the care order, was apparently not sent until 20 March after the courts' normal working hours. The Administrative Court of Appeal could not, therefore, deal with the matter before the start of the operation. Considering that the applicants had an opportunity to seek a stay of execution and having regard to the special circumstances of the case, the Commission cannot find that the limited time at the applicants' disposal involved a violation of Article 6 (Art. 6) 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.

3. The applicants complain of a violation of Article 6 (Art. 6) of the Convention also in that the Administrative Court of Appeal refused to examine their appeal on the merits and so refused to give them an oral hearing and to hear their expert witness.

The Government submit that the purpose of taking the applicants' son into care was to carry out the operation in question. When the son had died, there was no longer any purpose in examining whether the conditions for the care order were at hand. In this connection, the Government state that the Swedish administrative court procedure does not recognise the concept of declaratory judgments.

The applicants maintain that important points of principle remained to be determined by the appellate court. Particularly in view of the tragic result of the operation, the applicants had a legitimate interest in vindicating their opinion that the operation should not have been carried out at the particular time. Furthermore, the applicants wished to be assured that the courts had taken proper account of the statement given by their expert witness.

The Commission recalls that, in their appeal to the Administrative Court of Appeal, the applicants requested the public care of their son to be terminated. When the Court decided that there was no reason to examine the appeal, the public care had already ended as a consequence of the son's unfortunate death during the operation. In these circumstances, the Commission finds that the appellate court's failure to examine the appeal on the merits and to hear the applicants' expert witness do not involve a violation of Article 6 (Art. 6) 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.

4. The applicants complain, alternatively or additionally, that their right to respect for their family life under Article 8 (Art. 8) of the Convention has been violated because no adequate right of appeal against the judgment of the County Administrative Court was provided for in practice and because the Administrative Court of Appeal did not examine the case.

The Government maintain that these complaints are in principle identical with the complaints under Article 6 (Art. 6) of the Convention and that they do not warrant a separate examination. Moreover, a right to appeal cannot be derived from Article 8

(Art. 8) of the Convention.

Having regard to its findings under Article 6 (Art. 6) of the Convention, the Commission considers that these complaints do not reveal any appearance of a violation of the applicants' rights under Article 8 (Art. 8) 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.

5. The applicants contend that the decision to take their son into public care violated their right to respect for their family life. They invoke 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 or morals, or for the protection of the rights and freedoms of others."

The Government admit that there has been an interference with the applicants' rights under Article 8 (Art. 8) as a result of the care order. The interference was, however, in accordance with the law and pursued the legitimate aim of protecting Victor's life and health in spite of the tragic outcome of the operation. With regard to the necessity of taking Victor into care, the Government argue that, in all actions concerning children, the best interests of the child shall be a primary consideration. In the opinion of doctor A.K. and several experienced physicians whom he had consulted, an operation at the particular time was the only way to save Victor's life. The applicants had previously refused to allow an operation and the responsible physicians were very much concerned of the increased activity of the tumour. Doctor A.K. deemed that every delay involved increasing risks for Victor. It is this situation, prior to the operation, that should constitute the basis for the examination of whether the care order was necessary. The tragic and unexpected result of the operation must not affect this examination. The Government thus hold that the reasons for taking Victor into care were relevant and sufficient and proportionate to the aim pursued.

The applicants submit that the care order was not in accordance with the law and not necessary in a democratic society. They claim that the need to take custody over Victor to carry out the operation at the particular time had not been convincingly demonstrated. The AFP values were not conclusive in this respect. They contend that too great an emphasis was placed on the administrative convenience of the hospital.

The Commission finds that the taking into care of the applicants' son 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 and it must be "necessary in a democratic society" for that or those aims.

As regards the first condition, the Commission finds that the decision of the County Administrative Court to take the applicants' son into public care was in conformity with Swedish law, namely 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 child, 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" (cf. Eur. Court H.R., Olsson judgment of 24 March 1988, Series A no. 130, 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 child.

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. above-mentioned Olsson judgment, pp. 31-32, paras. 67-68).

In agreement with the view expressed by the Government, the Commission considers that the necessity issue must be examined in the light of the situation prevailing at the time of the County Administrative Court's decision to take the applicants' son into care. His tragic death during the operation cannot affect the assessment of whether there were relevant and sufficient reasons, at the time of the Court's judgment, to take him into care.

The Commission recalls that the Court's judgment was based on the opinion of the responsible physician, doctor A.K., that the applicants' son's only chance to survive was to undergo an immediate operation. This view was shared by several physicians whom doctor A.K. had consulted. The only physician to disagree on the urgency of the operation was doctor D.R. As the applicants would not allow the operation, it could not be carried out unless their son was taken into public care.

The Commission further recalls that the Court's judgment was preceded by an investigation of the matter by the Social Council, during which the Council heard the applicants and doctors A.K. and D.R. The Council's report, which included the statements made by these persons, was submitted to the Court. The Court further held a hearing in the case, during which it heard, inter alia, the applicants and doctor A.K. It further had at its disposal a transcribed and translated statement made by doctor D.R. Thus, the Court cannot be said to have intervened without adequate knowledge of the case.

In the light of the foregoing the Commission finds that the decision to take the applicants' son into care was supported by relevant and sufficient reasons and that, having regard to their margin of appreciation, the Swedish authorities were entitled to think that is was necessary to take him into care for the purpose of carrying out the operation. Accordingly, the Commission concludes that the decision 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 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 Second Chamber	Acting President of the Second Chamber
(M.-T. SCHOEPFER)	(G.H. THUNE)