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In case no. 1513-20, **AA** (Appellant) v. the **Labour Market and Social Services Committee in Malmö municipality** (Respondent), the Supreme Administrative Court delivered the following judgment on 7 March 2022.

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RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court rejects the claim for a request for a preliminary ruling from the European Court of Justice.

The Supreme Administrative Court declares that the question which has been the subject of the Court's examination is to be answered as follows. It is not in violation of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms to provide care pursuant to sections 1 and 3 of the Care of Young Persons (Special Provisions) Act, which entails deprivation of liberty, to a person who has attained 18 years of age and engages in socially degrading behaviour.

The Supreme Administrative Court otherwise does not grant leave to appeal in the case. The administrative court of appeal's decision therefore stands.

The Supreme Administrative Court affirms the decision of the administrative court of appeal regarding secrecy and decides that compensation shall be paid to Nathalie Medina for work as public counsel in the amount of SEK 33,844 (including value added tax).

BACKGROUND

1. According to Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), no one shall be deprived of his liberty save in specifically enumerated situations. One such situation is the detention of a minor by lawful order for the purpose of educational supervision

(Article 5.1 d). The purpose of Article 5 is to protect the individual from arbitrary deprivation of liberty.

2. According to the Care of Young Persons (Special Provisions) Act (1990:52), young persons who have not attained 18 years of age may be provided care if they expose their health or development to a tangible risk of harm through abuse of addictive substances, criminal activity or any other socially degrading behaviour. A condition for obtaining a decision regarding care is that it may be assumed that necessary care cannot be provided with the consent of the young person's guardian and, when the young person has attained 15 years of age, his or her own consent. The legislation is intended to make it possible for society to provide children and young persons who are at risk of developing unfavourably the protection and support they need.

3. *Socially degrading behaviour* means that a young person acts in such a manner as deviates from society's basic norms. It may involve the young person socializing with criminals or being present in inappropriate environments on more than a temporary basis, e.g. substance-abuse environments. The term also covers situations in which the young person performs sexual services for payment. Accordingly, it must involve situations in which the young person exposes himself or herself to risks through behaviour of a certain scope, degree of severity, and duration.

4. Even a person who has attained 18 years of age but not yet 20 years of age may be provided care of this type if it is more appropriate than other care and cannot be provided with the consent of the young person. The deciding factor is what is best for the young person. Such care may not be provided after the person has attained 21 years of age.

5. It may be determined that the care will be provided at a so-called special youth home where the young person may be prevented from leaving the home and whose lifestyle may otherwise be limited. The purpose of the regime is to make it

possible for the social services to ensure the young person's need for care. The measures taken by social services shall be decided by the existing need for care and what may be done at present and in the future to provide for such need. The legislation may not, on the other hand, be used to provide community protection.

6. AA was immediately taken into custody in November 2019, and the Labour Market and Social Services Committee in Malmö municipality placed him in a special youth home. The committee thereafter applied to the Administrative Court in Malmö to provide AA, who was 18 years of age at that time, care pursuant to the Care of Young Persons (Special Provisions) Act. It is apparent from the application, *inter alia*, that social services had been aware of AA for several years, that AA moved about in risk environments involving criminality and drugs and, for an extended period of time, engaged in norm-breaking behaviours. His school attendance was deemed to be highly inadequate and, according to the application, it was unclear how he managed to fund various purchases. The committee made the determination that the necessary care could thus be ensured at a special youth home.

7. The administrative court determined that AA engages in socially degrading behaviour which created a tangible risk of harm to his health and development and that he could not be provided care by voluntary means. Accordingly, the administrative court granted the application.

8. AA appealed the ruling of the administrative court to the Administrative Court of Appeal in Gothenburg. In the appeal he stated that he is not in need of care. He also claimed that, by reference to socially degrading behaviour, it is a violation of Article 5 of the ECHR to care for him in a locked institution since he is not a minor. The administrative court of appeal rejected the appeal explaining that AA engages in socially degrading behaviour for which he needed compulsory care and that it did not violate Article 5 of the ECHR to provide him such care.

CLAIMS, ETC.

