AS TO THE ADMISSIBILITY OF

Application No. 26259/95
by Kerstin WOLLMAR and Others
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 19 September 1994 by Kerstin Wollmar and Others against Sweden and registered on 20 January 1995 under file No. 26259/95;

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 first applicant is a teacher born in 1943 and residing at Falköping. The other applicants are her son K, a cook born in 1967 and residing at Tidaholm, and her daughters A, a student born in 1973 and residing at Falköping, and D, born in 1982 and presently residing at Skara. They are all Swedish citizens.

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

On 18 November 1991 the first applicant attended a school conference at Tidaholm, where she was living at the time.

The same day, the Social Council (Socialnämnden) of Tidaholm 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 D into public care on a provisional basis. She was placed at the Children's Psychiatric Clinic (Barn- och ungdomspsykiatriska enheten) at Skövde. The Social Council's decision was put before the County Administrative Court (Länsrätten) of the County of Skaraborg which, on 22 November 1991, set aside the decision, finding that it was not supported by sufficient reasons.

On 23 November 1991 the first applicant came to the clinic to

take her daughter home. This was allegedly refused by the personnel. Instead, the first applicant was put under sedation and taken into compulsory psychiatric care pursuant to the Act on Institutional Psychiatric Care in Certain Cases (Lagen om beredande av sluten psykiatrisk vård i vissa fall, 1966:293).

On 28 November 1991 the Social Council again decided provisionally to take D into care. This decision was confirmed by the County Administrative Court on 2 December. She was placed at a children's home at Skara.

The Social Council later applied to the Court for a care order concerning D 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.

After having held a hearing in the case, the Court, by judgment of 11 February 1992, granted the application and ordered that D be taken into public care. It considered that her development was delayed and that she was in need of special assistance. It further found that it had for many years been impossible to give D the necessary assistance due to her mother's conflicts with the personnel at D's day-care centre and school, social welfare officers and medical services personnel. The Court also took into account that the first applicant had been in bad health for some time and was undergoing psychiatric treatment. It concluded that there was a clear risk of impairment of D's development due to insufficient care.

The first applicant later requested that the public care be terminated. Her request was rejected by the Social Council on 13 August 1992. She appealed to the County Administrative Court.

After another hearing, the Court, on 3 September 1992, decided that D should remain in care. It reiterated that D was in need of special assistance and paid particular attention to the testimony of the chief physician at the psychiatric clinic where the first applicant had been treated until 1 June 1992, from 5 February on a voluntary basis. The physician had stated before the Court that the first applicant suffered from a personality disorder and was in need of psychotherapy for five or ten years. As she did not accept the help she had been offered for herself and D, the physician found that she was not able to take care of her daughter.

No appeals were made against the judgments of 11 February and 3 September 1992.

A further request for termination of the public care of D was rejected by the Social Council on 4 March 1993. Following the first applicant's appeal against this decision, the County Administrative Court held a further hearing, during which it heard the first applicant and her counsel, D's counsel, representatives of the Social Council and an employee at the children's home. It also heard B.H., a psychologist who, after having met the first applicant and D on several occasions, concluded that D had a learning disability and a disturbed development and that it was too early to say whether the public care could be terminated.

The Court also had at its disposal two medical certificates issued by M.H., a chief physician specialising in psychiatry who had treated the first applicant in December 1991 and since 1 October 1992. In the first certificate dated 25 February 1993, M.H. stated that the first applicant was recovering and that there were no obstacles to returning D to her. However, according to the later certificate dated

10 June 1993, she had been under institutional care during the period 9 March - 4 June 1993 as she was suffering from an affected psychosis in a manic phase and a personality disorder of a borderline nature. She would be in need of medication and conversational therapy for a long period of time and was, according to M.H., not wholly capable of having the full responsibility for her daughter.

By judgment of 16 November 1993, the Court rejected the appeal. It found that D had developed favourably at the children's home and that the first applicant had recovered enough to be discharged from psychiatric care and resume work. It noted, however, their continued problems and concluded that the first applicant was not yet able to take care of her daughter.

The first applicant appealed to the Administrative Court of Appeal (Kammarrätten) of Jönköping. It held a hearing and heard the same persons as the County Administrative Court. It also heard M.H., who found that it was not possible for D to move back home as her mother's health was not stable enough. B.H. stated that there was a risk that D would not be sufficiently cared for if the public care was terminated.

On 10 February 1994 the appellate court, reaching the same conclusions as the County Administrative Court, rejected the appeal.

On 14 April 1994 the Supreme Administrative Court (Regeringsrätten) refused leave to appeal.

The applicants allege that the Social Council has subsequently decided to refuse the first applicant access to D and to reject a further request for termination of care. Apparently, these cases are pending before the County Administrative Court. The applicants further allege that, according to a decision taken by an employee at the children's home, the first applicant is not allowed to talk to D on the phone.

COMPLAINTS

1. Invoking Article 8 of the Convention, the applicants complain of the public care of D and the restrictions on access.

2. K and A complain, under Article 6 of the Convention, that they have not been able to bring before a court the questions of the public care of D and their access to D.

3. The first applicant contends that the real reason for taking her daughter into care on 18 November 1991 was to prevent her from presenting, at the school conference she was attending the same day, certain ideas which were apparently disliked by the school authorities at Tidaholm. In this respect, she invokes Article 10 of the Convention.

