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In the case of Margareta and Roger Andersson v. Sweden\*,

The European Court of Human Rights, sitting, in accordance

with Article 43 (art. 43) of the Convention for the Protection of

Human Rights and Fundamental Freedoms ("the Convention")\*\* and the

relevant provisions of the Rules of Court, as a Chamber composed of

the following judges:

Mr R. Ryssdal, President,

Mr J. Cremona,

Mr F. Gölcüklü,

Mr J. Pinheiro Farinha,

Mr L.-E. Pettiti,

Mr A. Spielmann,

Mr J. De Meyer,

Mr F. Bigi,

Mr G. Lagergren, ad hoc judge,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy

Registrar,

Having deliberated in private on 27 August 1991 and

20 January 1992,

Delivers the following judgment, which was adopted on the

last-mentioned date:

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Notes by the Registrar

\* The case is numbered 61/1990/252/323. The first number is the

case's position on the list of cases referred to the Court in the

relevant year (second number). The last two numbers indicate the

case's position on the list of cases referred to the Court since

its creation and on the list of the corresponding originating

applications to the Commission.

\*\* As amended by Article 11 of Protocol No. 8 (P8-11), which came

into force on 1 January 1990.

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PROCEDURE

1. The case was referred to the Court by the European Commission

of Human Rights ("the Commission") and by the Government of the

Kingdom of Sweden ("the Government") on 14 and 17 December 1990

respectively, within the three-month period laid down by

Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the

Convention. It originated in an application (no. 12963/87) against

Sweden lodged with the Commission under Article 25 (art. 25) by

Mrs Margareta Andersson and her son Roger Andersson, who are Swedish

nationals, on 13 February 1987.

The Commission's request referred to Articles 44 and 48

(art. 44, art. 48) and to the declaration whereby Sweden recognised

the compulsory jurisdiction of the Court (Article 46) (art. 46).

The object of the request and of the Government's application was to

obtain a decision as to whether the facts of the case disclosed a

breach by the respondent State of its obligations under Article 8

(art. 8) of the Convention and also, in the case of the request,

Article 13 (art. 13).

2. In response to the enquiry made in accordance with

Rule 33 para. 3 (d) of the Rules of Court, the applicants stated that

they wished to take part in the proceedings and designated the

lawyer who would represent them (Rule 30).

3. The Chamber to be constituted included ex officio

Mrs E. Palm, the elected judge of Swedish nationality (Article 43

of the Convention) (art. 43), and Mr R. Ryssdal, the President of

the Court (Rule 21 para. 3 (b)). However, on 8 January 1991 Mrs Palm

had withdrawn from consideration of the case pursuant to Rule 24 para. 2

and by letter of 22 February the Agent of the Government notified

the Registrar of the appointment of Mr Gunnar Lagergren, former

member of the Court, as an ad hoc judge (Article 43 of the

Convention and Rule 23) (art. 43). On 21 February, in the presence

of the Registrar, the President drew by lot the names of the other

seven members, namely Mr J. Cremona, Mr F. Gölcüklü, Mr J. Pinheiro

Farinha, Mr A. Spielmann, Mr J. De Meyer, Mr I. Foighel and

Mr F. Bigi (Article 43 in fine of the Convention and Rule 21 para. 4)

(art. 43). Subsequently, Mr Foighel, who was unable to attend, was

replaced by Mr L.-E. Pettiti, substitute judge (Rule 22 para. 1 and

Rule 24 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber

(Rule 21 para. 5) and, through the Registrar, consulted the Agent of the

Government, the Delegate of the Commission and the lawyer for the

applicants on the organisation of the procedure (Rules 37 para. 1

and 38).

5. Thereafter, in accordance with the President's orders and

directions, the Registrar received from the applicants and the

Government, on various dates between 15 March and 26 August 1991,

their respective observations, the applicants' claims under

Article 50 (art. 50) of the Convention and a number of documents.

In a letter of 30 May, the Secretary to the Commission informed the

Registrar that the Delegate would submit his observations at the

hearing.

On 4 July and 5 August 1991 the Commission filed a number of

documents which the Registrar sought from it on the President's

instructions.

6. As further directed by the President, the hearing took place

in public in the Human Rights Building, Strasbourg, on

26 August 1991. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr C.H. Ehrenkrona, Legal Adviser,

Ministry for Foreign Affairs, Agent,

Mr R. Gustafsson, Legal Adviser,

Ministry of Health and Social Affairs,Adviser;

(b) for the Commission

Mr H. Danelius, Delegate;

(c) for the applicants

Mrs S. Westerberg, lawyer, Counsel,

Mrs B. Hellwig, Adviser.

The Court heard addresses by Mr Ehrenkrona for the

Government, by Mr Danelius for the Commission and by Mrs Westerberg

for the applicants as well as their replies to questions put by the

Court and by some of its members individually.

7. On 5 and 13 September 1991, respectively, the registry

received further replies in writing from the applicants and the

Government to questions put at the hearing.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

8. Mrs Margareta Andersson and her son Roger Andersson were born

in 1951 and 1974 respectively and are both Swedish citizens. They

resided first at Växjö but in 1985 they moved to Nybro.

9. On 5 June 1985 the Chairman of the Social Committee no. 1 of

the Social Council (socialnämndens socialutskott I) of Växjö decided

that Roger should be immediately taken into public care on a

provisional basis under section 6 of the 1980 Act containing Special

Provisions on the Care of Young Persons (lagen 1980:621 med

särskilda bestämmelser om vård av unga - "the 1980 Act"). The

purpose of this decision was to enable an investigation into his

situation by the Children's and Juveniles' Psychiatric Clinic ("the

Clinic") at Växjö. The decision was based on a social welfare

officer's report of the same date which noted inter alia the

following. When Roger started school in 1981 it had been observed

that he was lacking in social adaptation and maturity, he was

behaving in a very shy, inhibited and insecure manner. The social

welfare authorities at Växjö had then made several suggestions to

help Roger which Margareta Andersson rejected. As from

December 1984 Roger stopped attending school regularly. He and his

mother later moved to an address unknown to the social welfare

authorities which the latter managed to trace (at Nybro) after an

investigation. The report concluded that since Roger's health and

development were seriously disturbed in connection with his mother's

behaviour, it was likely that he had been treated in a mentally

harmful manner for a considerable period of time. In view of the

fact that his health and development were increasingly in danger and

that Margareta Andersson would obstruct the investigation, the need

for public care was urgent.

10. On 11 June 1985 the social welfare authorities decided to

prohibit contacts between the applicants, pending a decision of the

County Administrative Court (länsrätten) at Växjö on the care issue.

They permitted however some contacts by telephone. The prohibition

was to be reviewed as soon as it was deemed not to be harmful to

Roger to have contact with his mother.

