

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the four-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the "Notes for filling in the application form".

E. Statement of the facts

58.

I. INTRODUCTION

1. Ms Matilda [REDACTED] (the "Applicant") is a Swedish citizen. She was born in 2002 and lives with her fiancé in [REDACTED] Sweden. Since August 2018, the Applicant's younger siblings are placed under compulsory care by decision of the Social Welfare Committee in Ystad Municipality (sv. Socialnämnden i Ystads kommun, the "Committee"). The Committee has also restricted the siblings contact with the Applicant, without providing in its decisions any reasons to justify the restrictions.

2. Under Swedish law, the social welfare committees and social services (sv. socialtjänsten) enjoy almost unfettered discretion when regulating contact between siblings. Decisions to restrict contact between siblings may not be appealed. The Applicant argued that the statutory prohibition on appeal breached her right of access to court under Article 6 of the Convention. The domestic courts then made a finding to that effect and allowed her appeal. Her case is thus the first case where the domestic courts try a case concerning contact restrictions between siblings.

3. In examining the case on the merits, however, the courts rejected her appeal without conducting a genuine and independent review of the Committee's decision. As a result, the disproportionate contact restrictions continue to thwart the Applicant's efforts to maintain and build the relationships with her siblings.

4. The Applicant submits that Sweden has failed to provide adequate guarantees against arbitrariness and has allowed for unjustified, unforeseeable, and disproportionate interferences with her and her siblings' private and family life. The Applicant now turns to the Strasbourg Court and invites the Court to find that Sweden violates her rights under Article 8 of the Convention and to require that Sweden put an end to the continuing violations.

II. THE COMMITTEE PLACES THE APPLICANT AND HER YOUNGER SIBLINGS UNDER COMPULSORY CARE

5. On 29 August 2018, the Committee placed the Applicant and her three younger siblings [REDACTED] and [REDACTED] under compulsory care. The Committee based its decision on the finding that their parents had failed to provide adequate care. The Applicant and her siblings were placed in separate foster homes (sv. familjehem) and care facilities (sv. hem för vård eller boende, HVB-hem) in different parts of the country.

6. Between August 2018 and January 2020, the Applicant was allowed to see her siblings approximately ten times and on rare occasions speak with them over the phone.

III. THE SOCIAL SERVICES FURTHER LIMIT THE APPLICANT'S CONTACT WITH HER SIBLINGS

7. In January 2020 the Applicant reached the age of majority; the compulsory care order in relation to her was lifted; and she moved in with her older brother. Wishing to maintain good relationships with her siblings, the Applicant requested on a phone call with the Social Services that she be granted the right to contact and see her younger siblings more frequently.

8. On 6 March 2020, the Social Services in Ystad Municipality (sv. Socialtjänsten i Ystads kommun, the "Social Services"), acting for the Committee, denied the Applicant's request and instead limited the contact further (see bundle p. 1). During 2020, the Applicant was only allowed to see [REDACTED] on 6 January, and [REDACTED] and [REDACTED] on 6 April and 12 October. She was only allowed to speak with [REDACTED] and [REDACTED] over the phone on a few occasions. For 15 months, between 6 January 2020 and 13 April 2021, she had no contact at all with her youngest sibling [REDACTED] because of the restrictions.

IV. THE SOCIAL SERVICES AND THE COMMITTEE REFUSE TO ISSUE A WRITTEN DECISION

9. On 27 August 2020, to form an understanding of exactly what contact restrictions were in place, the reasons for them and with a view to possibly appeal, the Applicant requested that the Committee issue a written decision (see bundle p. 2).

10. On 2 September 2020, the Social Services replied that they had received her request and would respond by registered mail. By letter dated 9 September 2020, the Social Services denied the Applicant's request and explained that she was not entitled to a decision because of the prohibition on appeal (see bundle p. 3).

Statement of the facts (continued)

59.

11. On 23 September 2020, the Applicant met with the Social Services and discussed the possibility to be allowed more frequent and unrestricted contact with her siblings. The Social Services stated that they could not give her any definite answers and maintained that she was not entitled to a written decision.