4. The first applicant complains, under Articles 3 and 5 of the Convention, that she was put under sedation and taken into compulsory psychiatric care on 23 November 1991 without being mentally ill. Moreover, being under sedation, she was allegedly prevented from appealing against the decision to take her into care in violation of Article 6 of the Convention. In this connection, all applicants further complain, under Article 8 of the Convention, that the first applicant was separated from her family.

5. The first applicant further complains on her own behalf and on behalf of D that, on 23 November 1991, the personnel at the Children's Psychiatric Clinic refused to let her take her daughter home. She claims that she could not appeal against this refusal and invokes Articles 6 and 13 of the Convention.

6. The first applicant maintains that she is not allowed to talk to

D on the phone according to a decision of an employee at the children's home. Allegedly, there is no possibility to appeal against this decision. She claims that this constitutes violations of her rights under Articles 6, 8, 10 and 13 of the Convention and D's rights under Articles 6, 10 and 13.

THE LAW

1. The applicants complain of the public care of D and the restrictions on access. 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 and morals, or for the protection of the rights and freedoms of others."

The Commission first recalls that, pursuant to Article 26 (Art. 26) of the Convention, it "may only deal with the matter after all domestic remedies have been exhausted". No appeals were made against the County Administrative Court's judgments of 11 February and 3 September 1992. The Social Council's decision on access, taken subsequent to the Supreme Administrative Court's decision of 14 April 1994, is apparently pending before the County Administrative Court. Thus, the Commission may only examine the Social Council's decision of 4 March 1993 not to terminate the public care of D and the subsequent court judgments.

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

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

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 and the Administrative Court of Appeal, in their respective judgments of 16 November 1993 and 10 February 1994, found that, due to the first applicant's and D's continued problems, the first applicant was not yet able to take care of her daughter. The Commission also notes the statements made before the appellate court by M.H. and B.H., according to whom D could not return home as the first applicant's health was not stable enough and as there was a risk that D would not get sufficient care.

The Commission further recalls that the County Administrative Court and the Administrative Court of Appeal, before giving their judgments, had held hearings at which they heard, in addition to M.H. and B.H., the first applicant and her counsel, D's counsel, representatives of the Social Council and an employee at the children's home. 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 refusal to terminate the care of D was supported by relevant and sufficient reasons and that, having regard to their margin of appreciation, the Swedish authorities were entitled to think that it was necessary for D to remain in 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 this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. K and A complain about lack of access to court as regards the questions of the public care of D and their access to D. They invoke Article 6 (Art. 6) of the Convention, which in its relevant parts reads as follows:

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

The Commission recalls that in order for Article 6 para. 1 (Art. 6-1) to apply to the proceedings in question it must first be ascertained whether there was a dispute over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law (cf., e.g., Eur. Court H.R., W v. the United Kingdom judgment of 8 July 1987, Series A no. 121-A, p. 32-33, para. 73).

The Commission further recalls that, under Swedish law, the rights over a child, including the right to bring legal proceedings on behalf of the child, are normally vested in its parents or custodians. Moreover, siblings have no right under the law to have access to each other (cf. No. 21827/93, Eriksson and Alanko v. Sweden, Dec. 30.11.94, unpublished). K and A are not custodians of D. Thus, they cannot claim on any arguable ground that they have a right under domestic law. Article 6 (Art. 6) therefore does not apply to the present complaint (cf. No. 12763/87, Lawlor v. the United Kingdom, Dec. 14.7.88, D.R. 57 p. 216).

It follows that this part of the application is incompatible

ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The first applicant contends, under Article 10 (Art. 10) of the Convention, that D was taken into care so as to prevent the first applicant from presenting certain ideas at a school conference.

The Commission, however, is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of the Article invoked as, under Article 26 (Art. 26) of the Convention, it "may only deal with the matter ... within a period of six months from the date on which the final decision was taken". Where no domestic remedy is available, the six months period runs from the date of the act which is itself alleged to be in violation of the Convention (cf., e.g., No. 10389/83, Johnson v. the United Kingdom, Dec. 17.7.86, D.R. 47 p. 72).

The Commission observes that the conference and the provisional taking of D into public care occurred on 18 November 1991. The present application was introduced on 19 September 1994, which is more than six months later.

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

4. The applicants claim that the sedation of the first applicant and the taking of her into compulsory psychiatric care violated Articles 3, 5, 6 and 8 (Art. 3, 5, 6, 8) of the Convention.

The Commission observes that the compulsory psychiatric care of the first applicant was terminated on 5 February 1992.

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

5. Under Articles 6 and 13 (Art. 6, 13) of the Convention, the first applicant further complains on her own behalf and on behalf of D that she could not appeal against the refusal of the personnel at the Children's Psychiatric Clinic to let her take her daughter home.

The Commission observes that the decision against which the first applicant wished to appeal was taken on 23 November 1991.

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

6. The first applicant complains, under Articles 6, 8, 10 and 13 (Art. 6, 8, 10, 13) of the Convention on her own behalf and under Articles 6, 10 and 13 (Art. 6, 10, 13) on behalf of D that she is not allowed to talk to D on the phone and that there is no possibility to appeal against this decision.

The Commission, recalling that proceedings concerning the first applicant's access to D are apparently pending in the County Administrative Court, considers that the applicants' submissions fail to substantiate the present complaint.

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

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)