11. On 14 June 1985 the County Administrative Court, in two

decisions, confirmed the interim care order and upheld the

prohibition of access. The Deputy Chief Doctor of the Clinic, who

was heard as an expert witness, had stated inter alia that it was

necessary to control Margareta Andersson's contact with Roger; it

would be "too dramatic for Roger if she were allowed to visit him".

Margareta Andersson could not cope with being separated from her

son; she in fact needed assistance just as much as he did. It

should not be for him to take care of her. Prohibition of access

was therefore necessary for as long as Margareta Andersson was in

such a bad condition.

Margareta Andersson unsuccessfully challenged these decisions

before the Administrative Court of Appeal (kammarrätten) in

Jönköping. The Supreme Administrative Court (regeringsrätten)

refused leave to appeal on 26 July 1985.

12. The Social Council applied to the County Administrative Court

for a care order under the first sub-paragraph to the second

paragraph of section 1 of the 1980 Act. After holding a hearing,

the court granted the application on 17 July 1985 on, inter alia,

the following grounds:

"From the investigation in the case it does not appear that

there is any reason to criticise the manner in which

Margareta Andersson manages her home. In so far as can be

ascertained, the material conditions [there] are

satisfactory. However, the investigation shows that the

situation in the home is likely to jeopardise a young

person's emotional and social development. Before the County

Administrative Court, Margareta Andersson has expressed the

view that the information contained in the Social Council's

application is essentially incorrect. In the light of the

proceedings in this case, Margareta Andersson must thereby be

considered to confirm the allegation that she is unable to

understand Roger's situation. It has clearly appeared from

Roger's behaviour that his social and emotional development

is deranged. It is therefore essential for Roger to receive

assistance and support to overcome his problems. In view of

Margareta Andersson's attitude, it is not likely that the

necessary measures can be taken by herself or with her

approval. The task of rehabilitating Roger must therefore be

entrusted to the social welfare authorities. The Social

Council's application shall therefore be granted."

13. As decided by the Chairman of the Social Committee (see

paragraph 9 above), Roger was placed at the Växjö Clinic on

5 June 1985. But, on 15 July he ran away and joined his mother. On

26 August she reached an agreement with the Social Council by virtue

of which the public care of Roger continued, after a brief period in

the Clinic, in their home at Nybro.

14. As from March 1986, Roger stopped attending school. The

Chairman of the Social Committee consequently had him returned to

the Clinic on 29 April with a view to placing him in a foster home.

However, on 13 May Roger again ran away from the Clinic and stayed

with his mother, until the police took him back on 5 August 1986.

15. In the meantime, on 22 May 1986, the Social Council decided

to place Roger in a foster home. Margareta Andersson appealed

against the decision to the County Administrative Court, which held

a hearing at which she was present and assisted by counsel and Roger

was represented by official counsel (offentligt biträde). It

rejected the appeal on 19 August. Her further appeal to the

Administrative Court of Appeal was dismissed on 17 October. On

19 December 1986 the Supreme Administrative Court refused leave to

appeal.

While these proceedings were in progress, Roger was

transferred on 23 August to a foster home - with Mr Meijer and

Mrs Höjsholt - at Glimåkra, situated approximately 120 kilometres

from Nybro. Except for two periods of hospitalisation, he stayed

there until the public care order was terminated on 27 April 1988

(see paragraph 45 below). He was taken to hospital, firstly, from

3 to 25 February 1987, for treatment of diabetes; and later, from

26 February to 3 May 1988, because he had taken an overdose of

insulin. Since the latter date he has been living with his mother

at Nybro.

B. Limitations on access

1. Decisions relating to prohibitions of access

16. On 6 August 1986 the Assistant District Chief of the social

welfare authorities at Växjö decided:

"Since it is considered necessary in order to achieve the

purposes of the care order, the undersigned officer in

charge, having been duly authorised by the Social Council and

pending the Social Committee's meeting, has decided that

prohibition of access (umgängesförbud) between [the

applicants] under section 16 (1) of the 1980 Act shall apply

as from today and until further notice.

The decision shall be reviewed as soon as personal contact

between the mother and the child is no longer considered to

be harmful to the child."

17. Subsequently, in his report of 15 August 1986 to the Social

Council, the social welfare officer responsible for the case

explained the reasons for the above-mentioned decision and

recommended that the prohibition of access be continued as part

of a care-plan for Roger. He relied mainly on the following

considerations:

(a) Margareta Andersson had been involved with Roger's

escaping twice from the Clinic. Moreover, she had expressed an

intention of moving to an address unknown to the public authorities

or to leave the country, in order to avoid "persecution".

(b) Margareta Andersson had exerted a negative influence on

Roger during her visits at the Clinic; on some occasions her

behaviour had been so inappropriate that officials of the Clinic had

turned her away.

(c) While Roger stayed at the Clinic, it proved impossible to

induce Margareta Andersson to adopt any form of co-operation.

Whilst she had been refused contact with Roger, she had nevertheless

hidden money and messages inciting him to escape in clothes and toys

which she had brought for him to the Clinic.

(d) Staff members of the section at the Clinic which treated

Roger had observed that he had behaved in a "very suspicious but

calm" manner and that he had become more attached to the staff. He

had seemed to handle the situation better than his mother and had

not requested to call her by telephone.

(e) In order to achieve the purposes of the care, it was

necessary to temporarily prevent Margareta Andersson from having

"any form of contact with Roger".

18. According to the report, the decision of 6 August 1986 was

conveyed verbally to Margareta Andersson on 8 August.

19. On 21 August 1986 the Social Committee endorsed the proposed

care-plan, including the prohibition of access. As stated in its

decision:

"[a] prohibition of access is to apply between ...

Margareta Andersson and Roger Andersson, in accordance with

section 16 (1) [of the 1980 Act], until further notice and

awaiting that suitable access could be arranged without

involving harm to the child."

According to the Social Council's submissions during the

ensuing domestic court proceedings (see paragraphs 34-35 below), the

prohibition covered not only meetings but also telephone

communications and correspondence between the applicants.

2. Meetings

20. On authorisation by the social welfare authorities,

Margareta Andersson and Roger met on 5 October and 30 December 1986

at the home of the Helgesson family at Sibbhult, situated near

Glimåkra. A meeting planned for 3 December did not take place

because Margareta Andersson would not accept the conditions for the

meeting.

Mr and Mrs Helgesson had, as explained by the social welfare

officer in a report to the Social Council of 30 March 1987, been

appointed as support foster parents. They were entrusted with the

task of arranging in their home meetings between the applicants, in

order to facilitate contacts between them without causing disruption

to Roger's relationship with his foster home. The meetings were

attended by the Helgesson couple, the foster father - Mr Meijer -

and one or two social workers. They each lasted approximately two

hours. Shortly after the first meeting Roger attempted to escape

from the foster home.