12. On 20 October 2022, the Applicant met again with the Social Services. At that time, Centrum för rättvisa (en. Centre for Justice) had agreed to represent the Applicant. In the meeting, her lawyers from Centrum för rättvisa clarified her position and explained that both the Swedish Administrative Procedure Act (sv. förvaltningslagen, 2017:900) and the Convention require that a written decision be issued, which the Applicant could seek to appeal with reference to her right of access to court under Article 6 of the Convention.

13. On 22 October 2020, the Applicant (assisted by her lawyers from Centrum för rättvisa) again requested a written decision (see bundle pp. 7–9). On 18 November 2020, the Social Services, also acting for the Committee, refused her request, referring again to the prohibition on appeal (see bundle p. 7).

14. On 23 November 2020, the Applicant reiterated to the Social Services that she was entitled to a written decision, notwithstanding the prohibition on appeal (see bundle p. 6). On the same date, the Social Services maintained the opposite (see bundle pp. 5–6).

15. On 25 November 2020, the Applicant provided additional support for her right to a written decision (see bundle p. 5). On 11 December 2020, the Social Services asked the Applicant to call their lawyer at the municipality head office (see bundle p. 4).

16. During December and the beginning of January, the Applicant's lawyers had several phone calls with the municipality lawyer, who eventually recommended that the Applicant submit another request for a written decision. On 10 February 2021, the Applicant submitted another request (see bundle pp. 10–16).

V. THE COMMITTEE ISSUES A WRITTEN DECISION, BUT FAILS TO PROVIDE ANY REASONING

17. On 11 March 2021, representatives for the Social Services issued a written decision on behalf of the Committee in respect of each of the Applicant's three siblings. The decisions upheld the previous restrictions (see bundle pp. 17–19). The Committee, however, failed to provide reasons as to why the contact restrictions were justified, and clearly specify the nature of the restrictions. By way of example, the decision relating to one of the siblings reads as follows (in house-translation):

"Decision.

In view of Matilda [REDACTED]'s application for additional visitation rights and other contact dated on 2021-02-10, the Social Welfare Committee decides as follows.

The Social Welfare Committee decides under Section 11(4) of the Act with Special Provisions on the Care of Young Persons (Lagen med särskilda bestämmelser om vård av unga, 1990:52; [the "1990 Act"]) that the right of [REDACTED] [...] to contact Matilda [REDACTED] shall continue to be restricted indefinitely in the following manner:

- Contact with Matilda takes place according to [REDACTED] needs and in [REDACTED] best interest. This assessment is carried out by the Social Services.
- Contact by video or phone calls take place where [REDACTED] calls Matilda. During these calls, the foster family shall be present.
- Visits may take place by Matilda visiting [REDACTED] in his foster home. During those visits, the foster family shall be present. Visits shall be planned together with the Social Services and the foster home.

Reasoning.

Because this decision on restriction of contact is taken under Section 11(4) of [the 1990 Act], and not Section 14(2) of [the 1990 Act], the decision is not subject to appeal. The decision is issued in writing because of Matilda [REDACTED]'s request under Section 33(3) of the Administrative Procedure Act (2017:900)."

VI. THE COURTS ALLOW THE APPLICANT'S APPEAL, BUT FAILS TO REVIEW THE COMMITTEE'S REASONING

18. On 21 April 2021, the Applicant appealed the Committee's decisions to the Administrative Court in Malmö (see bundle, pp. 20–41). On 28 May 2021, the Administrative Court dismissed the appeal without any review of the merits and upheld the statutory prohibition on appeal under Section 41 of the 1990 Act, stating that it was not incompatible with

Statement of the facts (continued)

