**AFFAIRE ANNE-MARIE ANDERSSON c. SUEDE**

**CASE OF ANNE-MARIE ANDERSSON v. SWEDEN**

(72/1996/691/883)

ARRET/JUDGMENT

STRASBOURG

27 août/August 1997

Liste des agents de vente/List of Agents

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Pays-Bas/The Netherlands: B.V. Juridische Boekhandel & Antiquariaat A. Jongbloed & Zoon (Noordeinde 39, NL-2514 GC 's-Gravenhage)

SUMMARY[1]

Judgment delivered by a Chamber

*Sweden – lack of possibility for a patient, prior to the communication of personal and confidential medical data by medical authority to a social services authority, to challenge the measure before a court (Secrecy Act 1980 and Social Services Act 1980)*

I. PRELIMINARY OBSERVATIONS

Deceased applicant's son had sufficient interest to justify continuation of the examination of the case.

*Conclusion*: affirmative (unanimously).

Court had no jurisdiction to entertain applicant's Article 8 complaint.

II. ARTICLE 6 § 1 OF THE CONVENTION

If chief psychiatrist possessed information about the applicant patient to the effect that intervention by Social Council was necessary for protection of her under-age son, the psychiatrist was under a duty to report immediately to the Council – that duty extended to all data in her possession potentially relevant to Council's investigation into need to take protective measures with respect to the son and depended exclusively on relevance of those data – scope of this obligation and fact that the psychiatrist enjoyed very wide discretion in assessing what data would be relevant – in this regard, no duty to hear applicant's views before transmitting the information – a "right" to prevent communication of such data could not, on arguable grounds, be said to be recognised under national law.

*Conclusions*: inapplicable (five votes to four) and no violation (eight votes to one).

III. ARTICLE 13 OF THE CONVENTION

Separate issue arose with regard to Article 13 – this provision applied only in respect of arguable Convention complaints – whether that was so in the case of the applicant's claim under Article 8 had to be determined in light of particular facts and nature of legal issues

raised – in this connection, Commission's decision declaring her Article 8 complaint inadmissible as manifestly ill-founded was not decisive but provided significant pointers – on the evidence adduced, applicant had no arguable claim in respect of a violation.

*Conclusion*: no violation (unanimously).

COURT'S CASE-LAW REFERRED TO

27.4.1988, Boyle and Rice v. the United Kingdom; 31.3.1992, X v. France; 25.11.1993, Zander v. Sweden; 19.7.1995, Kerojärvi v. Finland; 28.9.1995, Masson and Van Zon v. the Netherlands; 15.11.1996, Chahal v. the United Kingdom; 25.2.1997, Z v. Finland

**In the case of Anne-Marie Andersson v. Sweden**[2],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court B[3], as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr B. WALSH,
Mr J. DE MEYER,
Mrs E. PALM,
Mr A.N. LOIZOU,
Sir John FREELAND,
Mr A.B. BAKA,
Mr K. JUNGWIERT,
Mr J. CASADEVALL,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 20 March and 25 June 1997,

Delivers the following judgment, which was adopted on the last-mentioned date:

## PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 28 May 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 20022/92) against the Kingdom of Sweden lodged with the Commission under Article 25 by a Swedish citizen, Mrs Anne-Marie Andersson, on 11 February 1992.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby Sweden recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 6 § 1 and 13 of the Convention.

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicant designated the lawyer who would represent her (Rule 31).

3. The Chamber to be constituted included *ex officio* Mrs E. Palm, the elected judge of Swedish nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 10 June 1996, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr B. Walsh, Mr R. Macdonald, Mr J. De Meyer, Mr A.N. Loizou, Sir John Freeland, Mr A.B. Baka and Mr J. Casadevall (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr K. Jungwiert, the first substitute judge, replaced Mr Macdonald, who was unable to take part in the further consideration of the case (Rules 22 § 1 and 24 § 1).

4. On 22 July 1996, the Agent of the Swedish Government ("the Government") wrote to the Registrar to inform him that it was the opinion of the Government that the present case and the case of M.S. v. Sweden (no. 74/1996/693/885) should be considered by the same Chamber and that both cases should be considered by a Grand Chamber in accordance with Rule 53 § 1.