21. A new meeting was planned at the beginning of February 1987,

but it had to be cancelled as Roger was hospitalised for treatment

of diabetes (from 3 to 25 February 1987). The Government submitted

that, during his hospitalisation, special efforts were made to have

Margareta Andersson visit him at the hospital, but it was impossible

to agree on the terms of such visits as she insisted on seeing him

on her own. However, on 19 February 1987 she went to visit Roger.

On this occasion she had a violent row with the foster father who,

against her wishes, had come to attend the visit which ended by him

forcing her to leave the hospital ward. According to the

Government, the incident occurred because Margareta Andersson had

not informed the hospital, the social welfare authorities or the

foster father of her visit and had tried to take Roger with her.

In the applicants' submission, the social welfare authorities had

authorised her to visit Roger on that day. Margareta Andersson and

her representative had made the hospital aware that, since his

situation was far better there than in the foster home, she wished

him to stay. Accordingly, there was never any danger that she would

take him away from the hospital.

22. Margareta Andersson filed a complaint with the police against

the foster father, alleging various acts of assault. The public

prosecutor decided after a preliminary investigation not to pursue

the matter. This decision was subsequently upheld on appeal to the

Director of the Malmö Public Prosecution Authority.

23. Further meetings took place at the Helgesson home on 24 June,

13 July and possibly 20 August 1987. Unlike the previous meetings,

these were attended by Mr and Mrs Helgesson only, as decided by the

County Administrative Court in a judgment of 1 June 1987 (see

paragraph 39 below). According to the Government, a meeting was

also held on 5 August 1987, but the applicants contested this.

24. Margareta Andersson declined to accept proposals by

Mrs Wintler, a social worker appointed by the social welfare

authorities to assist her, on 2 and 24 April, 25 June and

26 October 1987 to take part in the planning of any future meetings

with Roger but expressed her wish to be reunited with him.

25. Subsequently, on 28 November 1987 Roger and Margareta

Andersson met in her own home, in the presence of Mr and

Mrs Helgesson and Mrs Wintler. The Government claimed that such

meetings were also held on 20 December 1987 and on 9 and

30 January 1988, which was denied by the applicants.

26. On 5 February 1988 the Social Committee decided that meetings

be held on a monthly basis until May that year in Margareta

Andersson's home and that, in between, additional meetings be

organised in the Helgesson home (see paragraph 43 below). As

later ruled by the County Administrative Court in a judgment of

17 February, the latter meetings were to be arranged at least twice

a month (see paragraph 44 below).

27. However, on 26 February 1988 Roger was taken to hospital

where he stayed until 3 May (see paragraph 15 above). During this

period his mother was permitted to visit him and, also, to stay

overnight at the hospital. Altogether, she spent approximately two

weeks there.

3. Telephone communications and correspondence

28. According to a memorandum by the Assistant District Chief,

dated 4 March 1987, the prohibition of access between the applicants

was implemented in the following way until further notice:

"The prohibition covers telephone communications and

correspondence. Margareta has the possibility at certain

times of the week to have telephone contacts with Roger's

doctor and with Mrs Helgesson. She also has telephone

contact with [the foster father]. Letters from Margareta to

Roger shall first be scrutinised by [the foster father]."

29. The applicants submitted that Margareta Andersson addressed

about two letters per month to Roger in the foster home but he did

not receive these, apparently because they had been stopped by the

foster father. Moreover, while Roger was in hospital in February

1987, she sent him several letters which he did not receive either,

as they had been stopped by the hospital's personnel and transmitted

to the foster father.

30. The Government, for their part, asserted that, as far as they

were able to establish, only two undated letters from his mother had

been stopped, both probably written in February 1987. One letter

said that she had been talking about the case in a radio programme

and had been refused to contact him by telephone. It also invited

him to inform the doctor at the hospital that he was dissatisfied

with the foster family, with a view to getting assistance from the

doctor. Another letter informed him of the date of the radio

programme and of her new lawyer, who would do everything she could

to get him back home. It moreover asked Roger to write to her about

his conditions at Glimåkra.

31. The Government handed these letters over to the applicants'

representative during the hearing on 26 August 1991. They submitted

that the social welfare authorities had not been able, until late

April 1991, to retrieve the letters which had been stopped.

32. In addition, it appears from the case-file that the foster

father had prohibited Roger to call or write to Margareta Andersson

and had taken certain preventive measures to this effect. Roger

had, nevertheless, sent two letters without permission to his mother

during the autumn of 1986.

33. On 5 February 1988 the Social Committee decided to revoke the

prohibition of correspondence between the applicants and,

furthermore, to allow them to communicate by telephone on condition

that it occurred on Roger's own initiative (see paragraph 43 below).

C. First set of proceedings challenging the limitations

on access

34. Margareta Andersson appealed against the decision of

21 August 1986 (see paragraph 19 above) to the County Administrative

Court, requesting, firstly, that the prohibition of access be

revoked and, secondly, that she be granted a right to talk to Roger

on the telephone. After holding a hearing on 11 September 1986 at

which Margareta Andersson was present and assisted by counsel, the

court, by judgment of 12 September 1986, dismissed the latter

request as being inadmissible and rejected the former on the merits.

It stated:

"Margareta Andersson has asserted inter alia the following:

The prohibition of access decided by the Social Committee

goes beyond what is necessary to implement the care order.

This decision was taken before Roger was transferred to

Glimåkra. The fact that Roger is now living at Glimåkra

constitutes a change of circumstances. There is no

indication that [Margareta Andersson] would now exert a

negative influence on Roger. She has not interfered with the

present care and has not tried to sabotage the measures now

taken. The resentment which she has displayed is rooted in

the fact that she does not understand why care measures had

to be taken. It is true that the bags with clothes which she

brought to Roger when he stayed at the ... Clinic contained

money and a card with a message that she would help him to

leave. This does not mean that she encouraged him to run

away. It was her way of telling Roger that she would try to

get him home by appealing against the care decision. Roger

has a lot of difficulties in the foster home at Glimåkra. On

contacting the foster home by telephone she has been informed

that Roger sits alone in his room crying. He wants to go

home. Moreover he is being used as domestic help there. He

has to do washing up and cleaning.

The Social Council has alleged that, in view of what has

happened in the case, it has been necessary to prohibit

access. This includes a prohibition for Margareta Andersson

to speak to Roger on the telephone. The Council has made

great efforts to get closer contact with Margareta Andersson

and to establish a relationship of effective co-operation.

These have not been successful. It does not wish to risk the

failure of the renewed efforts. The ... Clinic has

emphasised that a failure in this respect could entail a

considerable risk to Roger. Statements made by Margareta

Andersson show that she is prepared to take Roger away.

Roger is developing well in the foster home. The Council

aims at improving its co-operation with Margareta Andersson.

Its intention is that at least one month should lapse after

the transfer before any contacts take place between Margareta

Andersson and Roger. If a suitable agreement can be made

with Margareta Andersson, the Council intends to let her see

Roger at the end of September or the beginning of October.