60.
Article 6 of the Convention (see bundle pp. 42–46). The Applicant appealed this ruling to the Administrative Court of Appeal in Gothenburg (see bundle pp. 47–68).
19. On 4 November 2021, the Administrative Court of Appeal quashed the prohibition on appeal with reference to the Convention, and remanded the case to the Administrative Court for examination on the merits (see bundle pp. 69–74).
20. On 7 January 2022, the Administrative Court in Malmö upheld the Committee's decisions on the merits (see bundle pp. 89–99). On 28 January 2022, the Applicant appealed (see bundle pp. 100–112). On 27 April 2022, the Administrative Court of Appeal affirmed the lower court's findings (see bundle pp. 119–125). Neither court did a genuine and independent assessment of the Committee's reasons for the contact restrictions. The Administrative Court of Appeal merely referred to the findings of the Administrative Court that the restrictions did not disproportionately interfere with the Applicant's rights under Article 8 of the Convention. The Administrative Court in turn based its decision on the Committee's assertions, stated in the decisions themselves, that any contact taking place would be arranged according to the children's needs and in their best interest. The Administrative Court thus completely deferred to the Committee's assessment on what would constitute a justified interference – without carrying out any meaningful judicial review of the facts.
21. On 1 June 2022, the Applicant appealed the Administrative Court of Appeal's judgment to the Supreme Administrative Court (sv. Högsta förvaltningsdomstolen) (see bundle pp. 126–131). On 22 July, the Supreme Administrative Court denied leave to appeal (see bundle pp. 132–133).
- VII. THE APPLICANT TURNS TO THE STRASBOURG COURT
22. To date, the Applicant's younger siblings are still in foster care and their contact with the Applicant is still severely restricted. Even though the Administrative Court of Appeal quashed the statutory prohibition on appeal, it did not independently review the Committee's reasoning. The domestic courts did not, therefore, provide sufficient guarantees against the arbitrary restrictions. The Applicant now turns to the Strasbourg Court to put an end to the continuing violation of her right to respect for her private and family life under Article 8 of the Convention.

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

61. Article invoked

Article 8

Explanation

VIII. SWEDEN VIOLATES ARTICLE 8 OF THE CONVENTION

23. This case turns on the minimum requirements of the rule of law. The 1990 Act not only affords the Committee almost unfettered discretion when limiting contact between siblings; it also exempts the Committee's decisions from being appealed, leaving subjects of the Committee's arbitrary exercise of discretion in a legal black hole. Although the domestic courts eventually allowed the Applicant's appeal, they failed to circumscribe the Committee's discretion and offer necessary guarantees against arbitrariness. The Applicant now invites the Court to affirm and clarify the checks and balances required to prevent the arbitrary exercise of public power.

24. The Applicant submits that the contact restrictions interfere with her right to respect for her private and family life under Article 8 of the Convention (see *Mustafa and Armağan Akin v. Turkey*, no. 4694/03, §§ 19 and 21, 6 April 2010). That interference cannot be justified for three reasons: First, the interference is unforeseeable because the scope of the Committee's discretion is not sufficiently defined, and the legal basis is not formulated with sufficient precision to enable the Applicant to regulate her conduct. Second, the protection against arbitrariness is inadequate because the powers of the social authorities are not coupled with genuine and independent judicial review. Third, the interference is not necessary in a democratic society because the contact restrictions are disproportionate.

IX. THE INTERFERENCE IS UNFORSEEABLE

25. The legal basis fails to meet the requirements of foreseeability because the 1990 Act does not demarcate the scope of the Committee's discretion and is not formulated with sufficient precision to enable the Applicant to regulate her conduct (see *Silver and Others v. the United Kingdom*, 25 March 1983, §§ 86–88, Series A no. 61).

26. Section 11(4) of the 1990 Act confers almost unfettered discretion on the Committee, stating merely that "the Committee decides on matters relating to the child's personal situation". Neither the 1990 Act nor the travaux préparatoires specify if or to what extent Section 11(4) allows interferences with the Convention. By contrast, contact restrictions between a child and its parents are expressly permitted under Section 14 of the 1990 Act to the extent necessary with respect to the purpose of the care order. The Committee must reassess the necessity of such restrictions every three months. These decisions are also subject to appeal under Section 41 of the 1990 Act.

