

THE EUROPEAN COURT OF HUMAN RIGHTS

Council of Europe
Strasbourg, France

APPLICATION

Christer Johansson and family vs Sweden

under Article 34 of the European Convention on Human Rights
and Rule 39, 45 and 47 of the Rules of Court

IMPORTANT: This application is a formal legal document and may affect your rights and obligations

5. Date and Place of Birth: 09 September 2001; Visby, Sweden

6. Permanent Address: Fam Christer and Johansson; Gudings Alva, 62346 HEMSE,
Sweden

7. Telephone Number: +46-498-480458

8. Present Address (if different from 6.): As above

9. Name of Representative: Ruby Harrold-Claesson

10. Occupation of Representative: Lawyer

11. Address of Representative: Ströms Väg 37, 424 71 Olofstorp, Sweden

12. Tel. N°: + 46 31- 70 20 385

Fax N°: + 46 31-70 25 242

Co-Representatives:

9. Name of Representative: Roger Kiska (**Alliance Defense Fund**)

10. Occupation of Representative: Lawyer

11. Address of Representative: 46 Kosicka Ulica; 821 08 Bratislava, Slovak Republic

12. Tel N°: +421 918 427 157

Fax N°: +421 220 702 547

9. Name of Representative: Michael Farris (**Home School Legal Defense Association**)

10. Occupation of Representative: Lawyer

11. Address of Representative: P.O. Box 3000, Purcellville, VA 20134-9000, USA

12. Tel. N°: + (540) 338-5600

Fax N°: + (540) 338-2733

9. Name of Representative: Michael Donnelly (**Home School Legal Defense Association**)

10. Occupation of Representative: Lawyer

11. Address of Representative: P.O. Box 3000, Purcellville, VA 20134-9000, USA

12. Tel. N°: + (540) 338-5600

Fax N°: + (540) 338-2733

B. **THE HIGH CONTRACTING PARTY.**

(Fill in the name of the State(s) against which the application is directed)

13. The Kingdom of Sweden

II - STATEMENT OF THE FACTS

See Part II of the Explanatory Note

14. **Facts of the case**

Summary of court decisions in chronological order

This application stems from events transpiring from the taking into state custody of the applicants' child at the age of seven years old and subsequent court cases which are the subject of an Application to this Court, dated June 25, 2010 and a request for interim measures on July 19, 2010 (application number pending). A copy of that Application is herein annexed as addendum "A" to provide the Court with a full factual and procedural background to the new violations alleged herein for violation of the applicants' right to a fair trial.

Case no. 1

On April 23, 2010, the Administrative court in Stockholm, **Case no 27370-10**, issued its decision not to appoint Mrs Ruby Harrold-Claesson, public counsel for the applicant, Mr Christer Johansson, despite his express wish for her to be his legal representative. The court while stating that Mrs. Harrold-Claesson could not be deemed unsuitable, the magistrate nonetheless chose to appoint a lawyer from Gotland of whom Mr Johansson did not approve.¹ This decision was preceded by the Gotland social council's application to the court to appoint public counsel for Mr Johansson and an accompanying "submission" from the municipality's lawyer. The court requested Mrs. Harrold-Claesson to comment on the information produced by the social council, which she did.²

On April 28, 2010, the Administrative court in Stockholm, **Case no 27370-10**, issued a new decision in which it appointed Mrs. Harrold-Claesson as public counsel for Mr Johansson. No reason was given for the change.³

On June 3, 2010, Mrs Harrold-Claesson appealed against the social council decision and demanded the immediate return of Domenic Johansson to his parents.⁴

On June 4, 2010, the Administrative court in Stockholm, **Case no 27370-10**, acting upon a complaint made by the legal representative of Mr and Mrs Johansson's son, decided to remove Mrs. Harrold-Claesson, the lawyer chosen by Christer Johansson and to dismiss her from her role as the applicant's public counsel.⁵ On June 9, 2010, the Administrative court appointed a new public counsel, Mr. Johan Carlsson. Mr. Johansson has opposed the decision of the Administrative court in Stockholm to force a public counsel on him.⁶

¹ - App 1. Administrative court in Stockholm, Case no 27370-10, April 23, 2010

² - App 2. Lawyer's submission to the Adm court, April 20, 2010 + social council submission 100330 + 22 March 2010

³ - App. 3. Administrative court in Stockholm, Case no 27370-10, April 28, 2010

⁴ - App. 4. Appeal against social council decision, June 3, 2010, the day before Mrs Harrold-Claesson's vacations (dated "Olofstorp dag som ovan")

⁵ - App. 5. Administrative court in Stockholm, Case no 27370-10, delivered on June 4, 2010

⁶ - App. 6. Administrative court decision Case no 27370-10, June 9, 2010

The new public counsel has made several efforts to try to persuade Christer Johansson to issue a power of attorney for him, but Christer Johansson has consequently refused to do this and has refused to revoke the power of attorney that he gave to Mrs Harrold-Claesson.

On June 16, 2010, Christer Johansson and Mrs. Harrold-Claesson filed a joint appeal to the Administrative court of Appeal in Stockholm against the Administrative court's decision to dismiss Mrs Harrold-Claesson from the case.⁷ The Administrative court of Appeal in Stockholm, **Case 3858-10**, upheld the lower court's decision on June 29, 2010.⁸

On July 7, 2010, Christer Johansson and Mrs. Harrold-Claesson requested leave to appeal to the Supreme Administrative court.⁹

On August 10, 2010, **Case no. 4439-10**, the Supreme Administrative Court refused to grant Mr Johansson and Mrs Harrold-Claesson, leave to appeal against the decision of the Administrative court of Appeal in Stockholm¹⁰.

Case no. 2

On June 22, 2010, **Case no 27370-10**, Christer Johansson requested the Administrative court to remove the public counsel that they had appointed for him and reinstate the lawyer of his choice, Mrs Harrold-Claesson.¹¹

In a separate letter to the Administrative court, dated June 22, 2010, Mr Johansson questioned the impartiality of the magistrate. The same magistrate who acquiesced to the social council's suggestion¹² to the court to appoint a lawyer from Gotland, which lead to the court's decision of Apric 23, 2010, to appoint a local lawyer for Mr Johansson. Mrs Harrold-Claesson was then dismissed from the case on June 4, 2010.

On July 5, 2010, the Administrative court rejected Christer Johansson's request stating that he had had several changes of lawyers so they would allow no more.¹³ The Administrative court never addressed Christer Johansson's questioning of the magistrate's impartiality.

On July 7, 2010, Christer Johansson appealed against the decision of the Administrative court and requested the Administrative court of Appeal in Stockholm to remove the public counsel appointed for him by the lower court. In his appeal, Mr Johansson

⁷ - App. 7. Appeal to the Administrative Court of Appeal, Case no 27370-10, June 16, 2010

⁸ - App. 8. Administrative Court of Appeal, Case no 3858-10, June 29, 2010

⁹ - App. 9. Appeal to the Supreme Administrative Court, Case no 3858-10, July 7, 2010

¹⁰ - App. 10. Supreme Administrative Court, Case no. 4439-10, decision August 10, 2010

¹¹ - App. 11. Christer Johansson's letter, dated June 22, 2010, to the Administrative court to remove the public counsel

¹² Supra Note 2, the social council submission to the Adm. Court dated 100330 and the Municipality lawyer's report dated 22 March 2010

¹³ - App. 12. Administrative court decision Case no 27370-10, July 5, 2010

informed the court that he had not chosen the first public counsel nor did he choose the third one that had been appointed, and that his first and only choice was to have Mrs Harrold-Claesson as his lawyer and public counsel - and that was the only change that he was requesting.

The Administrative court of Appeal in Stockholm, **Case no 4555-10**, upheld the lower court's decision.

On July 27, 2010, Christer Johansson appealed against the decision of the Administrative court of Appeal, but the Supreme Administrative court did not grant him leave to appeal.

Also in this case, Mr Johansson's right to a fair trial before an impartial tribunal, as guaranteed in Article 6 of the European Convention of Human Rights, has been violated by the Swedish Administrative court system.

Case no. 3

On July 9, 2010, Annie Johansson, wrote to the Administrative court in Stockholm, requesting them to dismiss her lawyer and public counsel, Ms Shantu Brahmbhatt, on the grounds that she was dissatisfied with the way Ms Brahmbhatt handled her case. Annie Johansson informed the court that she had requested her lawyer to discuss the case with Christer Johansson and also that she should use the European Convention on Human rights, which she refused to do. Annie Johansson requested that Mrs Harrold-Claesson should be appointed public counsel for her.