9. *AA* claims that the application for care is to be rejected and that a preliminary ruling is to be obtained from the European Court of Justice. He states that he has attained 18 years of age and is thus not a minor. Providing him institutional care thus violates Article 5 of the ECHR.

10. The *Labour Market and Social Services Committee in Malmö municipality* is of the opinion that the appeal is to be rejected and states that the committee proceeds on the assumption that the laws which it is to apply in the performance of its duties are compatible with the ECHR.

REASONS FOR THE RULING

The question in the case

11. Pursuant to section 36 a of the Administrative Court Procedure Act (1971:291), leave to appeal may be limited to apply to a certain question in the case the determination of which is of importance for the guidance of the application of law (precedential matter).

12. The Supreme Administrative Court has issued leave to appeal in so far as pertains to the question regarding the extent to which it is compatible with the exception to the right to liberty in Article 5.1 d of the ECHR, from which it follows that a person who is a minor may be detained for the purpose of educational supervision, to provide and carry out care of a person who has attained the age of 18, and who has been deemed to have a socially degrading behaviour.

13. The question regarding leave to appeal in the case has otherwise been declared stayed.

Legislation, etc.

ECHR

14. Article 5.1 of the ECHR states that everyone has the right to liberty and security of person and that no one shall be deprived of liberty save in the cases set forth in sections a–f and in accordance with a procedure prescribed by law. Under section d, one case is stated in which it is permissible to deprive someone of liberty in such situations in which a minor, by lawful order, is detained for the purpose of educational supervision.

The Care of Young Persons (Special Provisions) Act

15. Section 1, second paragraph of the Care of Young Persons (Special Provisions) Act states that a person who has not attained 18 years of age is to be provided care in accordance with the Act where a situation stated in section 3 subsists and it may be assumed that necessary care cannot be provided to the young person with his or her guardian or guardians' consent and, when the young person has attained 15 years of age, his or her own consent. Care pursuant to section 3 may also, according to the third paragraph, be provided to a person who has attained 18 years of age but not 20 years of age where such care, taking into account the young person's needs and personal circumstances in general, is more appropriate than any other care and it may be assumed that necessary care cannot be provided with the consent of the young person. The fifth paragraph states that, in conjunction with a decision in accordance with the Act, the deciding factor shall be what is best for the young person.

16. Pursuant to section 3, first paragraph, a decision to provide care shall be taken if the young person exposes her or his health or development to a tangible risk of harm through abuse of addictive substances, criminal activity or any other socially degrading behaviour.

17. Section 21, first paragraph states that, when care is no longer needed, the Social Services Committee shall determine that the care shall cease. It follows from the third paragraph that care pursuant to section 3 shall cease not later than when the young person attains 21 years of age.

18. According to section 11, first paragraph, it is the Social Services Committee which determines the manner in which the care is to be arranged and where the young person shall reside during the period of care. For care of young persons who, on the basis of any ground stated in section 3, must be subject to particularly close supervision, there shall, according to section 12, first paragraph, be special youth homes. In the event the Social Services Committee has decided that the young person shall reside in a special youth home, the Swedish National Board of Institutional Care shall, pursuant to the second paragraph, designate a place in such a home.

19. Sections 15–15 d state, *inter alia*, the following as regards young persons who are under care on the basis of any ground set forth in section 3 and who reside in a home for particularly close supervision. The young person may be prevented from leaving the home and otherwise be subject to the limitation of freedom of movement which is necessary in order that the care may be provided. In addition, under certain circumstances and subject to certain conditions, the right to use electronic communications services and to receive visits may be denied or limited. In certain cases, care may be provided to the young person at a unit within the home which may be locked or in some other manner set up for particularly close supervision (care at lockable unit) and the young person may also be prevented from meeting others (isolated care).

20. Section 41, first paragraph provides that the decisions of the Social Services Committee regarding where care of the young person shall be initiated and decisions to relocate the young person from the home at which he or she resides may be separately appealed.

The Children and Parents Code

21. Chapter 9, section 1 of the Children and Parents Code states that a person who has not attained 18 years of age (a minor) is underage.