27. In the Applicant's case, the Committee's decisions essentially give the Social Services a carte blanche to grant or deny contact according to their own judgment of what is in the childrens' best interest (see para. 17 above). As a result, the Applicant cannot foresee the current and possible future extent of the restrictions and regulate her conduct accordingly. The decisions' lack of explicit justification further curtails the possibility of adequately assessing the prospects of and properly preparing an appeal – which adds to the legal uncertainty. In sum, Sweden thus falls short of the quality of law standard and violates Article 8 of the Convention.

X. THE PROTECTION AGAINST ARBITRARINESS IS INADEQUATE

28. Sweden also falls short of the quality of law standard because the protection against arbitrary interference is inadequate. Crucially, the discretionary powers of the Committee are not coupled with genuine and independent judicial review (see *inter alia* *X v. Finland*, no. 34806/04, §§ 220–222, ECHR 2012 (extracts) and *Moiseyev v. Russia*, no. 62936/00, § 266, 9 October 2008, where the Court emphasised the importance of such review as a safeguard against arbitrariness).

29. In the Applicant's case, the Committee refused to provide reasons for the contact restrictions in its decisions because the decisions were not subject to appeal.

Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments (continued)

62. Article invoked

Article 8

Explanation

The Committee provided an explanation only when the prohibition on appeal was quashed and the case was remanded to the lower court for examination on the merits. The Committee then referred to (i) practical considerations related to the pandemic and to the children's recreational activities, (ii) the need not to force a relationship between the Applicant and her siblings; (iii) the importance of avoiding a loyalty conflict between the childrens' biological family and foster homes; and (iv) the fact that the Applicant appealed the contact restrictions, which somehow indicated to the Committee that she did not have her siblings' best interest at heart (see bundle pp. 77–78).

30. Without requiring that the Committee provide evidence to support its assertions, the domestic courts tacitly accepted their veracity. As for the legal conclusions to be drawn, the domestic courts deferred to the Committee's own assessment that the restrictions were proportionate. Rather than conducting a genuine and independent review with reference to the relevant Convention standards, the courts endorsed the Committee's arguments using "short, vague and stereotyped formulae" – finding inter alia that the restrictions were "compatible with the children's best interest" and "not incompatible with Article 8 of the Convention", without explaining how and why in light of the particular circumstances of the case (see mutatis mutandis, the Court's reasoning in *Mirgadirov v. Azerbaijan and Turkey*, no. 62775/14, § 99, 17 September 2020, where the Court held that the applicant had not been afforded a proper judicial review because of similar shortcomings in the reasoning of the domestic courts).

31. In short, the domestic courts' "review" was a theoretical and illusory exercise, rather than a practical and effective safeguard against arbitrariness and abuse. Consequently, Sweden falls short of the quality of law standard under Article 8.2 and violates the Convention also on this ground.

XI. THE INTERFERENCE IS NOT NECESSARY IN A DEMOCRATIC SOCIETY

32. The contact restrictions disproportionately interfere with the Applicant's private and family life. The care order is based exclusively on the parents' failure to provide adequate care. Yet, the Applicant is allowed less contact than her parents with her youngest brother. The Committee has not adduced any reasons for the contact restrictions in its decisions. The few reasons adduced by the Committee in the domestic proceedings (see para. 29 above) are in turn either irrelevant, insufficient or both.

33. The Applicant does not dispute that practical considerations may entail some limits on her in-person contact with her siblings. But those considerations are not relevant to digital forms of contact. She does, however, dispute that there is any real risk of a loyalty conflict and that the contact with her would risk being perceived as a forced. She also disputes that her appeal would be contrary to her siblings' best interest. It is quite the opposite.

34. In all, the reasons adduced by the Committee are insufficient to justify the far-reaching restrictions; the Committee has failed to demonstrate why the restrictions are necessary and Sweden has overstepped any acceptable margin of appreciation.

XII. CONCLUSION

35. The Applicant respectfully asks the Court to find that Sweden has violated Article 8 of the Convention and to require that Sweden put an end to the continuing violation of her right to respect for her private and family life.

36. The Applicant also invites the Court to consider her complaints under Article 6 or Article 13 in conjunction with Article 8, under the procedural limb of Article 8 or in terms of the state's positive obligations under Article 8 of the Convention, should the Court find it appropriate to do so.