On 13 August 1996 the Registrar informed the Agent that, before drawing lots in the two cases, Mr Ryssdal had considered whether to constitute a single Chamber. However, bearing in mind, *inter alia*, that none of those taking part in the proceedings had asked that the case be examined by the same Chamber, he decided to constitute a separate Chamber for each case.

On 25 August 1996 the Chamber decided not to relinquish jurisdiction in favour of a Grand Chamber.

5. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence on 25 August 1996, the Registrar received the applicant's and the Government's memorials on 13 and 16 December 1996 respectively.

6. The applicant died on 20 November 1996. On 15 January 1997 her lawyer informed the Registrar that the applicant's son, Mr Stive Andersson, wished to continue with the case. By letters of 28 January and 10 February 1997, the Government objected to his being allowed to do so.

7. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 18 March 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*
Ms E. JAGANDER, Director, Ministry of Foreign Affairs, *Agent*,
Mr G. SCHÄDER, Director-General of Legal Affairs,
Ministry of Justice,
Mr B. REUTERSTRAND, Director-General of Legal Affairs,
Ministry of Health and Social Affairs,
Ms H. JÄDERBLOM, Legal Adviser,
Ministry of Justice, *Advisers*;

(b) *for the Commission*
Mrs G.H. THUNE, *Delegate*;

(c) *for the applicant*
Mrs S. WESTERBERG, Lawyer, *Counsel*,
Mrs C. BOKELUND, Lawyer,
Mr M. ELIASSON, Lawyer,
Mrs R. HARROLD-CLAESSON, Lawyer, *Advisers*,
Mrs B. HELLWIG, *Assistant*.

The Court heard addresses by Mrs Thune, Mrs Westerberg and Ms Jagander.

## AS TO THE FACTS

### I. CIRCUMSTANCES OF THE CASE

8. The applicant, Mrs Anne-Marie Andersson was a Swedish citizen. She was born in 1943 and died in 1996 (see paragraph 6 above). She lived in Göteborg, where she worked as a taxi driver.

9. At the time of the events in question, Mrs Andersson was divorced and living with her youngest son, who was born in 1981. From May 1988 onwards, Mrs Andersson was unable to work as a result both of dental problems which caused her severe pain and anxiety about a dispute with her landlord.

10. In April 1989 she contacted a psychiatric clinic in Göteborg in order to receive a medical certificate which would enable her to claim sickness benefit from the Health Insurance Office. From 20 August 1991 the applicant was treated by the chief psychiatrist who drew her attention to the possible detrimental effect her situation might have on her son and advised her to seek support for him from the children's psychiatric clinic or the social authorities. Mrs Andersson, however, considered that her son was a normal child who was not in need of any particular help.

11. In January 1992 the psychiatrist informed Mrs Andersson that since the child's health might be at risk, she (the psychiatrist) had an obligation under Swedish law to contact the social authorities (see paragraphs 16–17 below). Accordingly, she telephoned a social-welfare officer at the Social Council (*socialnämnden*) and informed her of the applicant's health problems. At the request of that officer the psychiatrist submitted the following written statement on 16 January 1992:

> "Anne-Marie Andersson has had a polyclinical contact with a psychiatrist at [the clinic] since 19 April 1989, from 20 August 1991 with the undersigned. The reason has been a pain condition in connection with dental problems and this has caused her being on sick-leave as from May 1988. The patient does not consider herself to be mentally ill but she has accepted the contact with us solely due to her need to be put on the sick-list.
>
> In my opinion she has an extreme personality and her thoughts are, in conversations here, occupied by her severe pain condition and her dissatisfaction with the treatment she has received. She has once in a while had her son with her. He seemed quiet and sensitive.
>
> The undersigned, as well as others in the medical service with whom the patient has been in contact, have worried about the possible effect of her severe pain condition on the son whom she cares for alone. I have on several occasions drawn her attention to this, *inter alia* in letters (please see copy), and asked her to contact [the children's psychiatric clinic] or the social authorities. As, apparently, this has not been done, I called you today and I now send a written account of the case as agreed.
>
> As I do not find that, from a psychiatric point of view, we can do more for the patient, who does not consider herself to be mentally ill, I have referred her to the district medical officer and she will, thus, have no further contact with me."