The County Administrative Court makes the following

assessment of the case. The decision to take Roger into

public care under [the 1980 Act] and his transfer to Glimåkra

are based on the fact that Margareta Andersson has been

unable to give Roger the necessary care. On two occasions,

when Roger has been staying at the ... Clinic ..., he has run

away and, with the help of Margareta Andersson, managed to

stay away for long periods of time. During Roger's last stay

at the ... Clinic, Margareta Andersson tried to give him a

message which, in his eyes, must have meant that she would

take him away. In the light of the proceedings and having

regard to the need of continuing, without interruption, the

care that has just started and of preventing Margareta

Andersson from influencing Roger, the County Administrative

Court finds that the Social Committee has good reasons for

its decision to prohibit access. However, the County

Administrative Court considers it appropriate to underline

that if a well-functioning co-operation with Margareta

Andersson can be established, it is important that a meeting

between Margareta Andersson and Roger take place as planned

by the Social Council.

According to Section 20 (3) [presumably (4)] of [the 1980

Act] a decision of the Social Council may be appealed to the

County Administrative Court when the Council has decided

under section 16 on the access to a child. The County

Administrative Court finds that the Social Committee, by

prohibiting telephone contact with Roger, has limited

Margareta Andersson's access according to section 11 of the

Act. According to section 20 of the Act such a decision

cannot be appealed."

35. Margareta Andersson appealed to the Administrative Court of

Appeal which, after a fresh examination of all aspects of the

prohibition in question, rejected the appeal by judgment of

11 November 1986. Its reasons included the following:

"According to section 16 of [the 1980 Act], the Social

Council may restrict the guardian's right of access to the

child, when it is necessary in order to implement the care

order. Such a restriction may cover a prohibition of

correspondence or telephone communications between the parent

and the child as well as keeping the place of residence of

the child secret. In applying this provision the right of

access should, as a starting-point, not be restricted more

than is absolutely necessary.

The appealed decision to prohibit access included, according

to the Social Council's statement at the hearing before the

County Administrative Court, a prohibition of correspondence

and telephone communications. The entire decision is based

on section 16 of the Act. The County Administrative Court

should therefore have examined those parts of the decision

which concerned prohibition of correspondence and telephone

communications. Margareta Andersson's appeal should

accordingly be examined with respect to the restriction as a

whole.

...

During the care period the Social Council shall in principle

try to maintain contacts between Roger and Margareta

Andersson, but it can be forced by the circumstances to

restrict contacts under the above-mentioned section of the

Act.

From the documents and from what has transpired in the

proceedings in this case, ... it appears that Margareta

Andersson lacks understanding for Roger's need of care and

that she is opposed to Roger being placed outside her home.

Margareta Andersson has prevented earlier attempts to place

Roger away from home by fetching Roger and by staying with

him in a place unknown to the authorities. In view of what

happened during her last meeting with Roger and of her own

[oral] submissions before the Administrative Court of Appeal,

there is reason to believe that she will not accept that

Roger remain in the foster home.

It is an absolute condition for the success of the care in

the foster home that Roger feels secure when staying there.

The foster parents must furthermore be given the possibility

to deal peacefully with Roger's problems. As soon as

Margareta Andersson is able to accept the care measures taken

and the transfer to the foster home and is able to

participate in the implementation of the care, she should

have the opportunity of seeing Roger. However, Margareta

Andersson has shown that for the time being she is not

prepared to take part in the care measures in this way.

In these circumstances there are good reasons for the

decision of the Social Council to prohibit access, including

the prohibition of correspondence and telephone

communications."

36. On 19 December 1986 the Supreme Administrative Court rejected

Margareta Andersson's application for leave to appeal against the

latter judgment.

D. Second set of proceedings challenging inter alia the

limitations on access

37. On 9 April 1987 the Social Committee rejected requests by

Margareta Andersson for termination of the care order and for repeal

of the prohibition of access. It stated, inter alia, that:

"continued prohibition of access, under section 16 (1) of

[the 1980 Act], shall apply ... until suitable access can be

arranged without harm to the child".

38. On reviewing this decision on 14 May 1987, the Social

Committee further decided:

(a) although the decision of 9 April 1987 could be

interpreted as a total prohibition of access, it only amounted to a

restriction on access;

(b) such restrictions should continue in accordance with

section 16 (1) of the 1980 Act. Every instance of contact between

the applicants should be planned and carried out in consultation

with the social welfare authorities at Växjö, at Mr and

Mrs Helgesson's home and in the foster father's presence.

39. Margareta Andersson appealed to the County Administrative

Court, requesting termination of the care measure and, in the

alternative, revocation of the restrictions on access. The court

held a hearing at which she and her son were each represented by

counsel and evidence was given by the foster father and

Mr Mats Eriksson, a social worker. The latter had been assisting

and supervising the foster home for a period of one month

immediately after Roger's placement there. By judgment of

1 June 1987, the court amended the Social Council's decision of

9 April in such a way that future meetings between the applicants

were to be attended by Mr and Mrs Helgesson only and dismissed the

remainder of the appeal. With regard to the restrictions on access,

it held:

"Concerning the restrictions on the right of access, the

Social Council has stated that there is no restriction as to

how many meetings can be arranged. The restrictions also

include a prohibition of contact by telephone or letters.

According to section 16 of [the 1980 Act] the Social Council

may restrict the guardian's right of access, when this is

necessary in order to achieve the purposes of the care order.

When applying this provision the aim should be not to

restrict the right of access more than is absolutely

necessary.

Margareta Andersson has shown at the hearing before the

County Administrative Court that she does not understand

Roger's need for care. Her only aim is that Roger return

home. Her conduct creates a conflict of loyalties for Roger.

Margareta Andersson's previous actions in connection with

Roger's escapes from the ... Clinic at Växjö, Roger's attempt

to run away after her visit to the foster home, and Roger's

behaviour when she visited the hospital at Kristianstad, show

that restrictions on access are necessary for the successful

care of Roger. The County Administrative Court finds that

the Social Council has good reasons to restrict the right of

access including contact by letters or telephone.

Margareta Andersson has stated that she does not intend to

visit Roger if Henry Meijer [the foster father] is present

during the visits. The County Administrative Court finds it

important that the Social Council's decision be modified so

as to encourage Margareta Andersson to visit Roger. This can

initially only be done if Henry Meijer is not present during

the visits. In order to facilitate the establishing of

contacts no one else appointed by the Social Council should

be present. During the visit, which is to take place in the

Helgesson home, the presence of the Helgesson couple would be

sufficient. No other change should be made in the decision

to place restrictions on access."

