THE FACTS

I. THE APPLICANT'S ORIGINAL SUBMISSIONS

The facts of the case, as they were originally 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 againin 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.

In her original submission the applicant gave 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 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 paragraph 1 (2) of the Child and Youth Welfare Act (lov om börne- og ungdomsforsorg), the three youngest children should be taken away from their home and placed elsewhere. 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 away from 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 1970. 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 principal of the institution where the children were placed had stated that all of them were out of balance and needed 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.

It appears from the applicant's submissions that she and her present husband visited the children regularly after they had been taken to the institution in August 1969.

The applicant alleged that, in January 1970, she was refused permission to visit the children and 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 did not invoke any specific Article of the Convention but indicated that her application concerned the "kidnapping" of her four children and refusal of permission for her to see them since January 1970.

II. PROCEEDINGS

The Commission first examined the application on 12 July 1972 and, in a partial decision on admissibility, declared inadmissible the complaint concerning the decision to place the applicant's children in care away from their own home. The Commission left open the question whether the applicant had exhausted all domestic remedies, but found that this part of the application was manifestly ill-founded.

The Commission held that the decision to remove the children from the applicant's home constituted unquestionably an interference with her right to respect for her family life under Article 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 Commission recalled that 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 found that this decision was reasonable in the circumstances and that the consequent interference with the applicant's family life therefore fell under Article 8 (2) of the Convention as a necessary measure for the protection of the "health or morals" of the children.

The Commission next examined the applicant's complaint that she had been refused all access to her children since January 1970. The Commission found that an examination of the file at that stage did not, on certain points, give the information required for determining the question on admissibility of this part of the application. It therefore decided, 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 their observations in writing on admissibility.

The respondent Government's observations were submitted on 5 September 1972 and the applicant submitted her observations in reply on 20 September 1972.

Subsequent to the filing of her above observations, the applicant wrote a number of further letters to the Commission.

III. SUBMISSIONS OF THE PARTIES

The respondent Government submitted the following observations on 5 September 1972:

"On .. August 1969 the Child and Youth Welfare Board of the then local Government district of K. (which has since been incorporated into the local government district of G.) decided pursuant to section 28, sub-section 1 (2) of the Child and Youth Welfare Act of 1964 that the four children of Mrs X: A. born on .. March 1955; B. born on .. February 1956; C. born on .. September 1957; and D. born on .. September 1958, be taken in charge by the National Child and Youth Welfare Board on .. January 1970 and upheld by the High Court, Eastern Division, on .. September 1970.

Pursuant to the decision of the Child and Youth Welfare Board of .. August 1969, A. was placed temporarily in the E. School while the three youngest children were placed temporarily in a children's boarding house at H. On .. July 1970, all four children were placed in " ... Hus", a children's home at M., where they have since been staying.

After Mrs. X had introduced her application with the European Commission on Human Rights, the Ministry of Social Affairs requested the appropriate representative of the Social Welfare Administration, the Child Welfare Consultant of the Counties of Copenhagen and R., to look into the matter.

In response to the consultant's enquiries the Child and Youth Welfare Board of the local Government district of G. and the principal of the children's home at M., have stated that neither law courts nor authorities have taken any decision restricting the applicant's right of access to the children.

Until Mrs. X. moved from K. she as well as her husband visited the children almost every Sunday. But since then she has never tried, through the child welfare authorities or the children's home, to get into contact with her children; and attempts by the authorities and the children's home to get into touch with Mrs. X. have been unavailing because of her changing addresses. In September 1970, when the case of the removal of the children from the home was heard in the High Court, the principal of the home spoke to Mrs. X. and invited her to visit the children at the institution. In spite of renewed requests to her, sent to the address which she had given for the purpose of the Court hearing, she did not visit the children at the institution.

The child welfare authorities and the principal of the children's home are still prepared to arrange for Mrs. X. to see her children.

In these circumstances the Government of Denmark submits that Mrs. X's application be declared inadmissible as being manifestly ill-founded, see Article 27 (2), of the European Convention on Human Rights.

The applicant submitted her observations in reply on 20 September 1972. As in her previous submissions she again made a number of accusations against the children's aunt (the sister of her first husband) and the Child and Youth Welfare Board at K. In particular, she alleged that the

aunt tried to get control over a sum of money which the children had inherited and that she wanted the eldest child to become an apprentice in her hairdresser's shop.