12. By letter the same day, the psychiatrist notified the applicant of the information imparted to the Council. The relevant part of the letter read as follows:

> "As you know, I have several times asked you to seek support for your son who, naturally, cannot remain unaffected by your severe pains. As I have not been able to convince you that this is necessary, I have called [a] social-welfare officer and
>
> expressed my concern. Unfortunately, I find myself obliged under the law to take this action in an attempt to reduce future problems for the boy (and thereby also for you)."

13. The psychiatrist's concern for the applicant's son was shared by the headmaster and a teacher at the school he attended. In October 1991 they had contacted the Social Council and expressed concern about his learning difficulties and his general state of health. Following this, the Council commenced an investigation which, with Mrs Andersson's agreement, led to the placement of her son in a non-residential therapeutic school on 2 March 1992.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. The general principle of freedom of information

14. Under sections 1 and 2 of chapter 2 of the Freedom of the Press Act (*Tryckfrihetsförordningen*), which is part of the Swedish Constitution, everyone is entitled to access to public documents, subject to exceptions set out in the Secrecy Act (*Sekretesslagen*, 1980:100).

### B. Confidentiality of medical information

15. One of the exceptions to this general rule relates to confidentiality of information in the field of health and medical care and is set out in chapter 7, section 1, of the Secrecy Act, which provides as follows:

> "Secrecy applies ... in the field of health and medical care to information on the individual's state of health or otherwise concerning his or her private life, unless it is clear that the information can be disclosed without any harm to the individual or persons closely related to him or her ..."

### C. The duty to report to the Social Council

16. Notwithstanding this rule of confidentiality, in certain circumstances health and medical-care authorities are required to submit information to another authority. Thus, chapter 14, section 1, of the Secrecy Act provides the following:

> "Secrecy does not prevent ... the disclosure of information to another authority, if an obligation to disclose the information is laid down in an act of law or a government ordinance."

17. Such an obligation follows from section 71 of the Social Services Act 1980 (*Socialtjänstlagen*, 1980:620), subsections 2 and 4 of which read as follows:

> "Authorities whose activities relate to children and young persons as well as other authorities within health and medical-care and social services are obliged immediately to report to the Social Council if, in the course of their activities, they receive information which may imply that an intervention by the Social Council is necessary for the protection of a minor. This also applies to the employees of such authorities and to physicians, teachers, nurses and midwives who are not so employed.
>
> ...
>
> Authorities, employees and practitioners referred to in subsection 2 are obliged to give the Social Council all information which may be of importance to an investigation of a minor's need of protection."

18. At the time of the enactment of the Social Services Act, the Parliament's Standing Committee on Health and Welfare (*Riksdagens socialutskott*) stated that the reporting obligation was not limited to cases where it was clear that the Social Council would have to intervene. In addition, unconfirmed information or information which was difficult to assess should also be reported, if it implied that a child might be in need of support or assistance from the Council. In such cases it would be for the Council to investigate whether there was any factual basis for the information in question and whether there was a need for any particular measure (see the report of the Standing Committee on Health and Welfare, SoU 1979/80:44, p. 113).

19. The obligation to report only concerns information which is of relevance to the Social Council's investigation. It does not extend to other information concerning the persons in question (see Government Bill 1989/90:28, p. 132). It is for the reporting authority or practitioner to decide which information is covered by the reporting obligation.

20. Information which is submitted to the Social Council is protected by the rule of confidentiality provided by chapter 7, section 4, of the Secrecy Act:

> "Secrecy applies within the social services to information concerning the individual's private life, unless it is clear that the information can be disclosed without any harm to the individual or persons closely related to him or her ..."

### D. Remedies

21. Under the Freedom of the Press Act and the Secrecy Act, there is a right to appeal against a decision not to grant access to public documents. There is, however, no such right in respect of decisions to grant access to information contained in public documents. Furthermore, there is no right

for the individual concerned to be consulted before such information is disclosed or to be notified of the disclosure afterwards.

22. Under chapter 20, section 3, of the Penal Code (*Brottsbalken*), a physician who, intentionally or through negligence, discloses information which should be kept confidential according to law is guilty of breach of professional secrecy. Proceedings may be brought in the ordinary courts by the public prosecutor or, if the public prosecutor decides not to prosecute, the aggrieved individual. Such a breach of professional secrecy may also constitute a basis for claiming damages under chapter 2, section 1, or chapter 3, section 1, of the Damage Compensation Act (*Skadeståndslagen*, 1972:207). Action may be taken by the individual against the physician or his or her employer.