22. Pursuant to Chapter 6, section 2, first paragraph of the Children and Parents Code, a person who has not attained 18 years of age shall be in the custody of parents or someone else. Pursuant to sections 1 and section 2, second paragraph, the person with custody of the child shall also ensure that the child receives a sound upbringing and shall be responsible, *inter alia*, for ensuring that the child is subject to necessary supervision.

The Court's assessment

Preliminary ruling

23. The case does not give rise to any such issue of the interpretation of EU law which gives cause to obtain a preliminary ruling from the European Court of Justice. Accordingly, the claim therefor shall be rejected.

Question whether compatibility with the Convention is to be examined in this case

24. The case pertains to an appeal of a decision by a court to provide a person care in accordance with sections 1 and 3 of the Care of Young Persons (Special Provisions) Act. Decisions regarding the manner in which care is to be provided are taken by the Social Services Committee and can, as regards where the care is to be initiated and to relocate the young person, be separately appealed.

25. Where, as in this case, it is a question regarding the provision of care and the young person, according to the care plan accompanying the application for care, is to be placed in a special youth home, the determination by the court – notwithstanding that the court is not to formally decide how the care of the young

person is to be arranged – of whether the conditions for the decision regarding care are met must include an examination of whether the planned care is contrary to law. If such is the case, care may not be provided. Accordingly, in such a situation, it is irrelevant whether there is a possibility to separately appeal the placement decision made by the Social Services Committee.

26. The question whether the care to which the application pertains is compatible with Article 5 of the ECHR shall thus be examined within the context of this court proceeding.

Age limitations in Swedish law and the background of the regime in the Care of Young Persons (Special Provisions) Act

27. The age of majority in Sweden has been 18 years since 1974. Prior thereto, it was reduced in 1969 from 21 to 20. These reforms approximate the same patterns in other European states.

28. The age of majority is governed by Chapter 9, section 1 of the Children and Parents Code in which it is stated that a person who has not attained 18 years of age is underage. Otherwise, Chapter 9 of the Children and Parents Code addresses the property-law consequences of acts carried out by underage persons in various respects, and persons who are under the age of 18 are designated in these provisions as “minor”. The expression *minor* is also used in certain other statutes and should, as a rule, pertain to persons who are underage in accordance with Chapter 9, section 1 of the Children and Parents Code. However, what is usual is that legislation in which age limits appear is not tied to this concept but, rather, to an expressly stated age. Thus, for example, political rights such as the right to vote and the right to run for office have been tied to the age of 18 (Chapter 3, section 4 of the Instrument of Government).

29. In Swedish law, there is no uniform age limit regarding when a young person obtains all of the rights and obligations normally possessed by an adult, even if 18

years of age is the age at which most rights and obligations arise. In certain cases, the age of 15 is the relevant age limit, e.g. as regards criminal liability, and, as regards conscription, the age limit is instead the year in which the person attains 19 years of age. Again, in other cases, the age has been established at 20 years of age (in order to purchase alcohol from the state alcohol monopoly) or 21 years of age (for certain driver's licences). Certain criminal sanctions, intended for young persons, may be imposed until the relevant person attains 21 years of age. In addition, other age limits exist. Consideration of to whom the question pertains, the purpose of the regime, and what may be generally assumed regarding persons' maturity, etc., have been relevant to the age limit tied to a certain regulation.

30. The age limits appearing in the Care of Young Persons (Special Provisions) Act have been established in light of the fact that the Act is protective legislation for children and young persons. It has thus not been deemed suitable to make the age of 18 constitute a clear delimitation for the application of the Act. The legislators have been of the opinion that such a rule would have grave consequences for young persons who, due precisely to their youth, are disinclined towards voluntary forms of measures (Government Bill 1979/80:1, p. 500 f. with reference to the referral from the Council on Legislation, p. 14 ff.). As a consequence of these considerations regarding age limits, the Act came to be entitled the *Care of Young Persons* (Special Provisions) Act.