On August 29, 2010, contrary to her request, the Administrative court in Stockholm appointed the lawyer, Johan Carlsson, as her public counsel. Christer Johansson had made several appeals to have Johan Carlsson removed from his case, but to no avail.

During this same period of time, ie June 2010 - August 2010, the Administrative court in Stockholm retained the appeal that Mrs Harrold-Claesson had made on Mr Johansson's behalf against the Gotland social council decision of May 12, 2010, **Case no 27370-10**.

On June 9, 2010, the social council decided to reject Mrs. Harrold-Claesson as legal representative for Mr Johansson and to disregard the appeal that Mrs Harrold-Claesson had made on Mr Johansson's behalf against the Gotland social council decision of May 12, 2010, concerning the restrictions of the his visiting rights with his son, Domenic Johansson.¹⁴

Mr Johansson informed the social workers that he would pursue the appeal himself, but this was rejected.

¹⁴ - App. 13. Social council decision, June 9, 2010.

Case no. 4

On March 24, 2010, Mrs Harrold-Claesson sent a letter to the social council requesting the full documentation in the Johansson case including the foster home investigation and the foster home contract Mrs Harrold-Claesson at all times had a valid power of attorney authorizing her to act as Mr. Johansson's attorney.

Nevertheless, the social workers refused to deliver the documentation. Mrs Harrold-Claesson appealed against the council decision refusing her access to the documentation.

On June 24, 2010, Case no 3432-10, the Administrative Court of Appeal in Stockholm ruled that parts of the foster home investigation should be released to Mrs Harrold-Claesson.¹⁵ On July 7, 2010, Mrs Harrold-Claesson sent a letter to the social council, reminding them of the verdict of Administrative Court of Appeal. This letter was completely ignored. On November 2, 2010, Mrs Harrold-Claesson applied to the Bailiff's Offices in Visby Gotland for the execution of the verdict of Administrative Court of Appeal. Only then were the highly censored documents released to the Bailiff on December 28, 2010 and delivered to Mrs Harrold-Claesson on January 14, 2010. These documents were essentially useless to Mr. Johansson in furthering his cause.¹⁶

Case no. 5

On November 22, 2010, Christer Johansson was scheduled to meet his son Domenic Johansson for exercise of the "one hour every five weeks, and under close watch of the social authorities" visiting rights that the parents have been granted. Christer Johansson took his son and left the scene. On November 24, 2010, Christer Johansson called the authorities to inform them that he had taken Domenic home to visit his parents. Police arrived, took Domenic with them without allowing him to put on his jacket or his hat, and arrested Christer Johansson. On November 26, 2010, Christer Johansson was remanded in custody on charges of abduction. The court appointed the lawyer, Ms Shantu Brahmhatt, who previously was Annie Johansson's lawyer in the public care case, as Christer Johansson's public defender.

Christer Johansson requested Gotland district court to remove Ms Shantu Brahmhatt and appoint another lawyer in her stead. The prosecutor, the counterpart in the case, objected to the removal of Ms Shantu Brahmhatt, and chief justice Mikael Mellqvist refused Christer Johansson's request for a change of public defender.¹⁷

On December 15, 2010, on Mr Johansson's behalf, Mrs Harrold-Claesson appealed against the lower court's decision¹⁸, requesting Svea Court of Appeal to appoint the very experienced Human Rights lawyer, Tryggve Emstedt, in Ms Shantu Brahmhatt's stead. Svea Court of

¹⁵ - App. 14. Case no 3432-10, the Administrative Court of Appeal in Stockholm, June 24, 2010

¹⁶ - App. 15. Fosterhome investigation.

¹⁷ - App. 16. Case no. B 990-09. Gotland district court, Decision delivered December 7, 2010.

¹⁸ - App. 17. Appeal to Svea Court of Appeal, Case no. B 990-09, December 15, 2010.

Appeal¹⁹ upheld the Gotland District Court decision not to grant Christer Johansson's request for a change of public defender.

The decision of Svea Court of Appeal could not be appealed against.

The Law

The Act with Special Provisions on the Care of Young Persons (*Lagen med särskilda bestämmelser om vård av unga*, 1990:52 - hereinafter "the 1990 Act") § 39 stipulates that public counsel must be appointed for both the parents and the child following the parents' application for the termination of public care.

According to § 5 Act (1990:1620) on public counsel, the provisions of § § 26-29 Legal Aid Act (1996:1619) shall apply with respect to public counsel.

§ 26 of the Legal Aid Act provides, inter alia, that as legal counsel [public counsel] may be appointed attorney, associate at a law firm or someone else that is suitable for the task. However, if the claimant himself has proposed someone suitable, he should be appointed, if it will not entail significant additional costs, or there are otherwise special reasons to the contrary.

A claimant may therefore at his discretion appoint his legal counsel. However, public counsel is appointed by the court, and the costs borne by the state. The court therefore undertakes an assessment in accordance with § 26 Legal Aid Act and can declare the lawyer "suitable" or "unsuitable".

Background

For the background please see the Application for the family Annie, Domenic and Christer Johansson that was lodged on June 28, 2010, by attorneys Roger Kiska, Mike Donnelly and Ruby Harrold-Claesson.

Change of legal representative and public counsel

After exhausting all the domestic remedies in the aforesaid Application and having experienced the lack of involvement of the lawyer on his case and the lawyer's refusal to cooperate or even to mention the provisions of the European Convention of Human Rights and fundamental freedoms, Christer Johansson issued a "Power of Attorney"²⁰ dated February 8, 2010, to Mrs Harrold-Claesson, to plead his case concerning the cessation of the care order and the return of his son, Domenic Johansson.

On March 5, 2010, on behalf of Christer Johansson, Mrs Harrold-Claesson sent a letter to the chairman of the social council demanding the immediate return of his son, Domenic Johansson, to his father and parents and that an application for the appointment

¹⁹ - App. 18. Svea Court of Appeal, Case no. Ö 10164-10. Decision delivered December 16, 2010.

²⁰ - App.19. Power of Attorney (Fullmakt)

of Mrs Harrold-Claesson as public counsel should be sent to the Administrative court.²¹

Christer Johansson's wife, Mrs Annie Johansson, decided to keep the lawyer that she had in the previous court hearings. Her demand to have her child returned to her was sent on March 9, 2010.

The social services acknowledged receipt of Christer Johansson's demands in a letter dated 2010-03-10.²² In their missive the social workers stated that their standard procedure was to finish the social investigation before sending an application for the appointment of a public counsel to the Administrative court. This, I informed them, was quite irregular and I requested them to attend to the matter of appointment without further delay²³.

On March 24, 2010, Mrs Harrold-Claesson requested the social services to send the full documentation of the Johansson Case, including the foster home investigation and the contract, to her.²⁴

In a missive dated March 26, 2010, the social services rejected the demands made for copies of the foster home investigation and the contract. There were no directions on how to appeal against their "decision".²⁵

In reply to Mrs Harrold-Claesson's request for the full documentation of the Johansson Case, including the foster home investigation and the contract, one of the social workers sent an undated message to her.²⁶ The message was sent together with an application to the Administrative Court in Stockholm²⁷, dated 100330, signed by the two social workers on the case, and a statement to the social council in the municipality of Gotland, signed by Patrik Pettersson the municipality's legal adviser.²⁸

This statement is dated 22 mars 2010 and registered on 2010-03-24.

In the undated message the social worker states that they, that very day, had sent an application to the administrative court to appoint public counsels in the case. As to Mrs Harrold-Claesson's demand for the documentation the social worker stated that they were attending to the matter, and that there was a massive documentation so they would have

²¹ - App. 20. Letter to the chairman of the social council dated March 5, 2010

²² - App. 21. Social services letter dated 2010-03-10

²³ - App 22. Letter to social services 2010-03-16

²⁴ - App. 23. Letter to the social services to send the full documentation of the Johansson Case, including the foster home investigation and the contract.