23. Public authorities and their employees are, furthermore, subject to the supervision of the Chancellor of Justice (*Justitiekanslern*) and the Parliamentary Ombudsman (*Justitieombudsmannen*). The Chancellor and the Ombudsman investigate whether those exercising public powers abide by laws and follow applicable instructions and may prosecute a certain individual or refer the matter to disciplinary action by the relevant authority.

## PROCEEDINGS BEFORE THE COMMISSION

24. Mrs Anne-Marie Andersson lodged her application (no. 20022/92) with the Commission on 11 February 1992. She alleged that the psychiatrist's submission of information to the Social Council without her knowledge or consent constituted a violation of her right to respect for private life as guaranteed by Article 8 of the Convention. Moreover, she complained that, contrary to Articles 6 and 13, she could not appeal to a court against the psychiatrist's decision to disclose the information.

25. On 22 May 1995 the Commission declared admissible the applicant's complaints under Articles 6 and 13 and declared the remainder of her application inadmissible. In its report of 11 April 1996 (Article 31), the Commission expressed the opinion that there had been no violation of Article 6 § 1 of the Convention (unanimously) and that no separate issue arose under Article 13 of the Convention (twenty votes to seven).

The full text of the Commission's opinion and of the three separate opinions contained in the report is reproduced as an annex to this judgment[4].

## FINAL SUBMISSIONS TO THE COURT

26. At the hearing on 18 March 1997 the Government, as they had done in their memorial, invited the Court to hold that there had been no violation of the Convention in the present case. In the meantime, after learning of the applicant's death and of the fact that her son, Mr Stive Andersson, wished to continue the proceedings on her behalf, the Government objected to his being allowed to do so (see paragraph 6 above).

27. In her memorial to the Court the applicant's lawyer alleged that there had been violations of Articles 6, 8 and 13 and requested it to make an award of just satisfaction under Article 50 of the Convention. At the hearing she reiterated her claim that there had been violations of the Convention.

## AS TO THE LAW

### I. PRELIMINARY OBSERVATIONS

28. In the Government's submission, those of the applicant's complaints which had been declared admissible by the Commission and which had been referred to the Court were so closely and directly bound up with her person that her son, Mr Stive Andersson, could not assert any specific legal interest which would enable him to continue the proceedings in her stead. Nor did he have any definite pecuniary interest under Article 50 of the Convention. For these reasons, the Government contested the right of the son to continue before the Court the proceedings which his mother had instituted.

29. The Court observes that, in so far as declared admissible by the Commission, the applicant's case concerns her complaints under Articles 6 and 13 of the Convention about lack of remedies to challenge the disclosure of certain confidential medical data by one public authority to another. In view of its own case-law (see, for instance, the X v. France judgment of 31 March 1992, Series A no. 234-C, p. 89, § 26), the Court accepts that, as the deceased's heir, the son has sufficient interest to justify the continuation of the examination of the case.

30. On the other hand, the applicant's complaint that the disclosure of data in question amounted to a violation of Article 8 was declared inadmissible by the Commission (see paragraph 25 above). The

Court has therefore no jurisdiction to entertain it under that provision (see, amongst other authorities, the Z v. Finland judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 341, § 69).

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

31. The applicant contended that there had been a violation of Article 6 § 1 of the Convention which, in so far as is relevant, reads:

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

Under this provision, she complained that she had not been afforded a possibility, prior to the communication of the psychiatrist's statement to the Social Council, to challenge the measure before a court (see paragraph 21 above).

32. The Government disputed that Article 6 § 1 was applicable and maintained that, in any event, it had been complied with in the present case (see paragraphs 22–23 above). The Commission, for its part, considered that the provision was applicable and that its requirements had been met (see paragraph 22 above).

33. The Court must first examine whether Article 6 § 1 was applicable to the disagreement between the applicant and the Swedish authorities as to the disclosure of her medical data. It reiterates that, according to the principles laid down in its case-law (see, for instance, the judgments of Zander v. Sweden, 25 November 1993, Series A no. 279-B, p. 38, § 22, and Kerojärvi v. Finland, 19 July 1995, Series A no. 322, p. 12, § 32), it must ascertain whether there was a dispute ("*contestation*") over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the existence of a right but also to its scope and the manner of its exercise; and the outcome of the proceedings must be directly decisive for the right in question. Finally, the right must be civil in character.