40. On appeal, the Administrative Court of Appeal, after holding

a hearing at which Margareta and Roger Andersson were represented in

the same way as before the County Administrative Court and the

former was herself present, upheld the above-mentioned judgment on

10 July 1987. It gave the following reasons for maintaining the

restrictions on access:

"At the hearing it was said that Margareta Andersson had

visited Roger on 24 June [1987] at the Helgesson home at

Sibbhult. The visit - which was the first meeting ... since

February - turned out well. The more precise conditions for

future contacts - as well as future care - depend to a great

extent on Margareta Andersson's attitude and conduct.

The Administrative Court of Appeal considers that further

successful encounters, such as for example at the Helgesson

home, must be established before other kinds of contact can

be allowed."

41. Margareta Andersson subsequently applied for leave to appeal

to the Supreme Administrative Court, but it refused such leave on

20 August 1987.

E. Third set of proceedings challenging inter alia the

limitations on access

42. On 15 December 1987 the Social Committee again dismissed a

request by Margareta Andersson to terminate the care or,

alternatively, to lift the restrictions on access.

43. Later, on 5 February 1988, the Social Committee decided that

monthly meetings be arranged in Margareta Andersson's home, in

addition to meetings in the Helgesson's home. It moreover revoked

the prohibition imposed on correspondence and reduced those on

telephone communications (see paragraphs 26 and 33 above).

44. In a subsequent appeal to the County Administrative Court,

Margareta Andersson requested that the care order be terminated, in

the alternative that it be carried out in her home, in the further

alternative that the restrictions on access be repealed. After

holding a hearing at which each of the applicants were represented

by counsel, the court, in its judgment of 17 February 1988, rejected

the principal claim. As to the two alternative claims it stated:

"The Social Council has not examined Margareta Andersson's

request that the care continue in her home. The County

Administrative Court cannot legally decide where Roger shall

stay. Margareta Andersson's request cannot be examined.

Concerning the issue of restrictions on access the Social

Council has expressed that it intends to assess generously

Margareta Andersson's request to meet Roger at Glimåkra.

Furthermore, the Social Council has stated that the

restrictions do not include a prohibition for Margareta

Andersson and Roger to meet in private, but it does mean that

someone from the Helgesson family must be present in the home

where they meet.

In view of Margareta Andersson's previous actions and her

attitude as concerns the care issue, the County

Administrative Court finds that the restrictions on access

should continue. Such restrictions should be designed so as

not to prevent a successful contact from being established.

The County Administrative Court finds that the restrictions

decided by the Social Committee have been so designed. In

order to avoid any possible uncertainty, the County

Administrative Court considers it appropriate to indicate

that the meetings in the Helgesson home at Glimåkra should

take place at least twice a month. Apart from that, the

County Administrative Court confirms the Social Council's

decision on the right of access. The above shall apply until

the end of the school term in the spring of 1988. Thereafter

a new assessment should be made."

45. Margareta Andersson appealed to the Administrative Court of

Appeal which, on 27 April 1988, ordered termination of the public

care of Roger. It considered that, whilst the main reason for

Roger's previous situation - namely Margareta Andersson's inability

to give him sufficient care and security - still existed, the

purposes of the care order had to a large extent been achieved in

that Roger had gained the ability to have good social relations and

a certain degree of self-esteem. The court noted that Margareta

Andersson's negative attitude towards the social welfare authorities

had rather worsened during the implementation of the care order and

that the likelihood of her continuing to refuse to co-operate with

them and the school was considerable, even if Roger returns to her

home. However, it found that there were reasons to believe that his

return would have a positive impact on his situation, since the kind

of conflicts that arose in connection with the care measures would

be avoided. Moreover, it considered that Roger had become

sufficiently strong and aware of his own situation for him not to be

harmed by a possible lack of care from his mother.

II. RELEVANT DOMESTIC LAW

A. Care decisions

46. The basic rules on public responsibility for young persons

are laid down in the Social Services Act 1980 (socialtjänstlagen

1980:620). This Act contains provisions regarding supportive and

preventive measures taken with the approval of the individuals

concerned. At the relevant time of the present case, when parents

did not give their consent to the necessary measures, compulsory

care could be ordered under the 1980 Act containing Special

Provisions on the Care of Young Persons (lagen 1980:621 med

särskilda bestämmelser om vård av unga - "the 1980 Act"). The 1980

Act was replaced by new legislation in 1990 (see paragraphs 65-66

below).

47. Section 1 of the 1980 Act read:

"Care is to be provided pursuant to this Act for persons

under eighteen years of age if it may be presumed that the

necessary care cannot be given to the young person with the

consent of the person or persons having custody of him and,

in the case of a young person aged fifteen or more, with the

consent of the young person.

Care is to be provided for a young person if

1. lack of care for him or any other condition in the home

entails a danger to his health or development, or

2. the young person is seriously endangering his health or

development by abuse of addictive substances, criminal

activity or any other comparable behaviour.

..."

48. It is primarily the responsibility of municipalities to

promote a positive development for the young. For this purpose each

municipality has a Social Council, composed of lay members assisted

by a staff of professional social workers, which operates under the

supervision and control of the County Administrative Board

(länsstyrelsen) and the National Board of Health and Welfare

(socialstyrelsen).

49. The 1980 Act specified that if the Social Council deemed it

necessary to take a child into care, it had to apply to the County

Administrative Court for a decision to this effect (section 2).

B. Implementation of care decisions

1. General

50. Once a decision on public care had been taken, the Social

Council was to execute the decision, take care of the practical

details regarding where to place the child and decide what education

and other treatment he should be given, etc. (sections 11-16).

51. Pursuant to section 11 of the 1980 Act:

"... the Social Council shall decide how care is to be

arranged for the young person concerned and where he is to

reside during the period of care.

The Social Council may consent to the young person residing

in his own home if this may be presumed the most appropriate

way of arranging care, but care pursuant to this Act is

always to commence away from the young person's home.

The Social Council or the person charged with care of the

young person by the Council shall keep the young person under

surveillance and make such decisions concerning his personal

circumstances as are necessary for the discharge of care."

52. With regard to the nature of the functions entrusted to the

Social Council under the 1980 Act, the following is stated in the

preparatory work to this Act, as reproduced in the Government Bill

(1979/80:1, Part A, pp. 596-597):

"After a decision on public care has been taken, the Social

Council exercises parental responsibility alongside with the

parents or in their place. It should assume such parental

authority and responsiblity as is necessary to implement the

care measures. Thus, like the parents, the Council may take

the necessary measures to prevent the young person from

harming himself or others ... [or] from running away [and]

... may also take decisions ... concerning [his] private

affairs. This may include matters relating to medical care

or treatment, permission for the young person to travel or to

take a job. According to the principles which govern the co-

operation between the social welfare authorities and the

individuals [concerned] on the implementation of public care

measures, the Council should consult the parents in such

matters, if the circumstances so allow. Therefore, the fact

that the Council has taken over the responsibility for the

care of the young person must not result in the parents being

deprived of all influence. The parents and the young person

himself should as far as possible take part in making the

care arrangements. Thus, it is only in so far as it is

necessary for the implementation of public care measures that

the Council, through the decision of the County

Administrative Court, takes over the parental responsibility

over the young person."