²⁵ - App. 24. Social services missive dated 2010-03-26

²⁶ - App. 25. Ang. begäran om utlämnande av handlingar samt uppdrag som offentligt biträde. Print date 2010-03-30

²⁷ - App. 26. Application to the Administrative Court in Stockholm, dated 100330

²⁸ - App. 27. Statement to the social council in the municipality of Gotland, signed by Patrik Pettersson the municipality's legal adviser

to check it for confidentiality²⁹ and that it would take time. To this information she added: "In addition, we will await the decision of the Administrative Court concerning the possible assignment to you as public counsel, provided that it does not take too long before we make our decision to disclose the records to you. You will receive instructions on how to appeal an possible decision concerning confidentiality if such a decision should be made."³⁰

In the application to the Administrative Court in Stockholm³¹, dated 100330, to appoint public counsels for Christer Johansson and Annie Johansson, the social workers explained the case and then they commented on Christer Johansson's choice of attorney and public counsel as follows:

"Christer has now requested that lawyer Ruby Harrold-Claesson, Olofstorp, should be appointed as his public counsel. On that question, the Social Council requests the Administrative Court to make a decision as to the lawyer Ruby Harrold-Claesson's suitability as public counsel in this matter and we refer to the attached letter from the legal adviser of the Municipality of Gotland, Patrik Pettersson. Concerning Domenic's public counsel and representative, we consider it desirable that Eva Ernstson should be reappointed since she is well versed in the matter and she has had previous contacts with Domenic."

The statement to the social council in the municipality of Gotland, signed by the municipality's legal adviser, dated 22 mars 2010 and registered on 2010-03-24 shows that the municipality's legal adviser did thorough research on Mrs Harrold-Claesson's background including her involvement in child care cases and the Nordic Committee for Human Rights (www.nkmr.org), i e her opinions. He also addressed the geographical distance between Gotland and Olofstorp (Gothenburg). In summing up the municipality's legal adviser wrote the following:

"It would therefore be absurd if the social council should recommend Ruby Harrold-Claesson as public counsel in the administrative court. However, the council needs to make an application for the appointment of suitable public counsel for CJ."³²

The statement by the municipality's legal adviser was later sent to Mrs Harrold-Claesson by the Administrative Court in Stockholm for her comments³³.

In her capacity of Christer Johansson's attorney, on April 20, 2010, Mrs Harrold-Claesson submitted a statement to the Administrative Court in Stockholm, in which she challenged the issues that the municipality's legal adviser had addressed.³⁴ These issues, reflected in the points below, gave rise to the following defence of both Mr Johansson's and Mrs

²⁹ - Please note that the Power of Attorney, App. 4, supra, clearly indicates access to confidential documents

³⁰ - Supra. App. 23.

³¹ - Supra App. 24.

³² - App. 28. Statement to the social council in the municipality of Gotland, signed by Patrik Pettersson the municipality's legal adviser

³³ - App. 29. Missive from the Administrative Court in Stockholm, dated 2010-04-19

³⁴ - App 30. Submission to the Administrative Court in Stockholm, dated April 20, 2010.

Harrold-Claesson's basic Human Rights:

- 1 - Christer Johansson's right to defend himself in person or by legal assistance of his own choosing; (Article 6 ECHR)
- 2 - It is not the prerogative of the social council to interfere with Christer Johansson's choice of attorney and public counsel; (Article 6 ECHR)
- 3 - The social council violated the freedom of expression of Christer Johansson's attorney; (Articles 8 and 9 ECHR)
- 4 - The social council incited the violation the freedom of movement expressed in the Maastrich Treaty and Article 49 of the European Union;
- 5 - Verdicts from the Swedish administrative courts that had gained force of law were irrelevant, as shown in the European Court Verdicts in Olsson v. Sweden and other cases;
- 6 - Knowledge of the law; (Mrs Harrold-Claesson has been a lawyer for more than 20 years)
- 7 - Legislative ambitions; (Sweden as a democratic society under the rule of law)
- 8 - Recommendation to the social council (not to recommend Mrs Harrold-Claesson).

On April 23, 2010, the Administrative court in Stockholm, **Case no 27370-10**, issued its decision not to appoint Mrs Ruby Harrold-Claesson, public counsel for Christer Johansson. The court stated that Mrs Harrold-Claesson could not be deemed unsuitable, but the magistrate chose to appoint a lawyer from Gotland.³⁵ The reason given was that "Anything else would mean substantially increased costs in the proceedings".

In a telephone call to Mrs Harrold-Claesson, and in an e-mail to Christer Johansson, both during the late afternoon of April 26, 2010, one of the social workers informed Christer Johansson that they had made a decision to reject his counsel.³⁶ No written decision was ever sent. Mrs Harrold-Claesson therefore sent a complaint to the Parliamentary Ombudsman, JO³⁷ and demanded a copy of the decision.³⁸

On April 28, 2010, the Administrative court in Stockholm, **Case no 27370-10**, issued its decision to appoint Mrs Harrold-Claesson as public counsel for Christer Johansson. No reason was given for the change.³⁹

Christer Johansson was contented. His basic Human Right to legal assistance of his own choosing had been respected by the Administrative court.

After the Administrative court in Stockholm, **Case no 27370-10**, of April 28, 2010, the social workers sent information concerning the council meeting that should be held on May 12, 2010.

³⁵ - Supra. App 1. Administrative court in Stockholm, **Case no 27370-10**, April 23, 2010

³⁶ - App. 31. E-mail to Christer Johansson April 26, 2010, 17.30

³⁷ - App. 32. Complaint to the Parliamentary Ombudsman, dated 2010-04-30 of Justice

³⁸ - App. 33. Demand for a copy of decision of April 26, 2010.

³⁹ - Supra. App 2. Administrative court in Stockholm, **Case no 27370-10**, April 28, 2010

On May 10, 2010, after consultations with Mr Johansson, Mrs Harrold-Claesson booked a flight to Visby, Gotland, to take place on May 11, 2010.⁴⁰ Upon arrival, May 11, 2010, Mrs Harrold-Claesson was met at the airport by Mr Johansson and his wife, Annie Johansson. After their initial greetings, Mrs Harrold-Claesson suggested that they should take her to Domenic's school to meet him. This was nothing that she had suggested before or thought of before.

Events at the school - May 11, 2010

Domenic's paternal grandparents were waiting in the car and Mrs Harrold-Claesson was driven to Domenic's school. Mr and Mrs Johansson and Mrs Harrold-Claesson went into the school to meet Domenic, who unfortunately wasn't in his classroom at the moment. His teacher informed them that Domenic would return in about 20 minutes because he was at a class of Child Yoga! They informed her that they would return in 20 minutes.

Upon their return 20 minutes later they were met by the principal, who informed them that the social workers had been alerted and that they would be coming to the school. Mr and Mrs Johansson and Mrs Harrold-Claesson informed him that their intention was to meet Domenic - not the social workers.

While they were talking with the principal, Mrs Harrold-Claesson noticed that Domenic's teacher was trying to make a phone call and she looked out into the corridor from time to time to see if they were noticing what she was doing. The principal then invited Mr and Mrs Johansson and Mrs Harrold-Claesson out into the schoolyard to wait while he had discussions with the social workers. There was even talk about calling the police, which Mr Johansson welcomed. The principal left Mr and Mrs Johansson and Mrs Harrold-Claesson in the schoolyard, and Mr Johansson went back to the car to fetch his camera to take a photo of the meeting between his son, Domenic, and Mrs Harrold-Claesson. But when he returned he informed his wife and Mrs Harrold-Claesson that his parents, who were waiting on the parking lot, had seen a truck drive up. They then saw Domenic taken from the school building through the back door and shoved into the truck which then took off at full speed.

The Council meeting - May 12, 2010

Following the events at the school a scheduled meeting at the social council meeting occurred on May 12, 2010, Mrs Harrold-Claesson quoted the UN Convention on the Rights of the Child and the European Convention on Human Rights. The meeting was recorded by Mr Johansson and it can be listened to at the link below.⁴¹

⁴⁰ - App. 34. Gotlandsflyg - Travel documents for Ruby Harrold-Claesson

⁴¹ - Meeting at the Social council, Gotland, May 12, 2010

http://www.mepprograms.org/mote_socialnamnd.wma

During the meeting Mrs Harrold-Claesson criticised, inter alia, the brutal interference in Christer Johansson's and his family's private and family life, the unreasonable restriction of their freedom of movement and the incompetence of the social workers, as shown in their investigation, their failure to deliver the documentation in the case and their attempt to have her removed from Mr Johansson's case⁴² after which she went on to mention the happenings of the previous day at Domenic's school.⁴³

Domenic Johansson's public counsel expressed her agreement with the measures that the social council had taken towards him.⁴⁴ She even spoke of "Annie Pettersson", obviously referring to Annie Johansson, Domenic's mother. This is a clear demonstration that she was not particularly familiar with Domenic Johansson's case, despite the fact that she had been working with it since Domenic Johansson was removed from the care of his parents in June 2009.⁴⁵

Upon her return to her office in Gothenburg, Mrs Harrold-Claesson found a recording left by one of the social workers that she should contact them for the social council decision. Mrs Harrold-Claesson did not contact them by telephone to get the decision because such decisions must be sent by registered mail.