G. Compliance with admissibility criteria laid down in Article 35 § 1 of the Convention

For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the four-month time-limit.

63. Complaint	<p>Information about remedies used and the date of the final decision</p> <p>XIII. COMPLIANCE WITH ADMISSIBILITY CRITERIA LAID DOWN IN ARTICLE 35 § 1 OF THE CONVENTION</p> <p>37. The four-month time limit has not started to run as the violation is still continuing (see e.g. Sabri Günes v. Turkey [GC], no. 27396/06, § 54, 29 June 2012). Nonetheless, the Applicant has submitted her application within four months of the Supreme Administrative Court's decision to deny leave to appeal on 22 July 2022. The Applicant was not required to exhaust any additional remedies for the purposes of Article 35 § 1 of the Convention.</p> <p>38. Under Article 35 § 1 of the Convention, an applicant is only required to exhaust remedies that are capable of affording the applicant sufficient redress (see e.g. S.J.P and E.S v. Sweden, [dec.], no. 8610/11, §§ 72–73, 16 December 2014 and Jovanovic v. Sweden, 10592/12, §§ 61–62, 22 January 2016).</p> <p>39. The main objective of this application is to end the restrictions placed on the Applicant's contacts with her younger siblings. To that end, the Applicant has relied on the Convention before the Administrative Court in Malmö, the Administrative Court of Appeal in Gothenburg, and in her appeal to the Supreme Administrative Court. She has explicitly argued that the Committee's decisions to restrict contacts between her and her siblings violate her rights under Article 8 of the Convention (see bundle pp. 84–85, 110–111, 116, and 127). Swedish authorities have thus had opportunity to determine the compliance of Swedish law with the Convention before this application was made to the Court (see inter alia the Court's case law in Burden v. the United Kingdom [GC], no. 13378/05, § 42, ECHR 2008).</p> <p>40. The only remaining domestic remedy would be for the Applicant to turn to either the general courts or the Chancellor of Justice and claim damages for the violation of the Convention. However, the Applicant's younger siblings are still placed under compulsory care and the Applicant's contacts with them are still severely restricted. The violation of the Applicant's rights under Article 8 of the Convention is thus continuing. Monetary compensation would not afford sufficient redress for the Applicant, nor would it end the continuing violation (cf. S.J.P and E.S v. Sweden, [dec.], no. 8610/11, § 72, 16 December 2014). The Applicant has therefore exhausted all available effective remedies in Sweden.</p>
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64. Is or was there an appeal or remedy available to you which you have not used?

☒ Yes

☐ No

65. If you answered Yes above, please state which appeal or remedy you have not used and explain why not

XIV. REMEDIES THAT HAVE NOT BEEN USED

41. For the reasons set out in in section G above, the Applicant has not claimed monetary compensation for the violation of her rights under Article 8 of the Convention before the general courts or the Chancellor of Justice. She is, however, not required to do so under Article 35 § 1 of the Convention. Those remedies are ineffective as they would neither afford sufficient redress for the Applicant nor end the continuing violation (cf. S.J.P and E.S v. Sweden, [dec], no. 8610/11, §§ 72–73, 16 December 2014).

H. Information concerning other international proceedings (if any)

66. Have you raised any of these complaints in another procedure of international investigation or settlement?

☐ Yes

☒ No

67. If you answered Yes above, please give a concise summary of the procedure (complaints submitted, name of the international body and date and nature of any decisions given)

68. Do you (the applicant) currently have, or have you previously had, any other applications before the Court?

☐ Yes

☒ No

69. If you answered Yes above, please write the relevant application number(s) in the box below

I. List of accompanying documents

You should enclose full and legible copies of all documents. No documents will be returned to you. It is thus in your interests to submit copies, not originals. You MUST:

- arrange the documents in order by date and by set of proceedings;
- number the pages consecutively; and
- NOT staple, bind or tape the documents.