31. Throughout the entire period of time during which compulsory care of young persons up to the age of 21 was permitted in accordance with Swedish law, the ECHR has been binding on Sweden. Changes to the age of majority have not given rise to comparable changes in the age limits in legislation regarding compulsory care of young persons. Throughout this long period of time, no arguments according to which this age limit would be in contravention of the Convention have been asserted in conjunction with legislative amendment, and this question has also not been considered in particular when the content of Swedish law was analysed prior to the Convention becoming Swedish law in 1995 (Swedish Government Official Reports 1993:40 , part B, pp. 37 and 39 and

Government Bill 1993/94:117, p. 41 f.). Thus, it is clear that the legislators were of the opinion that Swedish law complied with the Convention on this point. In subsequent legislative work, the question has been illuminated with no revised position being expressed (Swedish Government Official Reports 2015:71, p. 349 f.).

Requirements of the Convention

32. AA is cared for in a special youth home. Placement there involves a deprivation of liberty.

33. Article 5 of the ECHR contains an exhaustive enumeration of the conditions under which a deprivation of liberty accords with the Convention. According to Article 5.1 d a minor may be detained for the purpose of educational supervision. Thus, the case deals with whether it is compatible with this provision to provide care pursuant to sections 1 and 3 of the Care of Young Persons (Special Provisions) Act, which entails deprivation of liberty, to a person who has attained 18 years of age when the ground for the care cannot be ascribed to abuse or criminal activity.

34. A starting point is that the exceptions in Article 5 are to be interpreted narrowly since the Article is intended to protect individuals against arbitrary detention (see judgments of the European Court of Human Rights of 29 March 2010 in the *Medvedyev and others v. France* case, paragraphs 76 and 78, and of 15 December 2016 in the *Khlaifia and others v. Italy* case, paragraph 88). The Convention is intended to establish a level of protection which, in principle, is uniform for all Convention States in such a way that it may constitute a minimum standard, and it is accordingly presumed that it is interpreted such that it has the same substantive content for all States. The terms appearing in the Convention must thus be given an autonomous interpretation which is independent of the purport given to comparable terms in the national legal systems (Hans Danelius, *Mänskliga rättigheter i europeisk praxis* [Human Rights in European Precedent], ed. 5:1,

2015, p. 55 f.).

35. At the same time, consideration must be given to the fact that Convention terms which do not have any uniform meaning may have different meanings in various Convention States and, to a certain extent, it is within the States' so-called margin of appreciation to ascribe to the terms a specific content in the national context.

36. According to the general international rules for treaty interpretation, a treaty shall "be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose" (Article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969).

37. In addition, a version of the treaty in a language other than those in which the text has been authenticated shall be regarded as authenticated only where the treaty provides or the parties agree (Article 33 of the Vienna Convention). As far as the ECHR is concerned, this means that it is the English and French versions that are to be interpreted.

38. A first question is what is meant by "for the purpose of educational supervision" ("*pour son éducation surveillée*"). It is apparent from case law that *for the purpose of educational supervision* means not only measures which are directly associated with school attendance and the like, but also that nurturing in a broader sense is covered (see, for example, judgments of the European Court of Human Rights of 12 October 2000 in the *Koniarska v United Kingdom* case, paragraph 1, and 16 May 2002 in the *D.G. v. Ireland* case, paragraph 80).

39. Against this background, such care of a young person who engages in socially degrading behaviour which entails a deprivation of liberty must be regarded as such a measure as is covered by the exceptions for the deprivation of liberty enumerated in the Convention for educational supervision.

40. The next question is then whether the exception in the Convention's Article 5.1 d is applicable when a person who has attained 18 years of age or more is cared for pursuant to the Care of Young Persons (Special Provisions) Act. According to the Convention, the exception applies only in conjunction with a detention of someone who is a *minor (*"*mineur*").

41. Article 5 of the ECHR does not specify what is meant by the term *minor*/*mineur*. In general linguistic contexts, it often refers to the age of majority – which currently is 18 years of age in the Contracting States – but it may have another purport in legal contexts which apply to the rights and obligations of young persons. There is namely no uniform view as to when a young person is deemed to have full capacity in all respects to take decisions of his or her own and his or her life in the Convention States but, rather, age limits may vary depending upon the rights and restrictions involved (see, for example, *Age of majority,* European Union Agency for Fundamental Rights [fra.europa.eu], as worded 1 March 2022). Accordingly, it cannot be determined exclusively on the basis of the text of the Convention at which age anyone is to be deemed a minor within the meaning of the Convention.