In her capacity of lawyer and public counsel for Christer Johansson, Mrs Harrold-Claesson appealed against the council decision on June 3, 2010.⁴⁶

In a missive dated May 20, 2010, the Administrative court in Stockholm sent a copy of a submission that Domenic Johansson's public counsel⁴⁷ had sent to the court, requiring them to dismiss Mrs Harrold-Claesson, Christer Johansson's lawyer and public counsel from the case - because she, together with Domenic Johansson's parents had tried to visit Domenic at his school. She insinuated

"My opinion is that she through her action has damaged the ongoing care efforts for Domenic. One can not exclude that her visit to the school in the company of Domenic's parents and grandparents had a different purpose than what was claimed." (sid. 2).

She continued:

"In addition, Ruby Harrold Claesson publicly inter alia by publications on the Internet advocates the right of parents to smack their children, which should be abetting misdemeanours. Finally, the exposure of my client in discussions on various websites in

⁴² - a a (10:55 - 36:15)

⁴³ - a a (36:15 - 39:40)

⁴⁴ - Titti Mattsson, lecturer at Lunds University and the University of Växjö, states in her PhD thesis (2002) "*Barnet och rättsprocessen*" that the public counsel for the children usually cooperates with the social services - which also is Mrs Harrold-Claesson's experience from public care cases since the beginning of the 1990s.

⁴⁵ - Supra - 3 - page 7, note 31. App 24. The social workers/council recommended the Administrative court to re-appoint the lawyer Eva Ernstson

⁴⁶ - Mr Johansson appealed against the council decision on June 3, 2010

⁴⁷ - App35. Eva Ernstson's submission to the Administrative court, dated May 18, 2010

which also Ruby Harrold Claesson partakes, contributes to Domenic being exposed to a substantial invasion of privacy." ⁴⁸

In Mrs Harrold-Claesson's submission to the Administrative court in Stockholm, dated May 27, 2010, on behalf of Christer Johansson and herself, she refuted the charges brought against her by Domenic Johansson's public counsel. ⁴⁹ Once again Mrs Harrold-Claesson firmly stated:

- Christer Johansson's right to defend himself in person or by legal assistance of his own choosing;
- Domenic Johansson's public counsel's interference in due process;
- the counsel's failure to indicate what "ongoing care efforts for Domenic" that the meeting with Domenic Johansson that didn't take place could have damaged; and
- the counsel's violation of Mrs Harrold-Claesson's freedom of thought and expression.

On behalf of Christer Johansson and herself, Mrs Harrold-Claesson also requested the court to appoint her also as Domenic Johansson's public counsel, thus giving the parent and the child the same public counsel, due to the obvious fact that Domenic Johansson's public counsel was not protecting his vital interests, but the social workers'.

It should be noted that § 39 second paragraph of the 1960 Act stipulates:
"Should public counsel be necessary for both the child and its guardians, a joint counsel should be appointed, unless there are conflicting interests between them."

This provision is however very seldom used by the Swedish Administrative court system because they prefer to see the child and its parents as adversaries - which in this case they clearly are not.

In its decision dated June 4, 2010, the Administrative court in Stockholm, acquiesced to the demands of Domenic Johansson's public counsel to deprive Mr Johansson of his lawyer and public counsel and thus to violate his Article 6 rights. ⁵⁰ It should be noted that it was the same magistrate, Magnus Schultzberg, who decided not to appoint Mrs Harrold-Claesson on April 23, 2010, who once again acquiesced to the demands of the social council and its collaborator.

This Administrative court in Stockholm decision was appealed on June 16, 2010, but on June 29, 2010, the Administrative court of Appeal, Case no 3858-10, confirmed the decision of the lower court. ⁵¹

In a verdict delivered on June 24, 2010, the Administrative court of Appeal ordered the social council to deliver the documentation in the Johansson case to Mrs Harrold-Claesson. ⁵²

⁴⁸ - a a page 3.

⁴⁹ - App 36. Submission to the Administrative court in Stockholm, dated May 27, 2010

⁵⁰ - Supra. App. 5

⁵¹ - Supra. App. 8. Administrative Court of Appeal, Case no 3858-10, June 29, 2010

⁵² - App. 37. Administrative court of Appeal, Case no. 3432-10, verdict dated June 24, 2010

It should be noted that the decision above was delivered by Section 7, whereas the verdict delivered on June 24, 2010, was delivered by Section 5.

In turn the decision of the Administrative court of Appeal was appealed to the Supreme Administrative court, accompanied by a decision delivered by the Court of Appeal for Western Sweden in which Mrs Harrold-Claesson was declared suitable as lawyer in Case no. Ö 2476-10.⁵³

The Administrative court of Appeal **Case no 4555-10**⁵⁴, upheld the decision of the lower court in its decision dated July 23, 2010.

The **Case no 4889-10**⁵⁵, decision date August 17, 2010, did not grant Christer Johansson leave to appeal.

Case no 4889-10 and Case no. Ö 2476-10 were both signed by the Supreme Administrative court magistrate Patrik Lidin.

The hearing in the public care case took place on September 2, 2010.

On September 21, 2010, the Administrative Court in Stockholm, sitting in Visby, Gotland, delivered its verdict in Case no 27370-10, according to which Annie and Christer Johansson's son, Dominic Johansson, should remain in foster care, the ward of the municipality of Gotland.

The Administrative Courts had forced Christer Johansson and Annie Johansson to be represented by the public counsel, Mr Johan Carlsson, that they had not chosen.

Christer and Annie Johansson appealed against the Stockholm Administrative Court verdict, where their appeal is registered under Case no 5965-10. On January 26, 2011, the Johanssons' public counsel, Mr Johan Carlsson, sent a letter to the Administrative Court of Appeal, withdrawing the appeal.⁵⁶

Upon discovering what the public counsel had done, Christer Johansson made a telephone call, and sent an e-mail to the Administrative Court of Appeal, informing them that neither he nor his wife Annie Johansson had authorised Johan Carlsson to withdraw their appeal.

⁵³ - App. 38. Court of Appeal for Western Sweden decision in Case no. Ö 2476-10, dated July 21, 2010, in which Mrs Harrold-Claesson was declared suitable as lawyer.

⁵⁴ - App. 39. Administrative court of Appeal, **Case no. 4555-10**, verdict dated July 23, 2010

⁵⁵ - App. 40. Supreme Administrative court **Case no 4889-10**, decision date August 17, 2010

⁵⁶ - App. 41. Public counsel, Mr Johan Carlsson's letter to the Administrative Court of Appeal, 2011-01-26

III. STATEMENT OF ALLEGED VIOLATION(S) OF THE CONVENTION AND/OR PROTOCOLS AND OF RELEVANT ARGUMENTS

15. (See § 19(c) of the Notes)

Victim Status:

Applicants have standing to bring this claim as they meet all Convention requirements, having exhausted domestic remedies and carrying victim status. The test applied by the Court to establish victim status is that the applicant must show that he or she has been personally or directly affected by the alleged Convention violation. The definition of victim is fluid and the discretion of defining victims is left to this Court.⁵⁷ The Court will only consider the particular circumstances of each case and will not admit abstract challenges.⁵⁸

Both Annie and Christer Johansson, who applied to this Court on 25 June 2010 regarding the abduction of their son Domenic by Swedish Social Services from an airplane bound for a new residence in India with his parents, file suit in the instant matter because of serious issues of judicial unfairness and lack of equality of arms in the ongoing proceedings regarding the reunification process with their son. The violation alleged by Mr. and Mrs. Johansson is concrete and directly affected their rights to a fair trial as guaranteed under Article 6 of the Convention. As is detailed below, the inability of the family to appoint the attorney of their own choosing materially and detrimentally damaged their legal defence and has unnecessarily and unfairly prolonged the reunification process with their son.