34. Under the rule on confidentiality contained in chapter 7, section 1, of the Secrecy Act, a duty of confidentiality applied to the kind of data in issue in the present case (see paragraph 15 above). The provision was evidently designed to protect a patient's interests in non-disclosure of medical data.

35. On the other hand, according to chapter 14, section 1, of the Secrecy Act, the rule of confidentiality did not apply where a statutory obligation required the disclosure of information to another authority (see paragraph 16 above). In the case under consideration, if the chief psychiatrist possessed information about the applicant patient to the effect that intervention by the Social Council was necessary for the protection of her under-age son, the psychiatrist was under a duty to report immediately to the Social Council. That duty extended to all data in her possession which were potentially relevant to the Social Council's investigation into the need to take protective

measures with respect to the son (see paragraphs 17–19 above) and depended exclusively on the relevance of those data (section 71, subsections 2 and 4, of the Social Services Act).

36. In addition to the scope of this obligation, as described above, the Court notes that the psychiatrist enjoyed a very wide discretion in assessing what data would be of importance to the Social Council's investigation (ibid.). In this regard, she had no duty to hear the applicant's views before transmitting the information to the Social Council (see paragraph 21 above).

Accordingly, it transpires from the terms of the legislation in issue that a "right" to prevent communication of such data could not, on arguable grounds, be said to be recognised under national law (see the Masson and Van Zon v. the Netherlands judgment of 28 September 1995, Series A no. 327-A, pp. 19–20, §§ 49–52). No evidence suggesting the contrary has been adduced before the Court.

37. Having regard to the foregoing, the Court reaches the conclusion that Article 6 § 1 was not applicable to the proceedings under consideration and has therefore not been violated in the present case.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

38. Relying on essentially the same arguments as with regard to Article 6 § 1, the applicant claimed that there had also been a violation of Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

She maintained that, since the disclosure of confidential data was a measure that could not be reversed, it was crucial for the effectiveness of a remedy against disclosure that the interested person be able to exercise it beforehand.

39. The Government admitted that if the Court found Article 6 § 1 inapplicable, a separate issue would arise under Article 13. In that event they maintained that, having regard to the fact that the Commission had declared the applicant's complaint under Article 8 inadmissible as being manifestly ill-founded, it could not be regarded as an arguable claim for the purposes of Article 13. Consequently, there had been no violation of this provision.

40. The Court, in view of its conclusion with respect to the applicant's complaint under Article 6 § 1 (see paragraph 37 above), considers that a separate issue arises with regard to her complaint under Article 13.

Article 13 of the Convention guarantees the availability of a remedy at national level to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy allowing the competent “national authority” both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under Article 13 (see, for instance, the Chahal v. the United Kingdom judgment of 15 November 1996, Reports 1996-V, pp. 1869–70, § 145).

However, this provision applies only in respect of grievances under the Convention which are arguable (see, for instance, the Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, § 52). Whether that was so in the case of the applicant's claim under Article 8 has to be determined in the light of the particular facts and the nature of the legal issues raised. In this connection, the Commission's decision on the admissibility of her complaint under Article 8 and the reasoning therein are not decisive but provide significant pointers (ibid., pp. 23–24, §§ 54–55).

41. In declaring the applicant's complaint under Article 8 inadmissible as being manifestly ill-founded, the Commission had regard to the following considerations.

The interference with the applicant's enjoyment of her right to respect for private life which the disclosure of the data in question entailed was in conformity with Swedish law, namely section 71 of the Social Services Act (see paragraph 17 above), and pursued the legitimate aims of protecting “health or morals” and the “rights and freedoms of others”.

Furthermore, the Commission observed, the measure had been notified to the applicant (see paragraph 12 above) and had been of a limited nature as the information concerned was not made public but remained protected by the same level of confidentiality as that applicable to psychiatric records. Contrary to the applicant's submission, in order for the Social Council to assess adequately the need for intervention it was necessary to have information not only about her son but also about herself. The psychiatrist's concern that her problems might adversely affect her son was supported by his school's report to the social authorities, which had led to his being placed in a special school with her consent. Having regard to their margin of appreciation, the authorities were entitled to take the view that the measure was “necessary in a democratic society”.