2. Regulation of the right of access

53. Section 15 of the 1980 Act provided for placing restrictions

on the right to correspondence of persons taken into care pursuant

to the second sub-paragraph to the second paragraph of section 1 of

this Act, for such reasons as drug abuse or criminal activities (see

paragraph 47 above). Section 15 read:

"Letters and other mail sent to or received by a person to

whom the provisions of section 13 apply may be subjected to

scrutiny if this is justified by considerations of order in

the home or by the particular circumstances of the young

person concerned. To this end the person in charge of the

care at the home may open and examine mail arriving for or

sent by the young person. If incoming mail contains any

material which the young person is not allowed to possess, it

shall be sequestrated.

Correspondence between the young person and a Swedish

authority or advokat or his official counsel shall be

transmitted without prior scrutiny."

54. Section 16 of the 1980 Act provided:

"If it is necessary in order to achieve the purposes of care

measures taken under this Act, the Social Council may

1. decide how the right of access to the young person shall

be exercised by a parent or other person who has custody of

him, or

2. decide that the young person's place of residence may not

be disclosed to the parent or custodian."

55. The preparatory work to this provision, as reproduced in

Government Bill (1979/80:1, Part A, p. 601), contains the following

statement:

"The Social Council should, when carrying out the care, as

far as possible co-operate with the parents and assist in

maintaining contacts between the parents and the child ... a

care decision should not give rise to other restrictions of

the parents' right of access to the child than those which

are necessary in order to carry out the care. The

circumstances might, however, be such that the parents during

the care period should not meet the child. There might for

example be a risk that the parents interfere with the care

without authorisation. The parents' personal circumstances

might also, for instance by reason of severe abuse [of

alcohol or drugs] or mental illness, be such that they should

not meet the child at all ... . The proposed provisions

concerning restrictions on the right of access should be

applied restrictively. [The Social Council] should, only in

exceptional cases, refuse to disclose the child's place of

residence to the parents."

56. The Standing Social Committee of the Parliament stated in its

report (Statens offentliga utrednigar - "SOU" 1979/80:44, p. 116)

that the Social Council had in principle responsibility for all

decisions concerning visits to the child. This was inherent in its

general powers to decide on the child's conditions during care. It

stated however that parents enjoyed a special right of access to the

child and that it was important that they maintain regular contact.

The Committee added that:

"the circumstances may, however, be such that the

parents during a certain time or until further notice

should not meet the child."

57. According to a guide on the 1980 Act (1981:2, p. 112) issued

by the National Board of Health and Social Welfare, the Social

Council was empowered under section 16 to restrict and terminate

completely the parents' access to the child.

58. There exists to date no judgment by the Supreme

Administrative Court concerning the application of section 16 of the

1980 Act on telephone conversations and correspondence. It has,

however, delivered one judgment in 1971, reported in its yearbook

(Regeringsrättens Årsbok, RÅ 1971,p. 283), relating to the

corresponding provision in the 1960 Child Welfare Act

(barnavårdslagen 1960:97, which was replaced by the 1980 Act). In

this case the Supreme Administrative Court unanimously rejected an

appeal against a prohibition of access for one year covering both

visits and telephone conversations. Appeals to the Supreme

Administrative Court were at the time not subject to leave to appeal

(see paragraph 64 below) and thus the appeal in question was

rejected on the merits. The judgment did not specify the reasons

for this rejection. As explained by the Government, this is in

keeping with the Supreme Administrative Court's practice and means

that the court accepted the reasons and conclusions of the lower

court.

The above-mentioned judgment was briefly reported in the said

yearbook as a so-called notisfall - which designates a category of

decisions which, according to the Government, do not have the

standing of clear precedents but may still have relevance in the

determination of legal issues.

59. The Government have cited to the Court four more cases.

In the first case, the Administrative Court of Appeal in

Sundsvall, by judgment of 5 July 1982, amended a prohibition of

telephone contacts so as to allow a mother to call her daughter

directly once every second week, rather than once a week through a

social welfare officer. The prohibition was applied together with

restrictions on meetings. Neither this judgment nor that of the

lower court specified which provision in the 1980 Act had been

applied.

In the second case, the said Administrative Court of Appeal,

by judgment of 15 June 1987, confirmed, referring to section 16 of

the 1980 Act, a prohibition of a mother to meet her son, for a

period of two years, and to contact him by telephone. There is no

indication that the lawfulness of the prohibition was disputed by

the mother or questioned by the court.

In the third case, the Administrative Court of Appeal in

Stockholm, by judgment of 20 March 1991, upheld measures limiting a

father's contact with his daugher to one telephone conversation

every Sunday between 5 and 6 p.m. On 24 May 1991 the Supreme

Administrative Court dismissed the father's application for leave to

appeal. This case was decided on the basis of section 14 of the

1990 Act, which had replaced section 16 of the 1980 Act (see

paragraphs 65-66 below).

In the fourth case, the County Administrative Court at

Gothenburg, by a judgment of 3 October 1990, rejected, with

reference to section 14 of the 1990 Act, an appeal against

restrictions on a mother's access to and telephone contact with her

son. She was permitted to call him twice a week, not later than

5 p.m. The lawfulness of the restrictions was disputed. However,

the court held that "according to applicable case-law, telephone

contact was considered on an equality with access (`umgänge') under

section 14". This judgment was upheld by the Administrative Court

of Appeal in Gothenburg on 11 January 1991. The Supreme

Administrative Court granted leave to appeal on 23 July 1991 and is

expected to deliver a judgment in the case in the spring of 1992.

60. Since 1972 there has existed in Sweden a computerised data

register, which is accessible to the public, containing information

on judgments of the Supreme Administrative Court and the four

Administrative Courts of Appeal. It includes, inter alia, an

indication of the nature of the case and a brief description of the

issues raised, as well as the names of the court and of the parties

and the date of the judgment. The rules governing the register

have, from time to time, undergone amendments, none of which is

relevant for the present case. Their current version is to be found

in the 1990 Regulations on Registration and Statistics of Cases

before the Supreme Administrative Court, the Supreme Social

Insurance Court and the Administrative Courts of Appeal

(Föreskrifter om dagbokföring och statistikregistrering i mål i

regeringsrätten, försäkringsöverdomstolen och kammarrätterna, DVFS

1990:25, B1), adopted by the National Courts Administration

(domstolsverket) on 11 December 1990, with effect from

1 January 1991.

C. Appeals

61. Decisions of the County Administrative Court that a child be

taken into care under the 1980 Act could have been the subject of an

appeal to the Administrative Court of Appeal and, with leave, to the

Supreme Administrative Court.