Article 6: Right to a Fair Hearing:

Christer and Annie Johansson's rights as protected by Article 6 of the European Convention of Human Rights have been violated by the Swedish Administrative court system by its refusal to allow the Johansson's the ability to appoint the advocate of their choosing in defending them in their plight to get their child back from Swedish social services. This refusal of the most basic aspect of right to a fair trial prevented the applicants from having their legal needs defended in a manner and course in which they themselves saw fit. As a result, the Johansson's have been forced to use attorneys highly institutionalized from within the very system against which they are fighting to have their child returned to them. These attorneys have consistently rejected their strategic desires in litigating their case and have obstructed the process of reuniting the applicants' with

⁵⁷ ECHR, *Klass and Others v. Germany*, judgment of 6 September 1978, §§ 31-32.

⁵⁸ See, e.g., ECHR, *Lindsay and Others v. UK*, app. no. 31699/96, judgment of 17 January 1997.

their son Domenic.

Article 6 of the European Convention guarantees the right to a fair trial. Article 6, paragraph 1 (particularly when looked at in relation to paragraph 2 and 3) enunciates rights which are distinct but when taken as a whole make up a single right not specifically defined and stemming from the same basic idea of due process.⁵⁹ The protections afforded by Article 6 reflect the fundamental principle of the rule of law.⁶⁰ The Court has held that Article 6 is one of the provisions of central importance to the Convention and that in view of the “prominent place” of a right to a fair trial within a democratic society, a restrictive interpretation of the rights therein would not be consistent with its object and purpose.⁶¹

The key criteria to determine whether Article 6 is applicable is whether the outcome of the proceedings is decisive for private law rights and obligations.⁶² In the instant matter, there is no question that the most intimate legal rights are at stake. Child care matters require expediency due to the potential catastrophic psychological effects on both the parents and children involved. Furthermore, because of the highly institutionalized nature of child care proceedings, the right of judicial fairness and equality of arms is a paramount component of Article 6 guarantees.

The right to access of court must not only exist, it must also be effective. Access to legal counsel is a primary component of this right.⁶³ In the *Golder* case, for example, a prisoner was denied access to legal counsel to defend his case which the Court found to violate the substance of the right to a fair hearing.⁶⁴ Qualitatively, the denial in *Golder* is analogous to the denial in the instant matter where the Johansson’s were refused to use the advocate of their choice and subsequently were also refused the right to use the legal strategy of their choice in reunification hearings which they eventually lost.

Foundationally, the right to a fair hearing requires the principle of equality of arms and the right to adversarial proceedings. Precisely stated, anyone who is a party to a proceedings must have a reasonable opportunity of presenting his case to a court under conditions which do not place him at a disadvantage vis-à-vis his opponent.⁶⁵ This right also includes the ability to have knowledge of and comment on all evidence adduced or observations filed.⁶⁶

In the instant matter, the Court denied both of these rights to Christer and Annie Johansson in proceedings relating to the return of their child Domenic to their care. By

⁵⁹ ECHR, *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A, No. 18 (4), p. 13, para. 28.

⁶⁰ ECHR, *Sunday Times v. the United Kingdom*, judgment of 26 April 1979, Series A, No. 30, p. 34, para. 55.

⁶¹ ECHR, *Delcourt Case*, judgment of 17 January 1970, Series A, No. 11, para. 25. *See also*: ECHR, *DeCubber Case*, Judgment of 26 October 1981, Series A, No. 86, paras. 30 and 32.

⁶² ECHR, *H. v. France*, judgment of 24 October 1989, para. 47.

⁶³ *Cf.*, ECHR, *Steel and Morris v. The United Kingdom*, Application no.68416/01, judgment of 15 February 2005.

⁶⁴ ECHR, *Golder v. the United Kingdom*, *op. cit.*.

⁶⁵ ECHR, *De Haes and Gijssels v. Belgium*, 24 February 1997.

⁶⁶ ECHR, *Borgers v. Belgium*, judgment of 30 October 1991, para. 24.

refusing the reasonable request of the Johansson's to legal counsel of their own choice, the Court disallowed the Johansson's from utilizing a legal course of defense of their own choosing. Because of this refusal, the Johansson's were not allowed by their court appointed attorneys to use the legal advocacy of their choosing. As a result, the family was not allowed to comment or introduce evidence which they felt was vital to establishing them as fit parents. This failure has resulted in prolonged proceedings and has greatly put the applicants at a disadvantage vis-à-vis state social services.

The Applicants, for example, had wanted to introduce key elements of Convention rights and case-law from this Court in their application to be re-united with their son Domenic. This Court has in fact, on numerous occasions, ruled against Sweden's social care system and the arbitrary means it both takes children into care and thereafter frustrates the process of reunification. Despite all of the rulings against Sweden, the system has been obstinate and refused to adapt to either the spirit or law of the holdings.

This is important for two reasons. First, the ample case-law showing that violations have in fact occurred frequently and continuously against Sweden on child care issues dictate that, if a client so-wishes, it would be unreasonable for their advocate to deny the introduction of Convention arguments; particularly as Sweden is bound by the same Convention guarantees as all of the other Council of Europe Member States. It therefore goes without saying that a key component of a right to a fair trial is the right to have a lawyer of your own choosing making arguments that are foundational to your case on your behalf.

Second, the fact that Sweden has refused to adapt its behavior to the decisions against it from this Court within the realm of child social services evidences just how entrenched and institutionalized Swedish Social Services is. This fact must be taken into consideration when analyzing the denial of Mrs. Harrold-Claeson as the advocate chosen by the Johansson's and the appointment of an entirely different lawyer against the express wished of the applicants.

In the instant matter, there was no justification for the denial of Mrs. Ruby Harrold-Claesson as legal counsel for the Johansson's. Mrs. Harrold-Claesson was deemed suitable and competent to represent the Johansson's by the administrative court in Stockholm on 28 April 2010.⁶⁷ The Johansson's expressly wished her to be their legal representative signing a power of attorney. And despite its reversal of 04 June 2010, the Administrative Court of Stockholm still deemed her as competent and suitable in such cases, but refused the Johansson's request to add her as public counsel. Finally, the state would have borne no extra costs as a result of her appointment. In the decision of the final appellate ruling refusing Mrs. Harrold-Claesson as legal counsel, the Court makes no mention of costs as a reason for her refusal. Quite the contrary, she has been the only lawyer involved with the case who has not been paid the full value of her services as owed to her for the work she has already committed to the case.

⁶⁷ *Case no. 27370-10.*

With regard to the applicable domestic law, the Act with Special Provisions on the Care of Young Persons (*Lagen med särskilda bestämmelser om vård av unga*, 1990:52 - hereinafter "the 1990 Act") § 39 stipulates that public counsel must be appointed for both the parents and the child following the parents' application for the termination of public care. According to § 5 of the 1990 Act (1990:1620) on public counsel, the provisions of §§ 26-29 of the Legal Aid Act (1996:1619) shall apply with respect to public counsel.

§ 26 of the Legal Aid Act provides, inter alia, that an associate at a law firm or someone else suitable for the task may be appointed as legal counsel [public counsel]. Of fundamental importance is that if the claimant himself has proposed someone suitable, he should be appointed if it will not entail significant additional costs or there are otherwise special reasons to the contrary.

A claimant may therefore at his discretion appoint his legal counsel. However, public counsel is appointed by the court, and the costs borne by the state. The court therefore undertakes an assessment in accordance with § 26 Legal Aid Act and can declare the lawyer "suitable" or "unsuitable". The court must remain objective and neutral in its assessment of suitability of legal counsel.

In the instant matter, the Johansson's reached a point of complete frustration with their appointed legal counsel and his unwillingness to adopt a legal strategy of their choosing or to make any arguments in line with the European Convention of Human Rights as repeatedly requested by the family. The family found a competent and experienced local attorney whom they retained vis-a-vis a power of attorney which would have borne absolutely no extra cost to the state.

This choice was based on multiple valid reasons including Mrs. Harrold-Claesson's shared vision with the family as to the advocacy strategy in the case, her twenty years of experience before Swedish courts in child care matters, and her experience with European Court of Human Rights cases involving children's custody. To date, Mrs. Harrold-Claesson has reunited nearly fifty children with their families through the Swedish courts.

