AS TO THE ADMISSIBILITY OF

Application No. 13177/87
by Mats NILSSON
against Sweden

The European Commission of Human Rights sitting in private on 14 April 1989, the following members being present:

MM. S. TRECHSEL, Acting President
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
J. CAMPINOS
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

Mr. J. RAYMOND, Deputy 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 8 April 1987 by Mats NILSSON against Sweden and registered on 31 August 1987 under file No. 13177/87;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a Swedish citizen, born in 1943. He is a doctor of medicine and resides at Frösön, Sweden.

As from the autumn of 1981 until April 1982 the applicant's two children participated in a day-care arrangement organised by the social authorities of Stockholm, where the applicant lived at that time. In April 1982, however, the applicant was informed by the social authorities of Stockholm that his children could no longer participate in this particular arrangement and the applicant experienced difficulties in arranging for somebody to look after his children on a private basis. The applicant maintains that it cost him approximately 6,000 Swedish crowns in addition to a loss of salary as he and his wife had to take extra holidays for this purpose.

It does not appear that the applicant contacted the social authorities in 1982 or 1983 in order to recover their extra costs and

the family moved from Stockholm on 1 July 1983. On 11 June 1984 the applicant submitted a request to the social authorities of Stockholm claiming 4,600 Swedish crowns in compensation for the extra expenses he had in connection with the special arrangements he had made in order to have somebody to take care of his children. His request was considered by the Stockholm Social District Council No. 14 (sociala distriktsnämnden 14) on 7 November 1984 when it decided to reject the applicant's request.

The applicant then submitted his case to the City of Stockholm Law Office (Stockholms stadskansli, stadsjuristen) requesting an evaluation of the merits of the case. He also requested information on how to appeal against the decision of the Social District Council. On 27 November 1984 the applicant was informed of the reasons behind the decision of the Social District Council and that an appeal against such decisions (kommunalbesvär) could be lodged with the Administrative Court of Appeal (kammarrätten) within a period of three weeks from the date of the decision. It was only possible, however, to lodge such an appeal if the person in question was living within the municipality of Stockholm.

The applicant complained about this information to the Parliamentary Ombudsman (justitieombudsmannen) as he was no longer living in Stockholm. However, on 19 June 1985 the Ombudsman informed the applicant that he agreed with the opinion voiced, that only persons living within the municipality of Stockholm could appeal against its decisions.

The applicant submitted a new complaint to the Ombudsman on 5 July 1985. His decision of 10 December 1986, however, did not change the situation.

COMPLAINTS

The applicant invokes Article 6 of the Convention. He maintains that the Social District Council, in its decision of 7 November 1984, determined a civil right within the meaning of this provision and that he has no access to a court in order to have this administrative decision examined.

THE LAW

The applicant has complained, under Article 6 (Art. 6) of the Convention, that he has no possibility of having the Social District Council's decision of 7 November 1984 examined by a court. Article 6 para. 1 (Art. 6-1) first sentence reads as follows:

"1. 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."

Article 6 para. 1 (Art. 6-1) of the Convention guarantees to everyone the right of access to a court in order to determine disputes concerning his or her civil rights. The Commission does not find it necessary, however, to examine in the present case whether it concerns a dispute over a civil right within the meaning of Article 6 (Art. 6) of the Convention. Neither does the Commission find it necessary to determine whether the applicant can actually be considered as having exhausted the domestic remedies available to him as required by Article 26 (Art. 26) of the Convention, in view of the fact that he apparently chose not to pursue the matter while he was still living in Stockholm. Even assuming that these requirements for the admissibility of the case have been fulfilled the Commission finds that the case is inadmissible for the following reasons.

According to Article 26 (Art. 26) of the Convention the Commission "may

only deal with the matter ... within a period of six months from the date on which the final decision was taken". According to the Commission's established case-law the final decision within the meaning of Article 26 (Art. 26) refers only to the final decision involved in the exhaustion of all domestic remedies according to the generally recognised rules of international law. In particular, only a remedy which is "effective and sufficient" can be considered for this purpose (see for example No. 654/59, Dec. 3.6.60, Yearbook 4 pp. 276, 282; No. 9266/81, Dec. 28.1.83, D.R. 30 pp. 155, 187).

The Commission finds that the applicant's complaint to the Parliamentary Ombudsman was not an effective remedy under the generally recognised rules of international law. Consequently the Ombudsman's decision cannot be taken into consideration when determining the date of the final decision for the purpose of applying the six months time-limit laid down in Article 26 (Art. 26).

Furthermore the Commission has constantly held that, where no domestic remedy is available to challenge a decision, the six months time-limit runs from the date on which an applicant was actually affected by the decision (see for example No. 8440/78, Dec. 16.7.80, D.R. 21 p. 138). It is true that the applicant does not complain of the decision of the Social District Council as such but of the fact that there was no remedy at his disposal in which he could challenge this decision.

The applicant appears to suggest that the six months time-limit in Article 26 (Art. 26) of the Convention is inapplicable to this complaint since he is referring to a continuing violation of Article 6 (Art. 6)

in that there is now, and continues to be, no court remedy available to him.

The Commission has frequently held the six months time-limit to be inapplicable in cases where the applicant has alleged himself to be the victim of a continuing violation of his rights under the substantive provisions of the Convention, in circumstances where no domestic remedy was available (see for example No. 214/56, Dec. 9.6.58, Yearbook 2 p. 215). However, in the present case the Commission does not find that the decision taken at the domestic level affecting the applicant gives rise to any question of a continuing situation. The decision of the Social District Council concerned the rejection once and for all, and at a given date, of the applicant's claim.

Where domestic law gives no remedy against such a measure, it is inevitable that unless the law changes that situation will continue indefinitely. However, the person affected suffers no additional prejudice beyond that which arose directly and immediately from the initial measure. His position is not therefore to be compared with that of a person subject to a continuing restriction on his substantive Convention rights (cf. No. 8206/78, Dec. 10.7.81, D.R. 25 p.147).

In the circumstances of the present case the Commission therefore finds that the decision of the Social District Council must be regarded as the "final decision" in relation to the applicant's complaint under Article 6 (Art. 6) of the Convention. This decision finally determined his legal position at the domestic level, in relation not only to his claims for damages but his remedial rights as well.

The decision of the Social District Council was given on 7 November 1984, whereas the present application was submitted to the Commission on 8 April 1987, that is more than six months after the date of this decision. It follows that the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Deputy Secretary to the Commission Acting President of the Commission

(J. RAYMOND) (S. TRECHSEL)