THE FACTS

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

The applicant is a Danish citizen, born in 1921 and resident in Copenhagen. She is a book-keeper by training.

Her application concerns the actions taken by the competent Danish authorities with regard to the four children born in her first marriage. The children were born in 1955, 1956, 1957 and 1958 respectively. The applicant obtained a decree of judicial separation from her first husband in 1963 and a final divorce in 1966. At the separation the applicant was given custody of her children. She married again in 1968.

As a consequence of the separation and, apparently, after the applicant had applied for financial assistance for help to look after the children, she was approached by the local Child and Youth Welfare Board (börne- od ungdomsvarenet i K. kommune). In January 1964 the Board appointed a child welfare officer (tilsynsvaerge) to supervise the children.

The applicant has submitted a very detailed account of their home conditions during the following years and her relations with the officers of the Board and her former husband and the alleged persecution she was subjected to. In particular, her former husband repeatedly broke into her house and inflicted damage on the building itself.

In November 1966 the District Medical Officer (kredslaegen) visited the home at the request of the Board to investigate reports of alleged neglect of the children. He did not, however, consider that there were reasons to remove the children. In March 1967, the District Medical Officer made a new inspection and reported that the house was dirty and disorderly. He did not recommend that the children should be removed for good but only provisionally in order to enable the house to be cleaned and attended to.

On .. March 1967, the Board decided that, according to Section 28 (1) (2) of the Child and Youth Welfare Act (lov om börne- og ungdomsforsorg), the three youngest children should be placed outside their home. No decision was taken with regard to the eldest child who was a boarder at a school for word-blind children. The three youngest children were put into the care of a farmer at H.

On .. August 1967, the Board ordered that the children should be returned to their mother on probation.

On .. July 1969, the Board decided, with the consent of the mother, that all the children should be examined by a child psychiatrist. The resulting report recommended that the three youngest children should be taken into care outside their home for a longer period. The eldest child should be allowed to continue her school education despite the mother's objection.

On .. August 1969 the Board ordered that all the children should be taken in charge outside their home with a view to placing the eldest daughter in a school and the other three in an institution for child care. After having been separated accordingly, all the children were, from .. July 1970, placed in an institution for child care in M. A psychiatrist's report in May 1970 stated that one of the children (born in 1956), who had shown signs of psychiatric problems, was in need of care in an institution with small groups where a man was in charge. This was said to be more important than keeping all the four children together.

The applicant appealed against the Board's decision of .. August 1970 which was upheld by the National Board (Landsnaevnet) on .. January 1969. The applicant then requested that the case should be referred to the High Court for Eastern Denmark (Östre Landsret) for a decision. In its judgment of .. September 1970 the Court recorded that the Head of the institution where the children were placed had stated that all of them were out of balance and need a period of rest and security. The Court also noted that the mother had given evidence to the effect that she had by then been forced to leave her former house, was living in a two-room apartment and had refused to give more detailed information concerning her living conditions. She was unable to work because of a wrist injury.

The Court held that it was necessary, in order to protect the interests of the children, that all four of them should be taken in charge for care outside their own home since the conditions there were such that their bodily and mental health and development was likely to be endangered. The removal of the children from their home was therefore in accordance with the law (1).

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(1) According to Section 59 of the Child and Youth Welfare Act an appeal lies to the Supreme Court (Höjesteret) where exceptionally leave to such appeal has been granted by the Minister of Justice.

It appears that the applicant and her present husband visited the children regularly after they had been brought to the child care institution in August 1969.

In January 1970 the applicant was allegedly refused permission to visit the children and she was told that she would be reported to the police if she tried to see them or find out where they were. According to her, she only learned about their whereabouts at the hearing in the High Court on .. September 1970. In a letter dated .. February 1972 the applicant emphasised that by then more than two years had passed since she last saw her children or received a word from them.

The applicant has not invoked any specific Article of the Convention but indicated that her application concerns the "kidnapping" of her four children and refusal of permission to see the children since January 1970.

THE LAW

1. The applicant has complained that she has been deprived of the care of her four minor children and that she has been refused all access to the children since January 1970. In examining these complaints the Commission has had regard to Article 8 (1) (Art. 8-1) of the Convention which provides, inter alia, that everyone has the right to respect for his family life.

2. The Commission has first considered the applicant's complaint concerning the decision to place the children in care outside their own home. It appears that the final decision with regard to this complaint was taken by the High Court (for Eastern Denmark) on .. September 1970 and that the applicant did not apply to the Minister of Justice for leave to appeal to the Supreme Court against that decision. Section 59 of the Child and Youth Welfare Act which governs such appeal provides that leave to appeal may only be granted in exceptional circumstances.

The question therefore arises whether the applicant has complied with Article 26 (Art. 26) of the Convention which provides that the Commission may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law. In this connection the Commission recalls that it has frequently stated that Article 26 (Art. 26) only imposes an obligation on an applicant to exhaust domestic remedies which can be

considered "sufficient and effective". However, the Commission does not find it necessary to determine whether or not an application for leave to appeal would, in the circumstances of the present case, have constituted such a sufficient and effective remedy for the purposes of Article 26 (Art. 26), since the Commission finds that this complaint is, in any event, inadmissible on other grounds.

It is true that paragraph (1) of Article 8 (Art. 8-1) recognises, in general, everyone's right to respect for his family life, but paragraph (2) of this Article (Art. 8-2) provides that "there shall be no interference by a public authority with this right except such as is in accordance with the law in a democratic society ... for the protection of health and morals ...".

The decision to remove the children from the applicant's home constitutes unquestionably an interference with her right to respect for her family life under Article 8 (1) (Art. 8-1).

However, this decision was "in accordance with the law" as it was provided for in Section 28 paragraph 1 (2) of the Child and Youth Welfare Act. Furthermore, the High Court considered that it was necessary to place the children in care outside their home in the interest of their welfare and based this conclusion on recommendations by psychiatrists and child welfare officers.

The Commission finds that this decision was reasonable in the circumstances and that the consequent interference with the applicant's family life therefore falls under Article 8 (2) (Art. 8-2) of the Convention as a necessary measure for the protection of the "health an morals" of the children. In this connection, the Commission refers, mutatis mutandis, to its decisions on the admissibility of applications nos. 2822/66, Yearbook, Vol. 11, pp. 406, 410 and No. 4396/70, Collection of Decisions, Vol. 36, pp. 88, 89.

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

3. The Commission has next examined the applicant's complaint that she has been refused all access to the children since January 1970. The Commission finds that an examination of the file at the present stage does not, on certain points, give the information required for determining the question of admissibility of this part of the application. The Commission therefore decides, in accordance with Rule 45, 3 (b), of its Rules of Procedure, to give notice of this part of the application to the respondent Government and to invite the Government to submit its observations in writing on the question of admissibility.

In the meanwhile the Commission adjourns its further examination of this complaint.

For these reasons the Commission

1. Declares inadmissible the applicant's complaint relating to the decision to place her children in care outside their home;

2. Adjourns its examination as to the admissibility of the applicant's complaint concerning the alleged refusal of all access to her children since January 1970.