42. The Court for its part finds, on the evidence adduced, that the applicant had no arguable claim in respect of a violation of the Convention. There has thus been no violation of Article 13.

## FOR THESE REASONS, THE COURT

1. *Holds* unanimously that the applicant's son, Mr Stive Andersson, had sufficient interest to justify the continuation of the examination of the case;
2. *Holds* by five votes to four that Article 6 § 1 of the Convention was not applicable in the present case;
3. *Holds* by eight votes to one that there has been no violation of Article 6 § 1 of the Convention;
4. *Holds* unanimously that there has been no violation of Article 13 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 27 August 1997.

*Signed*: Rolv RYSSDAL
President

*Signed*: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 55 § 2 of Rules of Court B, the following separate opinions are annexed to this judgment:

(a) partly concurring and partly dissenting opinion of Mr Ryssdal;
(b) separate opinion of Mr Walsh;
(c) partly concurring and partly dissenting opinion of Mr Casadevall;
(d) partly dissenting opinion of Mr De Meyer.

*Initialled*: R. R.
*Initialled*: H. P.

# PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGE RYSSDAL

1. I am unable to share the majority's view that Article 6 § 1 of the Convention was not applicable in the present case. However, I consider that the provision was complied with and therefore concur with the majority's conclusion that Article 6 § 1 has not been violated.

2. As regards the question whether an arguable claim existed, I attach weight to the fact, also mentioned in the judgment, that a duty of confidentiality applied to the kind of data in issue and was designed to protect the patient's interests in non-disclosure.

It is true that this rule of confidentiality did not apply with regard to information in the psychiatrist's possession which was potentially relevant to the Social Council's investigation into the need to take protective measures with respect to the applicant's under-age son and that the psychiatrist, as the imparting authority, enjoyed a considerable discretion in assessing what data would be of importance to the Social Council's investigation.

However, that discretion was not unfettered and was significantly more circumscribed than that in issue in the case of Masson and Van Zon v. the Netherlands (judgment of 28 September 1995, Series A no. 327-A, pp. 19–20, §§ 49–52), referred to in the majority's reasoning. In that case, the issue was whether a suspect, who was subsequently acquitted, had a right to compensation under certain provisions of Netherlands law for damage resulting from detention. A decisive factor leading to the Court's finding that no actual right to compensation was recognised under the national law was that the State had no obligation to pay even if the conditions set out in the relevant provision were fulfilled; an award was contingent on the competent court being of the opinion “that reasons in equity” exist therefor (ibid., § 51).

In contrast, the scope of the discretion in issue in this case was defined with greater precision. According to the relevant national provisions, a disclosure of medical data by the psychiatrist to the Social Council was permissible only in so far as the information was of importance to the latter's investigation into the need to take protective measures in respect of the son; were the disclosure to exceed those limits it would constitute a breach of the psychiatrist's obligation to maintain the confidentiality of the information.

In my view, the applicant could therefore arguably maintain that the national law recognised a right for her to challenge the disclosure of the data communicated by the psychiatrist to the Social Council.

3. Moreover, the applicant disputed that there was a need to take protective measures with respect to her son. There was thus a serious disagreement between the applicant and the authorities capable of raising issues going to the lawfulness under Swedish law of the psychiatrist's decision to disclose the medical data concerned to the Social Council. That decision was moreover directly decisive for the applicant's right to maintain the confidentiality of the information at the psychiatric clinic. Accordingly, there was a dispute over a “right”.

4. In addition, I am of the opinion that the right in issue, which concerned the protection of the confidentiality of the applicant's personal medical data, was civil in character.

5. As to the question of compliance, the remedies available to her did in my view satisfy the requirements of Article 6 § 1. By bringing civil and/or criminal proceedings for breach of professional secrecy before the Swedish courts, the applicant would have been able to obtain a review, addressing both questions of fact and of law, of the merits of her claim that the psychiatrist had communicated to the Social Council medical information about her which had not been relevant to the assessment of any need to take protective measures with respect to her son. The fact that the applicant could not bring proceedings before the disclosure of the information to the Social Council did not in my opinion impair the very essence of the “right to a court”.