42. To date, the European Court of Human Rights has not expressed itself as to whether the exception in Article 5.1 d may be applicable regarding persons who are indeed young but older than 18 years of age. The cases in which the court has interpreted Article 5.1 d have applied to persons who have not attained 18 years of age, and the court has, without detailed discussion, been able to make the observation that it has been an issue involving minors within the meaning of the Convention (see, for example, *Koniarska,* paragraph 1, and the judgment of the European Court of Human Rights of 19 May 2016 in the *D.L. v. Bulgaria* case, paragraph 71).

43. As stated, the general international rules for treaty interpretation may provide certain guidance as to the manner in which the Convention is to be understood. It follows from Article 31 of the Vienna Convention on the Law of Treaties that the

national regime must be compatible with the purpose of the relevant provision which, as regards Article 5 of the ECHR, is to prevent arbitrary deprivations of liberty.

44. As mentioned, furthermore, consideration must be given to the fact that Convention terms which do not have any uniform meaning may have a different meaning in different Contracting States and that there is certain room for interpretation by the national legislators. Accordingly, based on the national context, different States may reach partly different assessments of the specific purport of a Convention provision. It follows from the case law of the European Court of Human Rights that the content of national law is relevant also as to the age at which a person is to be regarded as a minor (*D.G.*, paragraphs 46 and 76).

45. Accordingly, the national legislators may be regarded as having certain room to apply in this context an age limit other than that used in most other respects in order to distinguish children from adults, e.g. as regards property-law and political rights. The chosen distinction may not, however, be such that it could jeopardise the purpose underlying Article 5 of the ECHR, i.e. to protect against arbitrary deprivations of liberty.

46. The Swedish regulation of age limits for compulsory care in accordance with the Care of Young Persons (Special Provisions) Act is the result of an express position regarding the manner in which young persons may be best provided care and possibilities for rehabilitation when they find themselves in a difficult social situation. The possibility provided by the regime to offer care also to persons who are 18 – 20 years of age in accordance with the Act is limited in a certain way; a decision regarding care presupposes not only that the general conditions of the Act for providing care are satisfied but, also, that such care is deemed to be more appropriate than other care. There is no cause to fear that a regime formulated in such a manner leads to arbitrary deprivation of liberty in violation of the purpose of the Convention.

47. Accordingly, the Supreme Administrative Court finds that a regime of this type – directed to helping young persons who expose their health and development to tangible risks of harm – falls within the margin of appreciation provided by the Convention.

Conclusion

48. The precedential matter for which the Supreme Administrative Court has granted leave to appeal shall be answered as follows. It is not in violation of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms to provide care pursuant to sections 1 and 3 of the Care of Young Persons (Special Provisions) Act, which entails deprivation of liberty, to a person who has attained 18 years of age and engages in socially degrading behaviour.

49. The Supreme Administrative Court does not otherwise find cause for leave to appeal in the case.

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Justices Helena Jäderblom (dissenting), Kristina Ståhl, Thomas Bull, Sten Andersson and Ulrik von Essen have participated in the ruling.

Judge Referee: Emelie Dahlgren.

DISSENTING OPINION

Justice Helena Jäderblom dissents and is of the opinion that leave to appeal is to be granted in the case in its entirety and that the appeal is to be granted and that the decisions of the lower courts are to be reversed She states the following.

Background of the compulsory care regime

1. According to the 1960 Child Care Act (1960:97), detention of children and young persons who lived lives of crime, substance abuse or were otherwise in need of social support was possible until the young person attained 21 years of age, i.e. reached the age of majority in accordance with then applicable legislation. In the proposal for new legislation in the area which was addressed at the end of the 1970's, a proposal was discussed, with reference to the rules regarding being underage and responsibility for care in the Children and Parents Code, to reduce the age limit in the Act to 18 years of age. As the majority observes (paragraph 30), however, this notion was dismissed, and the preparatory works state that many young persons just over 18 years of age, due to delayed maturity or development, may have a great need for the measures which can be provided by social services.