Any interference with a claimant's right to fairness in adversarial proceedings must be necessary in a democratic society and it must meet a pressing social need whilst at the same time remaining proportionate to the legitimate aim pursued.⁶⁸ The state has a duty to remain impartial and neutral, since what is at stake is the preservation of pluralism and the proper functioning of democracy, even when the state or judiciary may find some of those views irksome.⁶⁹ In the instant matter, there was neither necessity nor proportionality. The rejection by the Court of Mrs. Harrold-Claesson following the determination that she was fit to represent the family was a blatant violation of the principle of judicial neutrality.

⁶⁸ ECHR, *Sunday Times v. the United Kingdom*, *op. cit.*, § 63 *et seq.*

⁶⁹ ECHR, 30 January 1998, *United Communist Party of Turkey and Others v. Turkey*, Reports 1998-I, p. 25, § 57.

The totality of the circumstances which constitute the Johansson case, particularly the lack of evidence surrounding Domenic's being taken into care and the subsequent refusal of social services to relinquish Domenic back to his family despite there no longer being any objective reason or objectionable obstacle in the way to reunification, speaks to a serious failings in the fairness of the administrative and judicial process used in child care matters in Sweden.

The facts demonstrate that Swedish authorities acted on a subjective basis that Domenic would be better off "in state care" than with his parents. This basis has been explicitly rejected by the court in *Olsson v. Sweden*: "it is not enough that the child would be better off if placed in care."⁷⁰ This Court has held that the removal of a child from his parents' care is an interference of a very serious order.⁷¹ The Court requires that extreme diligence in reunification and judicial efficiency is required in such matters because of the danger of irreversible harm to both the family and the child.⁷² The Court has also ruled that decisions about children must not be determined by the mere effluxion of time.⁷³

In refusing the legitimate request of the applicants to use the advocate of their own choosing, their ability to have this reunification quickened was frustrated. Applicants contend that the unfettered discretion used by Sweden's social services and the judiciary adjudicating over the reunification process in the handling of Domenic's case clearly contradicts the principles and protections enshrined by the Convention.⁷⁴

Protections must be enforced against arbitrary and unfettered decisions made by the judiciary regarding choice of counsel. In the instant matter, where no logic or reason existed as to disallowing the Johansson's choice of their own legal counsel, the Court still abused its discretion in denying the request of the family despite its early acceptance of Mrs. Harrold-Claesson as their legal counsel.

The European Court has stressed that the right to a fair trial as safeguarded by Article 6 is guaranteed in civil matters as much as it is to criminal matters: "(...) the Contracting States have greater latitude when dealing with civil cases concerning civil rights and obligations than they have when dealing with criminal cases. Nevertheless, certain principles concerning the notion of a "fair hearing" in cases concerning civil rights and obligations emerge from the Court's case-law. Most significantly for the present case, it is clear that the requirement of "equality of arms", in the sense of a "fair balance" between the parties, applies in principle to such cases as well as to criminal cases (...). The Court agrees with the Commission that as regards litigation involving opposing private interests, "equality of arms" implies that each party must be afforded a reasonable

⁷⁰ ECHR, *Olsson v. Sweden* (No. 2) (17 E.H.R.R. 134) App. No. 13441/87 30, October 1992 paragraph 73.

⁷¹ ECHR, *Olsson v. Sweden*, *op. cit.*, paragraph 72.

⁷² ECHR, *H v. United Kingdom*, (judgment of 8 July 1987, Series A No. 120, pp. 59-63, para. 85.

⁷³ ECHR, *Ignaccolo-Zenide v. Romania*, judgment of 25 January 2000.

⁷⁴ ECHR, 13 December 2001, *Metropolitan Church of Bessarabia and Others v. Moldova*, Reports 2001-XII, § 109; JDI 2002, p. 313.

opportunity to present his case - including his evidence - under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent. (...)”⁷⁵

With the emotional sensitivities involved in child care cases, the paramount importance of expediency and the high level of state interest in family reunification, this principle of fairness and equality of arms is all the more vital. Precisely stated, these types of cases ruin lives. The longer reunification is frustrated, the greater the lasting and damaging psychological toll that is brought upon the child and his parents.

Article 6 [Right to a Fair Hearing] + 13 [Right to Effective Remedy]:

The principle of equality of arms and judicial fairness also involves Article 13 taken in conjunction with Article 6: “In the Court's view, Article 13 (art. 13) requires that where an individual considers himself to have been prejudiced by a measure allegedly in breach of the Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress. Thus Article 13 (art. 13) must be interpreted as guaranteeing an "effective remedy before a national authority" to everyone who claims that his rights and freedoms under the Convention have been violated.”⁷⁶

The Johansson’s have had access to no such effective remedy. This direness of this fact is compounded because after one year the family has still not been reunited with their child despite there being no reasonable obstacles in the way of reunification. Not only have the Swedish administrative and child care courts denied the Johansson’s a legal right to an advocate and legal strategy of their own choosing, but they have failed to comply even with the most basic precepts of judicial fairness. Mrs. Harrold-Claesson, still acting on a valid and effective power-of –attorney on behalf of the Johansson’s to this day is still being refused access to documents to which the family as a matter of right must have access too. This compounded by her rejection by the court without objective justification evidences a clear violation of the family’s right to a fair hearing and effective remedy.

“The remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State. (...)”⁷⁷ The instant case has been unjustifiably infected with procedural unfairness which has made impossible equality of arms in their efforts to be reunited with their son Domenic. From the denial of competent legal representation of their choosing to the refusal to furnish documents of which they and Mrs. Harrold-Claesson have a legal right is unacceptable behavior and violates the very substance of Article 6 taken in conjunction with Article 13.

The adequacy of the Swedish system with regard to the issue of counsel puts forth a unique question before this Court. The mandatory appointment or acquiescence of choice of counsel for claimants in a civil matter by a domestic court is wholly different from the matter of the appointment of legal counsel based on indigence. In the instant

⁷⁵ ECHR, *Dombo Beheer BV v The Netherlands*, judgment of 27 October 1993.

⁷⁶ ECHR, *Klass et. al. v. Germany*, application no. 5029/71, judgment of 6 September 1976.

⁷⁷ ECHR, *Aydin v Turkey*, applicaton no. 57/1996/676/866, Judgment of 25 September 1997.

matter, the issue before the Court is not whether applicants who are receiving voluntary legal aid services may choose any lawyer they wish; the question is with regard to choice of counsel where legal aid is made mandatory by the courts.

Applicants acknowledge that a limit may be placed on choice of attorney where indigence is at issue. The European Commission has held that a legally aided criminal defendant, for example, does not have an absolute right to choose his own attorney.⁷⁸ The Court has even held that the right to choose a lawyer of one's own desire where the litigant has means to pay for the services may be subject to the discretion of the court based on that lawyer's qualifications.⁷⁹

However, those cases are clearly distinguishable from the instant claim. First, the choice of whether or not to accept legal aid in child care proceedings, under the Act with Special Provisions on the Care of Young Persons and §§ 26-29 of the Legal Aid Act, is not provided to the parents in child custody claims. It is obligatory that the state either appoint or approve the attorney of choice in child care matters and costs are automatically borne by the State.

The Convention holds that where an applicant has the means to pay for an attorney, a right of choice arises for that litigant.⁸⁰ The applicants note that they had both the means and ample financial aid opportunities from organizations supportive of their legal efforts to cover their attorney's fees. Therefore, the aspect of the holding in *M. v. the United Kingdom* regarding choice of an attorney for indigent clients does not apply here; whereas the component of that same holding regarding choice of attorneys for those with financial means must be viewed as binding in the instant matter. Applicants hold that as they had financial means available to them for an attorney, but could not exercise this option by operation of § 26-29 of the Legal Aid Act, that the *Goddi* standard should be utilized with regard to the instant claim. In *Goddi*, the Court held that a judge has a positive obligation to ensure that a lawyer's obligation to his client is properly fulfilled.⁸¹ The opposite was the case here where the administrative court actively frustrated the right of Mr. and Mrs. Johansson to have the competent legal representation of their choice.

The rights in this claim are also analogous to those held to exist to applicants in *Steel and Morris v. the United Kingdom*. In that case, the Court found that refusing the litigants legal aid rendered the defamation proceedings against the defendants unfair and in breach of Article 6 § 1. The inequality of arms and the difficulties under which the applicants laboured were also cited as significant in assessing the proportionality of the interference.⁸² In the instant matter, while legal aid was not denied to them [as a matter of law it was provided to them], Annie and Christer Johansson are suffering similar inequality of arms and hardships during the course of court proceedings surrounding the issue of reunification with their son Domenic.