62. An appeal lay to the County Administrative Court (and then to

the Administrative Court of Appeal and, with leave, to the Supreme

Administrative Court) against:

(a) refusals by a Social Council to terminate care ordered

under the 1980 Act;

(b) decisions taken by a Social Council under the 1980 Act as

to where the care should commence; to move a child from a home where

he lives; regulating the right of access under section 16; and not

to disclose the child's whereabouts to the parent or the custodian

(section 20 of the 1980 Act).

63. The child was in principle a party to such proceedings, but

had to have attained the age of 15 in order to have the capacity to

conduct proceedings before the courts himself (processbehörighet).

Otherwise this capacity was vested with the child's legal guardian

(SOU 1987:7, pp. 66-70). Pursuant to section 19 of the 1980 Act, a

child below the age of 15 should have been heard if it could have

been useful for the investigation and it was not presumed to be

harmful to him or her.

64. An appeal to the Supreme Administrative Court is subject to

leave to appeal. Such leave is, pursuant to section 36 of the

Administrative Procedure Act 1971 (förvaltningsprocesslagen

1971:291), granted in the following circumstances:

"1. if review by the Supreme Administrative Court is of

importance in providing guidance on the interpretation of the

law; or

2. if there are special reasons which militate for such

review, such as the existence of a ground for reopening of

the proceedings or of a gross oversight or error which has

clearly affected the outcome of the case in the

administrative court of appeal."

D. New legislation

65. As of 1 July 1990 - and therefore after the facts of the

present case - the 1980 Act was replaced by a new Act containing

Special Provisions on the Care of Young Persons 1990 (lagen 1990:52

med särskilda bestämmelser om vård av unga - "the 1990 Act") which

entail certain amendments and additions to the 1980 Act.

66. The provisions of the 1990 Act corresponding to those of the

1980 Act mentioned above are essentially the same. However,

section 14 of the 1990 Act, which replaces section 16 (see

paragraph 54 above) of the 1980 Act, is worded as follows:

"The Social Council is responsible for accommodating as far

as possible the young person's needs of contact with his

parents or any person who has custody of him.

If it is necessary in order to achieve the purposes of care

measures taken under this Act, the Social Council may

1. decide how the right of access to the young person shall

be exercised by a parent or other person who has custody of

him, or

2. decide that the young person's place of residence may not

be disclosed to the parent or custodian.

The Social Council shall reconsider at least once every three

months whether such decision as referred to in the second

paragraph continues to be needed."

PROCEEDINGS BEFORE THE COMMISSION

67. In their application of 13 February 1987 to the Commission

(no. 12963/87), Margareta and Roger Andersson raised a number of

complaints relating to the taking of Roger into public care, the

maintenance in force of the care order, his placement in a foster

home and the restrictions imposed on their access to each other,

including communications by correspondence and telephone. They

alleged breaches of Article 8 (art. 8) of the Convention. They also

complained about the absence of an effective remedy within the

meaning of Article 13 (art. 13) with regard to the restrictions on

access. Roger, in addition, invoked Articles 2, 3, 4, 9 and 10

(art. 2, art. 3, art. 4, art. 9, art. 10) and claimed that, contrary

to Article 25 (art. 25) of the Convention, the exercise of his right

to petition to the Commission had been hindered.

68. On 10 October 1989 the Commission declared admissible the

complaints relating to the prohibition of access, including

communications by correspondence and telephone (Article 8) (art. 8)

and the absence of an effective remedy (Article 13) (art. 13), but

decided to take no action with respect to the complaints under

Article 25 (art. 25) and to declare all other complaints

inadmissible.

In its report adopted on 3 October 1990 (Article 31)

(art. 31), the Commission expressed the opinion that there had been

a violation of Article 8 (art. 8) (unanimously), but no violation of

Article 13 (art. 13) with regard to Margareta Andersson

(unanimously), or with regard to Roger Andersson (by ten votes to

two). The full text of the Commission's opinion and the dissenting

opinion contained in the report is reproduced as an annex to the

present judgment\*.

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\* Note by the Registrar: For practical reasons this annex will

appear only with the printed version of the judgment (volume 226-A

of Series A of the Publications of the Court), but a copy of the

Commission's report is obtainable from the registry.

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FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

69. At the hearing on 26 August 1991, the Government confirmed

the final submission in their memorial inviting the Court to find

"that there has been no violation of the Convention in the present

case".

AS TO THE LAW

I. SCOPE OF THE CASE

70. At the Court's hearing, the applicants raised a variety of

matters regarding inter alia the Swedish educational system, Roger's

school problems and the situation in the foster home. However, the

case, as delimited by the Commission's decision on admissibility,

concerns only their complaints against the restrictions on access to

each other, including communication by correspondence and telephone,

during the period from 6 August 1986 to 27 April 1988, and the

absence of an effective remedy in respect of those restrictions.

II. ALLEGED VIOLATIONS OF ARTICLE 8 (art. 8)

A. Introduction

71. Margareta and Roger Andersson alleged that the restrictions

on access, including restrictions on communication by correspondence

and telephone, had given rise to violations of Article 8 (art. 8) of

the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and

family life, his home and his correspondence.

2. There shall be no interference by a public authority with

the exercise of this right except such as is in accordance

with the law and is necessary in a democratic society in the

interests of national security, public safety or the economic

well-being of the country, for the prevention of disorder or

crime, for the protection of health or morals, or for the

protection of the rights and freedoms of others."

This allegation was contested by the Government, but was

accepted by the Commission.

72. The mutual enjoyment by parent and child of each other's

company constitutes a fundamental element of family life, and the

natural family relationship is not terminated by reason of the fact

that the child is taken into public care (see, as the most recent

authority, the Eriksson v. Sweden judgment of 22 June 1989, Series A

no. 156, p. 24, para. 58). Moreover, telephone conversations between

family members are covered by the notions of "family life" and

"correspondence" within the meaning of Article 8 (art. 8) (see the

Klass and Others v. the Federal Republic of Germany judgment of

6 September 1978, Series A no. 28, p. 21, para. 41, and the Kruslin v.

France judgment of 24 April 1990, Series A no. 176-A, p. 20, para. 26).

It follows - and this was not contested by the Government - that the

measures at issue amounted to interferences with the applicants'

right to respect for their family life and correspondence.

73. Such interferences constitute a violation of Article 8

(art. 8) unless they were "in accordance with the law", had an aim

or aims that is or are legitimate under Article 8 para. 2 (art. 8-2) and

were "necessary in a democratic society" for the aforesaid aim or

aims (see the above-mentioned Eriksson judgment, Series A no. 156,

p. 24, para. 58).

B. "In accordance with the law"

74. The applicants contended that the limitations placed on

access were not "in accordance with the law". The Government

contested this claim, whereas the Commission agreed in so far as it

concerned the restrictions imposed on telephone communications and

correspondence.