2. The preparatory works state that, as regards care of young persons over 18 years of age, the question of whether care can be decided must be determined taking into account the alternative care possibilities available. It is observed in this context, *inter alia*, that substance abuse problems are often related to inadequate social adjustment associated with delayed maturity and that the resources of youth care are better adapted to the specific needs of young persons than other forms of care. As regards young offenders, it was asserted that efforts within correctional treatment such as prison and other similar institutions provide meagre possibilities for social rehabilitation. Efforts within social services were regarded, both in terms of content and design, to be more adapted to provide for the needs of young persons and were therefore a better alternative (Government Bill 1979/80:1, p. 500 f. with reference to the referral from the Council on Legislation p. 14 ff. and, *ibid*., Government Bill, p. 584).

3. Mention is not made in either these or subsequent preparatory works in the area of care of young persons of any alternative forms of care for such young persons with behavioural problems who are not candidates for substance-abuse or

correctional care.

The term "minor"

4. In 1972, the Council of Europe Committee of Ministers adopted the resolution *On the lowering of the age of full legal capacity*, R(72)29. In it, the Committee of Ministers stated, *inter alia*, the following. The majority of member States of the Council of Europe, which had for a considerable period established 21 years as the age of full legal capacity, had now reduced the age, and the Committee of Ministers recommended that the member State governments reduce the age to 18 years. Even though life today is more complex, the education gained during the prolonged compulsory schooling and the abundance of information available enable young people to meet the exigencies of life at an earlier age than before. The need of protecting young people is diminishing in importance as a result of measures designed to protect people of all ages in the economic field. Lowering the age of majority should encourage the development of a sense of responsibility in young people.

5. Currently, the age of majority is not higher than 18 years of age in any country in Europe.

6. Chapter 9 of the Children and Parents Code contains provisions regarding the underage of minors. Section 1 states that "a person who is under 18 years of age (a minor) is "underage". The Chapter addresses the conditions for, and consequences of, the legal acts of underage persons in various economic respects.

7. As the majority observes (paragraph 29) there is no uniform age limit in Swedish law according to which a person in all contexts is said to be too young to take control of his or her situation or accept the consequences of his or her actions. The issue is whether, against this background, there is room to interpret the term *minor* in Article 5.1 d of the ECHR such that it may pertain to persons who are 18 years of age or older, when 18 years of age is the age at which a person is deemed

to be of age and no longer a minor in accordance with the Children and Parents Code.

Requirements of the Convention

8. The majority has noted that, to date, the European Court of Human Rights has not expressed itself whether the exception in Article 5.1 d for minors may be applicable when the young person is over 18 years of age (paragraph 42). On the other hand, the court has not established that such is the case. In *Koniarska,* the relevant girl was under 18 years of age and, according to the European Court of Human Rights, thereby a minor (paragraph 1). In *D.L.*, it was stated that the relevant girl had not reached the age of majority during the period she was deprived of liberty (section 71). In *D.G.*, the court expressly linked the assessment of minority to the regime in national law according to which a person under 18 years of age is a minor (paragraphs 10, 46 and 76). In the judgment of 27 October 2020 in the *Reist v. Switzerland* case, the court observed that the parties did not question the exception that Article 5.1 d was not applicable in a case in which the young person had been deprived of liberty following their 18th birthday since he had then reached the age of majority (*majorité*) (paragraph 77).

9. The Supreme Court of Norway has examined an appeal of a decision regarding compulsory care which entails a deprivation of liberty in an institution of a person who, during the period of detention, would attain 18 years of age (HR-2021-640-A). The Supreme Court of Norway stated the following as regards Article 5.1 d of the ECHR. The determination of who is regarded as a minor is, as the starting point, regulated by national law, and 18 years of age – as the age of majority in Norway – appears to be common. In the event a child in Norway attains 18 years of age during institutional detention, the relevant person is no longer a minor within the meaning of the ECHR.

10. In addition to the general principle regarding appropriate interpretation of treaties (see paragraph 43), according to Article 33 of the Vienna Convention on the Law

of Treaties, *inter alia*, a version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree (see paragraph 37). As regards the ECHR, this means that, since only the English and French versions are authentic, it is the purport of the English and French terms “minor” and “*mineur*” in Article 5.1 d which is to be determined and not, in the first place, the Swedish-language term for *minor*.