70. In the box below, please list the documents in chronological order with a concise description. Indicate the page number at which each document may be found

- | | |
|---|--------|
| 1. Email from the Social Services denying the Applicant's request for more contact with her siblings, 06.03.2020 | p. 1 |
| 2. The Applicant's request for a written decision, 27.08.2020 | p. 2 |
| 3. Letter from the Social Services denying the Applicant a written decision, 09.09.2020 | p. 3 |
| 4. The Applicant's email correspondence with the Social Services re her request for a written decision, 22.10.2020–11.12.2020 | p. 4 |
| 5. The Applicant's fourth request for a written decision, 10.02.2021 | p. 10 |
| 6. The Committee's written decisions on the contact restrictions between the siblings, 11.03.2021 | p. 17 |
| 7. The Applicant's appeal to the Administrative Court, 21.04.2021 | p. 20 |
| 8. Decision of the Administrative Court on the preliminary issue of the right to appeal, 28.05.2021 | p. 42 |
| 9. The Applicant's appeal to the Administrative Court of Appeal, 18.06.2021 | p. 47 |
| 10. Judgment of the Administrative Court of Appeal on the preliminary issue of the right to appeal, 04.11.2021 | p. 69 |
| 11. Written observations on the merits in the proceedings before the Administrative Court, submitted by the Committee, 12.11.2021 | p. 75 |
| 12. Written observations on the merits in the proceedings before the Administrative Court, submitted by the Applicant, 25.11.2021 | p. 80 |
| 13. Judgment of the Administrative Court on the merits, 07.01.2022 | p. 89 |
| 14. The Applicant's appeal to the Administrative Court of Appeal, 28.01.2022 | p. 100 |
| 15. Written observations on the merits in the proceedings before the Administrative Court of Appeal, submitted by the Applicant, 23.02.2022 | p. 113 |
| 16. Judgment of the Court of Appeal on the merits, 27.04.2022 | p. 119 |
| 17. The Applicant's request for leave to appeal to the Supreme Administrative Court, 01.06.2022 | p. 126 |
| 18. Decision of the Supreme Administrative Court to refuse leave of appeal, 22.07.2022 | p. 132 |
| 19. | p. |
| 20. | p. |
| 21. | p. |
| 22. | p. |
| 23. | p. |
| 24. | p. |
| 25. | p. |

Any other comments

Do you have any other comments about your application?

71. Comments

42. The Applicant may claim compensation for damages and will claim compensation for costs and expenses under Article 41 of the Convention after the case has been communicated with the government.

Declaration and signature

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

72. Date

2	1	1	1	2	0	2	2
D	D	M	M	Y	Y	Y	Y

e.g. 27/09/2015

The applicant(s) or the applicant's representative(s) must sign in the box below.

73. Signature(s) ☐ Applicant(s) ☒ Representative(s) - tick as appropriate

Confirmation of correspondent

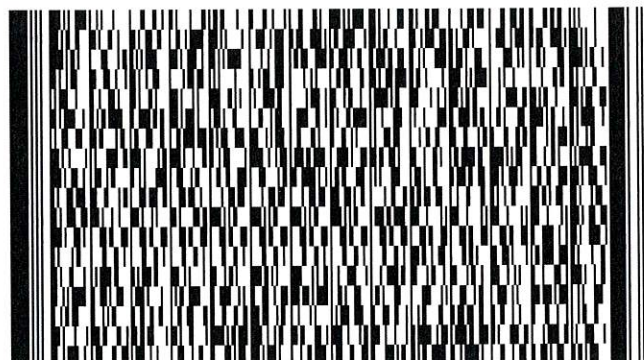
If there is more than one applicant or more than one representative, please give the name and address of the one person with whom the Court will correspond. Where the applicant is represented, the Court will correspond only with the representative (lawyer or non-lawyer).

74. Name and address of ☐ Applicant ☒ Representative - tick as appropriate

Fredrik Bergman
Centrum för rättvisa
Box 2215
SE-103 15 Stockholm
Sweden

The completed application form should be signed and sent by post to:

The Registrar
European Court of Human Rights
Council of Europe
67075 STRASBOURG CEDEX
FRANCE



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