6. In the light of the foregoing, I find no violation of Article 6 § 1 of the Convention in the present case.

7. I agree that there has been no violation of Article 13 of the Convention.

# SEPARATE OPINION OF JUDGE WALSH

1. I agree with the opinion of the President to the effect that Article 6 § 1 of the Convention was applicable in the present case.

2. I also agree with his opinion that the applicant failed to avail herself of the remedies available to her by law against the authorities.

3. There has therefore been no breach of Article 6 § 1.

4. In my opinion there has been no breach of Article 13.

# PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGE CASADEVALL

(*TRANSLATION*)

1. Like the President, I consider that Article 6 § 1 of the Convention was applicable in the present case. The majority of the Chamber held that Article 6 § 1 of the Convention was not applicable. As I have some doubts on that subject, I prefer to concur in the opinion of the Commission, both on the question of applicability and on the question of compliance with that provision.

2. Under the Court's case-law, the applicability of Article 6 is subordinated to the effective existence of a dispute (*contestation*) over a right which can be said, at least on arguable grounds, to be recognised under domestic law and which is civil in character. The dispute must, moreover, "*be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise ...*".

3. It is not disputed that the confidentiality obligation provided for in chapter 7, section 1, of the Secrecy Act was applicable in the present case. The contentious provision, as the majority notes, was clearly intended to protect the interest of patients in non-disclosure. Although the exception to that rule contained in section 71 of the Social Services Act (subsections 2 and 4) afforded psychiatrists a broad discretion in assessing the relevance of data for the purposes of Social Council investigations, that fact does not preclude the existence of a patient's right to non-disclosure. The limits on the psychiatrist's discretion are set out in a much more precise and restricted manner than that in issue in the Masson and van Zon v. the Netherlands judgment of 28 September 1995, Series A no. 327-A, pp. 19–20, § 51, where the Court held that Article 6 was inapplicable.

In my opinion, these factors suffice to support a finding that it could be said, on arguable grounds, that a "right" to prevent the disclosure of information of that type was recognised in Swedish law.

4. In the applicant's submission, the exception to the confidentiality obligation provided for by section 71 did not apply to information given to the Social Council by her psychiatrist. There was, therefore, a genuine and serious dispute as to the extent of her right to confidentiality.

5. The right in issue, which related to the applicant's health and which therefore concerned her private life, must be considered as a civil right. Consequently, Article 6 had to apply.

6. In addition to these considerations, regard being had to the fact that the application was registered by the Commission more than five years ago (on 22 May 1992), I consider that if there is doubt as to applicability – and I have doubts in the present case – the principle "*pro actione*" or "pro-applicant" must prevail.

7. I therefore conclude that Article 6 § 1 was applicable.

8. As regards compliance with that provision, since the applicant had the possibility of applying to a court to protect her civil rights, I agree that there has been no violation. With respect to Article 13, having regard to my conclusion on Article 6, I agree with the Commission that no separate question arises. In any event, there has been no violation of Article 13 either.

# PARTLY DISSENTING OPINION OF JUDGE DE MEYER

(*TRANSLATION*)

In the instant case there clearly was a dispute over a civil right.

As to the meaning to be given to those terms, I refer to my separate opinion in the Rolf Gustafson case[5].

Mrs Andersson asserted the right to confidentiality of medical data concerning her. That right is not only inherent in everybody's right to respect for his private life; it is also recognised in Swedish legislation[6].

The psychiatrist's decision to inform the Social Council of the applicant's health problems could, in itself, be regarded as justified in the circumstances of the case. But it should have been – or been able to be – submitted, before being implemented, to review by a court, a procedure which, it should be noted, ought to have been accomplishable very quickly.

Mrs Andersson was not able to secure any such review.

In this respect there was accordingly, in my view, a breach of Article 6 of the Convention in her regard and also of Article 8.

But the applicant did have available to her after the event judicial remedies which satisfied the requirements of Article 6[7] and therefore also, *a fortiori*, those of Article 13.

1. This summary by the registry does not bind the Court.

*Notes by the Registrar*

1. The case is numbered 72/1996/691/883. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No 9.

1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1997), but a copy of the Commission's report is obtainable from the registry.

5. Judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV.

6. See paragraphs 15 and 20 of this judgment.

7. See the separate opinions of Mr Ryssdal, Mr Walsh and Mr Casadevall, above, and also paragraphs 52–56 of the Commission's report.