11. Convention terms which do not have any uniform meaning may certainly have different meanings in the various Convention States and, to a certain extent, it falls within these States’ margin of appreciation to ascribe to the terms a concrete content within the national context (see paragraph 44).

12. At the same time, the starting point is that the exceptions in Article 5 are to be interpreted narrowly since the Article is intended to protect individuals against arbitrary deprivations of liberty. In addition, since the Convention is intended to establish a European minimum standard, i.e. a level of protection which, in principle, is uniform in all Convention States in such a way no State may fail to meet it, it is presumed that it is interpreted such that it has the same substantive content for all States. The terms which appear in the Convention must accordingly be granted an autonomous interpretation which is independent of the meaning provided to comparable terms in the national legal system (see paragraph 34).

13. A national age of majority which exceeds 18 years of age is certainly permissible in accordance with the Convention but, in Sweden, it is established at 18. In my view, it is irrelevant that the legislators have established various age limits for specific situations, including in the Care of Young Persons (Special Provisions) Act; the age which is generally regarded as the age of majority in Sweden and which constitutes the age limit for the legal capacity to act in accordance with the Children and Parents Code must be the starting point for who is to be regarded as a minor within the meaning of the ECHR. The fact that there are young persons of age in Sweden, precisely as in other countries, who, due to immaturity or delayed

development, have a poor understanding of what is necessary in order to avoid socially degrading behaviour in the conduct of their lives and thus require care does not mean that the starting point should be any other.

14. In order to stretch the terms in Article 5, notwithstanding the narrow interpretation to be conducted, and thus extend the term *minor* to apply to persons who are of age, it is insufficient to establish that the Swedish rules do not create the risk of leading to arbitrary deprivations of liberty (*cf.* paragraph 46). Even the fact that the exception in Article 5.1 d is limited to apply for the purpose that minors shall be the subject of protective education must be taken into account in the interpretation of the area of application of the Article.

15. It is apparent from the rules regarding care, custody, housing and visitation in Chapter 6 of the Children and Parents Code that a person who has not attained 18 years of age is in the care of one or both parents (section 2). Custody persists, according to section 2, first paragraph, until such time as the child attains 18 years of age. The guardian shall ensure that the child receives a sound upbringing and is responsible, *inter alia*, for ensuring that the child receives the necessary supervision (section 1 and section 2, second paragraph).

16. "Educational supervision"*(éducation surveillée*) means in Article 5.1 d of the ECHR not merely measures which are directly related to school attendance and the like but, rather, also other aspects when an authority exercises parental rights or obligations (see, *inter alia*, *Koniarska*, paragraph 1, and *D.G.*, paragraph 80).

17. When the European Court of Human Rights refers to "educational supervision" it thus means that the term certainly cannot be restricted to pertaining only to classroom teaching, but the court also does not appear to have stretched it to pertain to something other than what a guardian is normally responsible for. According to Swedish law, such responsibility does not extend to school attendance (other than in a maintenance respect, see Chapter 7, section 1 of the Children and Parents Code) or nurturing and supervision of a person who has

attained 18 years of age.

Conclusion

18. The term *minor* in Article 5.1 d of the ECHR cannot be interpreted such that it encompasses young persons who are of age and are thus not the responsibility or under the protection of the guardian. Accordingly, it is violation of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms to provide care pursuant to sections 1 and 3 of the Care of Young Persons (Special Provisions) Act, which entails deprivation of liberty, to a person who has attained 18 years of age due to the fact that the young person engages in socially degrading behaviour which is not related to substance abuse or criminal activity. The decisions of the lower courts to provide AA care which entails a deprivation of liberty are accordingly erroneous.

19. As regards other questions – that the claim regarding obtaining a preliminary ruling from the European Court of Justice is to be rejected, what the administrative court of appeal decided regarding secrecy is to be affirmed, and that compensation shall be paid to Nathalie Medina for work as public counsel in the amount of SEK 33 844 (including value added tax) – I am in agreement with the majority.