⁷⁸ ECHR, *M. v. the United Kingdom*, 36 DR 155.

⁷⁹ ECHR, *Ensslin and Others v. the Federal Republic of Germany*, 14 DR 64; ECHR, *X. v. the United Kingdom*, 15 DR 242.

⁸⁰ ECHR, *M. v. the United Kingdom*, *op. cit.*.

⁸¹ ECHR, *Goddi v. Italy*, Judgment of 9 April 1984, para. 31.

⁸² ECHR, *Steel and Morris v. the United Kingdom*, *op. cit.*, para. 95.

The Swedish government, in requiring litigants to accept legal aid, must still provide those claimants access to the legal advocate and legal strategy of their own choosing. The mandatory provision of legal aid does not absolve the Swedish judiciary of its obligation to provide judicial fairness to the parties in child care claims. This is in fact even more pertinent to child care cases where the system is far more institutionalized than other areas of the civil law because of the intimate and ongoing relationship between social services and the child care courts.

In *Czekalla v. Portugal* the failure of a legal aid lawyer to complete the grounds of appeal with the necessary formal conclusions, which led to the rejection of the appeal, was held to have deprived the applicant of a practical and effective defence.⁸³ In the instant claim, the Applicants Annie and Christer Johansson were not allowed, despite the qualifications and availability of the lawyer of their choosing, to adopt the advocate and therefore legal strategy they wished to utilize in the proceedings to reunite them with their son Domenic. Instead, their wishes to introduce both European Convention case law and evidence which they viewed as central to their case went ignored and they lost their subsequent case.

Finally, while not binding on this Court, the jurisprudence of jurisdictions with similar legal systems and values as that of the European Court of Human Rights is also persuasive as to the issue of right to legal counsel of one's own choosing. To this extent, the Supreme Court of the United States has held that: "it is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice."⁸⁴

The corpus of European and international case-law is clear on the right of choice of legal counsel where legal aid is not given as a result of indigence. The refusal of this right and other procedural short-comings relating to document production to Mrs. Harrold-Claesson establish that there has been a serious violation of Article 6 taken in conjunction with Article 13 in the instant case.

Legality of Act with Special Provisions on the Care of Young Persons:

The Act with Special Provisions on the Care of Young Persons, particularly with regard to § 5⁸⁵, fails to meet the standards of legal foreseeability and necessity as required under Convention case-law. For the state to lawfully restrict any aspect of the right to a fair trial, the law or act in question must: (a) be prescribed by law; (b) the interference must have a legitimate aim; and (c) the interference must be necessary in a democratic society. Generally speaking, the interference in question must be the act of a state⁸⁶; however, the European Court of Human Rights has held that any *inter partes* intervention

⁸³ ECHR, *Czekalla v. Portugal*, judgment of 10 October 2002.

⁸⁴ *Powell v. Alabama*, 287 U.S. 45 at 53.

⁸⁵ § 5 of the Act makes special provision that with regard to appointment of counsel, §§ 26-29 of the Legal Aid Act be utilized.

⁸⁶ ECHR, 23 November 1993, *A v. France*, Series A, No. 277-B, § 36.

by a court constitutes interference if this intervention challenges a *de facto* situation safeguarded by the Convention⁸⁷ or if it gives effect to law that conflicts with prevailing European Convention law⁸⁸. In the instant application, it was the Administrative Court in Stockholm⁸⁹ and the Administrative Court of Appeal⁹⁰ giving effect to § 5 of the Act with Special Provisions on the Care of Young Persons, which unlawfully interfered with the right to a fair hearing and provision of equality of arms to Annie and Christer Johansson by not allowing them to use the advocate of their choice despite her ample experience and suitability to the case.

The Court in *Metropolitan Church of Bessarabia* held that domestic law, to meet the clarity requirement, must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention: “in matters affecting fundamental rights it would be contrary to the rule of law- one of the basic principles of a democratic society enshrined in the Convention- for a legal discretion granted to the state to be expressed in terms of an unfettered power; consequently the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise.”⁹¹

Restrictions on rights guaranteed by the European Convention of Human Rights must be narrowly tailored, must be adopted in the interests of public and social life as well as the rights of other people within society.⁹² The government must pursue a legitimate aim with regard to any restriction of Convention rights.

The final criterion that must be met for government interference with Convention protections to be legitimate is that the interference in question must be necessary in a democratic society. The European institutions have stated that the typical features of a democratic society are pluralism, tolerance and broadmindedness.⁹³ For such an interference to be necessary in a democratic society it must meet a pressing social need whilst at the same time remaining proportionate to the legitimate aim pursued.⁹⁴

The state, including the judiciary, has a duty to remain impartial and neutral, since what is at stake is the preservation of pluralism and the proper functioning of democracy, even when the state or judiciary may find some of the views or actions of the people involved irksome.⁹⁵ In this sense, the justifications provided by the courts in rejecting Mrs. Harrold-Claesson as counsel-of-record following her brief appointment

⁸⁷ ECHR, 23 June 1993, *Hoffman v. Austria*, Series A, No. 255-C: JDI, 1994, p. 778, § 29.

⁸⁸ ECHR, 20 April 1993, *Sibson v. the United Kingdom*, Series A, No. 258-A, § 27.

⁸⁹ Case No. 27370-10, judgments of 28 April 2010 (reversing court order to appoint Mrs. Harrold-Claesson of 23 April 2010); 4 June 2010 and 5 July 2010.

⁹⁰ Case No. 3858-10, judgment of 29 June 2010; Case No. 4555-10, judgment of 23 July 2010.

⁹¹ ECHR, 13 December 2001, *Metropolitan Church of Bessarabia and Others v. Moldova*, Reports 2001-XII, § 109: JDI 2002, p. 313.

⁹² See e.g.: F. Sudre, *Droit International et Europeen des droits de l'homme*, PUF, Droit fundamental, 1999, p. 108.

⁹³ ECHR, 30 September 1976, *Handyside v. the United Kingdom*, Series A, No. 24, § 49 *et seq.*

⁹⁴ ECHR, *Sunday Times v. the United Kingdom*, *op. cit.*, § 63 *et seq.*

⁹⁵ ECHR, 30 January 1998, *United Communist Party of Turkey and Others v. Turkey*, Reports 1998-I, p. 25, § 57.

cannot be justified as necessary in a democratic society. For example, it is a matter of record to which applicants are happy to stipulate that Mrs. Harrold-Claesson visited Domenic's school with the applicants following her appointment as their legal counsel. While this action may have been viewed as imprudent or improper by the complaining social services, it was neither unethical, illegal or outside of the scope of Mrs. Harrold-Claesson's retainer to take such action. It further does not detract from her competency, her twenty years of experience or her reunification of nearly 50 families in Sweden.

Applicants have been frustrated repeatedly and continuously in both the process of reunification with their son Domenic and in having any of the file material to which they legally have a right of access to be provided to them and to Mrs. Harrold-Claesson, who to this day is still working under a valid power of attorney executed by Annie and Christer Johansson.

An interference with the right to a fair hearing and equality of arms in adversarial proceedings must correspond to a "pressing social need"; as such, the notion "necessary in a democratic society" does not have the flexibility of such expressions as "useful" or "desirable".⁹⁶ A law which infringes on Convention rights, as § 5 of the Act does, must be construed strictly, within a limited margin of appreciation allowed for the State and only convincing and compelling reasons can justify restrictions on the right to equality and fairness in adversarial proceedings.⁹⁷

The right of a court to refuse a litigant who is not receiving legal aid by choice but by mandatory operation of the law and who otherwise would have means to fund an attorney of his choosing, must be based on just reasons which are both relevant and sufficient.⁹⁸ This need must of course be concrete.⁹⁹ The restriction must achieve a fair balance between the various conflicting interests involved in case.¹⁰⁰

There was no such fair balance in the instant proceedings. Denying the applicants the right to use the legal strategy of their own choosing and advocate who would execute that strategy placed Annie and Christer Johansson at a significantly unfair disadvantage during their child reunification hearings. The credentials of Mrs. Harrold-Claesson in Swedish child care proceedings is beyond reproach. Her shared legal vision with the family provides even further compelling grounds to have allowed her to be the family's public counsel of record. Instead, without objective grounds, the court unlawfully exercised an unfettered discretion in dismissing her from this position. It then forced a lawyer whom the family did not want as the attorney they must use. The denial serves no valid or legitimate aim and was not necessary in a democratic society. The absolute

⁹⁶ ECHR, *Case of Svyato-Mykhaylivska Parafiya v. Ukraine*, application no. 77703/01, judgment of 14 June 2007, § 116.