As regards access to the children, the applicant stated that she had visited the children for the last time on .. January 1970 at the children's boarding house at H. When she and her second husband returned the following week they were allegedly told by both the principal of the boarding house and the aunt that the Board had prohibited all access to the children. On .. January the applicant and her husband allegedly tried again to see the children but were refused permission and told by the principal that she would call the police if they came back. The applicant alleged that she was later summoned by a police officer, Mr. E. in Copenhagen, and that he told her that she and her husband were prohibited from contacting the children at any time.

According to the applicant she was told, whenever she approached the authorities, that she would be put into the closed ward of a mental hospital if she went on asking about the children. She also claims that she repeatedly tried without success to contact the children or find out where they were. The applicant alleged that she went to see the Social Welfare Administration and that the Child Welfare Consultant so often that they finally threatened to call the police in order to stop her. For the last six months she had been afraid to go there again.

The applicant denied the respondent Government's assertion that she had moved and stated that she had lived at the same address since .. July 1970. She claimed that the authorities were well aware of her address as both she and her husband had been followed and officials were continuously making enquiries about them in their street.

The applicant all referred to the hearing in the High Court in September 1970 and said that she only refused to give her address because a certain official was present and she wanted to be protected from his persecution. However, she allegedly gave the Chief Judge a paper with her address. When she asked the Chief Judge for permission to see her children he told her to ask permission from the Head of the institution at M. The principal allegedly said that she could visit the children if the principal first had approved of the applicant's home and the aunt had given her consent. In the meanwhile, the applicant was allegedly told not to try to visit or write to the children. The applicant claims that she never heard from the principal again. She maintains that the respondent Government's statement that attempts had been made to find her was false and that the Child and Youth Welfare Board does not know what truth is.

According to the applicant she went again to the Social Welfare Office in Copenhagen in October 1970 to try to get some further information. She claims that she was told that all access was still forbidden and that the children had been handed over to their aunt. The applicant alleged that she was once more told that she would be brought to a mental hospital if she continued much longer.

The applicant also stated that the children had no contact with their aunt or the rest of their father's family until .. August 1969.

IV. SUBSEQUENT SUBMISSIONS FROM THE APPLICANT

On 23 September 1972 the applicant wrote a letter complaining that the Child and Youth Welfare Board did not give her children the money which belonged to them.

On 23 October 1972 the applicant wrote again and said that she and her husband had visited the children on 9 October. They were allegedly told by the children that all information as to her whereabouts had been withheld from the children at the children's home. In this letter the

applicant also suggested that her correspondence was being censored and that letters sent to her never arrived and she complained of persecution by the authorities.

On 2 November 1972 the applicant wrote a further letter enclosing a copy of a letter from the principal of the children's home dated 1 November in which the applicant and her husband were told that the children had been brought out of balance by her visits. The principal reproached the applicant for having tried to upset the good relationship between the children on the one hand, and on the other hand, the principal and the institution. The principal stressed that they were trying at the home to give the children a feeling of security. Having regard to the effect on the children by the applicant's visits, the principal felt that these visits would have to be limited. She pointed out, however, that such a decision would, of course, have to be taken in consultation with the Child and Youth Welfare Board and with the children themselves. Before a new agreement could be made concerning another visit, the applicant would hear from the Board.

According to the applicant, the eldest boy had told her that she would not be allowed to visit them much longer from the moment the aunt heard that the applicant knew the children's address.

THE LAW

In view of the terms of the Commission's partial decision of 12 July 1972 on the admissibility of the present application, the only question which falls to be considered by the Commission is the alleged refusal by the Danish authorities to allow the applicant to visit her children. The Commission observes that, if substantiated, this complaint would undoubtedly raise a question under Article 8 (1) (Art. 8-1) of the Convention which secures to everyone the right to respect for his family life.

Having regard to the respondent Government's observations on admissibility, the Commission considers, however, that there is no foundation for the applicant's allegations that she has been prevented from access to her children.

It is true that the applicant has referred to a number of occasions when she claims to have been orally informed that she was not allowed to see the children. There is, however, not the slightest evidence to support these allegations and, indeed, she appears to have taken no proceedings as regards this alleged refusal of access. Moreover, it appears that the authorities have taken all reasonable steps to inform the applicant of the position with regard to the possibility of visiting the children.

An examination by the Commission of this complaint as it has been submitted, including an examination made ex officio, does not therefore disclose any appearance of a violation of the rights and freedoms set forth in the Convention and in particular in the above Article.

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

For these reasons, the Commission DECLARES THE REMAINDER OF THIS APPLICATION INADMISSIBLE.