⁹⁷ ECHR, *Wingrove v. the United Kingdom*, judgment of 25 November 1996, Reports of Judgments and Decisions 1996-V, p. 1956, § 53.

⁹⁸ ECHR, 22 October 1981, *Dudgeon v. the United Kingdom*, Series A No. 45, § 51ff.

⁹⁹ See: *Article 9 of the European Convention of Human Rights: Freedom of Thought, Conscience and Religion*, Human Rights Files, No. 20, Council of Europe Publishing, 2005. p. 47.

¹⁰⁰ *Id.*, See also: ECHR, 7 December 1976, *Handyside v. the United Kingdom*, Series A No. 24, § 49; *Dudgeon, op. cit.*, § 60.

discretion afforded to judges at the administrative level to so negatively affect the rights of litigants is contrary to Convention protections and cannot be allowed to stand.

Conclusion:

Article 6 dictates that equality of arms and judicial fairness during adversarial proceedings is a necessary precondition to fulfilling a state's obligation under Article 6 of the Convention. Annie and Christer Johansson were afforded legal aid by the Swedish government not by their choice, but by operation of the law. This distinction is key in assessing the court's denial of the applicant's choice of counsel. In the highly institutionalized setting of Sweden's child care court system, where an existing, ongoing and intimate relationship exists between social services and the courts, it is paramount that the courts objectively assess the competency of lawyer's party to a suit and not exercise unfettered discretion in so doing. Annie and Christer Johansson had a right to utilize Ruby Harrold-Claesson as their attorney-of-record. Mrs. Harrold-Claesson has a twenty year track record handling child care cases in Sweden and has reunited nearly fifty families during that time.

Furthermore, she had a shared vision of the case with Annie and Christer Johansson and was willing to execute the legal strategy of their choosing. This right was unfairly denied to the Johansson's without objective justification. This denial had no proportionality or necessity in a democratic society. It placed undue hardships on the family and has hindered their reunification case, of which they eventually lost under the lawyer forcefully appointed to them by the Court. It continues to frustrate the reunification process. If Article 6 stands for anything, it requires that this level of judicial inequality cannot be allowed to stand and that equality of arms in judicial proceedings before Swedish children's courts must be guaranteed to all.

IV - STATEMENT RELATIVE TO ARTICLE 35 § 1 OF THE CONVENTION

Part IV of the Explanatory Note

16. Final decision (date, court, authority and nature of the decision)

1 - Supreme Administrative Court, Case no. 4439-10, decision August 10, 2010

2 - Supreme Administrative Court, Case no 4889-10, decision August 17, 2010

17. Other decisions (list in chronological order, giving date, court, authority and nature of the decision for each of them)

Administrative court in Stockholm, Case no 27370-10, April 23, 2010

Administrative court in Stockholm, Case no 27370-10, April 28, 2010

Administrative court in Stockholm, Case no 27370-10, delivered on June 4, 2010

Administrative Court of Appeal in Stockholm, Case no 3432-10, verdict June 24, 2010

Administrative court of Appeal in Stockholm, Case no 3858-10, decision June 29, 2010

Administrative court in Stockholm, Case no 27370-10, dated July 5, 2010

Administrative court of Appeal, Case no. 4555-10, verdict dated July 23, 2010

Gotland district court, Case no. B 990-09. Decision December 7, 2010.

Svea Court of Appeal, Case no. Ö 10164-10. Decision December 16, 2010

18.

V - STATEMENT OF THE OBJECT OF THE APPLICATION AND PROVISIONAL CLAIMS FOR JUST SATISFACTION

See Part V of the Explanatory Note

19.

- Christer Johansson requests that the violations of his and his family's human rights to be fully recognized.
- requires the Kingdom of Sweden to be instructed to write legislations/law making that is compatible with the European Convention on Human Rights.
- desires, if possible, a full review of the actions taken by Swedish social services and Administrative Courts, with the aim to protect parents from similar abuses and injustices that he and his family have suffered.
- demands compensation for the mental anguish and physical suffering that have followed in the wake of his family's Human rights violations
- demands a public apology for all violations listed above from the Kingdom of Sweden.

VI - STATEMENT CONCERNING OTHER INTERNATIONAL PROCEEDINGS

20. *Have you submitted the above complaints to any other procedure of international investigation or settlement? If so, give full details.*

See Part VI of the Explanatory Note

No.

VII - LIST OF DOCUMENTS

See Part VII of the Explanatory Note

21.

Supreme Administrative Court, Case no. 4439-10, decision August 10, 2010
Supreme Administrative Court, Case no 4889-10, decision August 17, 2010

Administrative court in Stockholm, Case no 27370-10, April 23, 2010
Administrative court in Stockholm, Case no 27370-10, April 28, 2010
Administrative court in Stockholm, Case no 27370-10, delivered on June 4, 2010
Administrative Court of Appeal in Stockholm, Case no 3432-10, verdict June 24, 2010
Administrative court of Appeal in Stockholm, Case no 3858-10, decision June 29, 2010
Administrative court in Stockholm, Case no 27370-10, dated July 5, 2010
Administrative court of Appeal, Case no. 4555-10, verdict dated July 23, 2010
Gotland district court, Case no. B 990-09. Decision December 7, 2010.
Svea Court of Appeal, Case no. Ö 10164-10. Decision December 16, 2010

Power of attorney for Ruby Harrold-Claesson, dated 15/6 2010

Lawyer's submission to the Adm court, April 20, 2010
Social council submission 100330 and 22 March 2010
Statement to the social council in the municipality of Gotland, signed by Patrik Pettersson the municipality's legal adviser, dated 22 March 2010
Appeal against social council decision, June 3, 2010, the day before Mrs Harrold-Claesson's vacations (dated "Olofstorp dag som ovan")
Appeal to the Administrative Court of Appeal, Case no 27370-10, June 16, 2010
Christer Johansson's letter, dated June 22, 2010, to the Administrative court to remove the public counsel
Social council decision, June 9, 2010.
Fosterhome investigation - heavily censored.
Appeal to Svea Court of Appeal, Case no. B 990-09, December 15, 2010.
Power of Attorney, dated 8 februari 2010
Letter to the chairman of the social council dated March 5, 2010
Social services letter dated 2010-03-10
Letter to social services 2010-03-16
Letter to the social services to send the full documentation of the Johansson Case, including the foster home investigation and the contract.
Social services missive dated 2010-03-26
Ang. begäran om utlämnande av handlingar samt uppdrag som offentligt biträde. Print date 2010-03-30
Application to the Administrative Court in Stockholm, dated 100330
Missive from the Administrative Court in Stockholm, dated 2010-04-19
Submission to the Administrative Court in Stockholm, dated April 20, 2010.

Social worker's e-mail to Christer Johansson April 26, 2010, 17.30
Complaint to the Parliamentary Ombudsman, dated 2010-04-30 of Justice
Demand for a copy of decision of April 26, 2010.
Gotlandsflyg - Travel documents for Ruby Harrold-Claesson
Mr Johansson's appeal against the council decision on June 3, 2010
Public counsel Eva Ernstson's submission to the Administrative court, dated May 18, 2010
Submission to the Administrative court in Stockholm, dated May 27, 2010
Court of Appeal for Western Sweden decision in Case no. Ö 2476-10, dated July 21,
2010, in which Ruby Harrold-Claesson is declared suitable as lawyer.
Public counsel, Mr Johan Carlsson's letter to the Administrative Court of Appeal, 2011-
01-26, withdrawing Annie and Christer Johansson's appeal

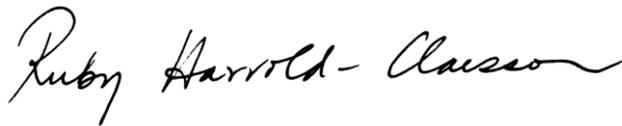
VIII. DECLARATION AND SIGNATURE

See Part VIII of the Explanatory Note

I hereby declare that, to the best of my knowledge and belief, the information that I have given in the present application form is correct

Date / Place

Olofstorp, Sweden, February 10, 2011

A handwritten signature in black ink that reads "Ruby Harold-Clausson". The signature is written in a cursive style with a long, sweeping underline.

Lawyer

Signature of the applicant or of the representative