75. The Court recalls that the expression "in accordance with the

law", within the meaning of Article 8 para. 2 (art. 8-2), requires

firstly that the impugned measures should have a basis in domestic

law. It also refers to the quality of the law in question,

requiring that it be accessible to the persons concerned and

formulated with sufficient precision to enable them - if need be,

with appropriate advice - to foresee, to a degree that is reasonable

in the circumstances, the consequences which a given action may

entail. A law which confers a discretion is not in itself

inconsistent with this requirement, provided that the scope of the

discretion and the manner of its exercise are indicated with

sufficient clarity, having regard to the legitimate aim in question,

to give the individual adequate protection against arbitrary

interference (see, amongst many other authorities, the above-

mentioned Kruslin judgment, Series A no. 176-A, pp. 20-23, paras. 27, 29

and 30).

76. The dispute in the present case concerns the question whether

the limitations on access, including communication by telephone and

correspondence, had a basis in Swedish law and were foreseeable.

1. Limitations on meetings

77. The applicants pointed out that they had been authorised to

meet only a few times during the period between August 1986 and

May 1987 and that the social welfare authorities had been given too

wide a discretion in this respect which they had exercised

arbitrarily. Even after the Social Committee's decision of

14 May 1987 (see paragraph 38 above), it had been unclear when and

how meetings were to be arranged. They claimed that this amounted

to a total prohibition of access, which lasted for almost one year

and which was both contrary to Swedish law and unforeseeable.

78. The Court observes that, as stated in the social welfare

authorities' decisions of 6 and 21 August 1986, a prohibition of

access was to apply until further notice and until "suitable access

could be arranged without involving harm to the child" (see

paragraphs 16 and 19 above). The applicants were allowed to meet on

5 October 1986. Subsequent to this, several meetings were held

throughout the care period. Admittedly the meetings took place with

a certain irregularity and often after lengthy intervals. However,

this is at least partly attributable to Margareta Andersson's

unwillingness to accept the terms for meetings or to take part in

their planning as proposed by the social welfare authorities (see

paragraphs 20, 21 and 24 above). The Court therefore shares the

view of the Government and the Commission that a total prohibition

of access was only in force for a period of approximately two

months, from 6 August 1986, when the Assistant District Chief

decided to prohibit access, until 5 October 1986, when the first

meeting was held between the applicants (see paragraphs 16 and 20

above).

79. Although the wording of section 16(1) may suggest that the

Social Council was empowered to regulate, but not to prohibit,

access, it was clearly stated in the preparatory work to this

provision that a prohibition of access could, if required by the

circumstances, be imposed for a certain period or until further

notice (see paragraph 56 above). Moreover, it follows from

decisions of Swedish administrative courts that a temporary

prohibition of access could be based on section 16 (see

paragraphs 34, 58 and 59 above). Such a prohibition could,

according to this provision, be imposed only to the extent that it

was necessary in order to fulfil the object of the care measures.

Furthermore, as expressed in the relevant preparatory work,

limitations on access under section 16 should be applied

restrictively and the Social Council should as far as possible co-

operate with the parents and assist in maintaining contact between

them and the child (see paragraph 55 above).

2. Limitations on communication by telephone

and correspondence

80. According to both the applicants and the Commission, it was

not clear that the social welfare authorities were permitted under

Swedish law to extend a restriction on access to cover

communications by correspondence and telephone. They pointed out

that the rationale for regulating meetings was different from that

for limiting contacts by telephone or mail. Limitations of this

kind were not expressly provided for by section 16 of the 1980 Act

nor mentioned in the preparatory work to this section. There was no

support in the corresponding rules of the Parental Code for the view

that the expression rätt till umgänge, as understood in Swedish,

referred to contact by mail or telephone. Moreover, whilst

section 15 of the 1980 Act, which was not applicable in the present

case, expressly authorised scrutiny of correspondence, section 16

did not.

81. The Delegate of the Commission did not accept that any

specific conclusion could be drawn from the case-law cited to the

Court by the Government as to whether the limitations on

correspondence and telephone communication had a basis in Swedish

law. First, he recalled that the Supreme Administrative Court's

1971 judgment contained no reasons for its rejection of the appeal

in question; the issue of the legality of the restrictions was not

raised and the court did not even indicate upon which provision the

restrictions were based (see paragraph 58 above). Moreover, the

Supreme Administrative Court's refusals to grant leave to appeal in

the present case did not constitute a legal precedent and did not

contain any reasons (see paragraphs 36 and 41 above). With regard

to the two decisions of the Sundsvall Administrative Court of Appeal

(see paragraph 59 above) the Delegate considered that these were of

little importance as they had not been decided by the highest court

and had not been published. In addition, he referred to a third

decision in which the Sundsvall court in 1983 had relied on

section 11, as opposed to section 16, thereby indicating an

inconsistency in its practice. The limitations, therefore, did not

have a clear basis in Swedish law and were not foreseeable.

82. In the present case, the contested limitations on

communications by correspondence and telephone had on two separate

occasions been upheld by the Administrative Court of Appeal under

section 16 of the 1980 Act. On each occasion, the Supreme

Administrative Court had subsequently refused leave to appeal (see

paragraphs 36, 41 and 64 above).

Furthermore, as appears from its public files, in doing so it

had taken into account its above-mentioned 1971 judgment. By that

judgment, the court rejected an appeal concerning a one-year

prohibition of access and telephone communications between a parent

and a child, after having examined the case on the merits. It

cannot be assumed that in the present case the Supreme

Administrative Court failed to consider whether the prohibition was

lawful. Clearly, that court accepted the lower court's reasoning

and conclusions (see paragraph 58 above).

The cases referred to by the Government, other than the

present instance, all concerned restrictions on access including

telephone communications (see paragraphs 58-59 above). None of

these decisions had set aside such restrictions as being unlawful.

It is true that only some of them pre-dated the judgments in the

instant case but those which followed are in principle capable of

illustrating the previous understanding of the law. All appellate

administrative courts' judgments are computerised in Sweden since

1972 (see paragraph 60 above).

In this regard, it is primarily for the national authorities,

notably the courts, to interpret and apply domestic law (see,

amongst many authorities, the above-mentioned Kruslin judgment,

Series A no. 176-A, pp. 21-22, para. 29).

83. In its report, the Commission further considered that the

"uncertainty" as to the contents of the law was combined with a lack

of clarity as to the scope of the social welfare authorities'

decisions of 6 and 21 August 1986 to prohibit access under

section 16, as these did not specify that the prohibition covered

telephone communications and correspondence (see paragraphs 16 and

19 above). In their view, this lack of clarity persisted during the

subsequent court proceedings, firstly because the County

Administrative Court's judgment had referred to telephone

conversations but had not mentioned correspondence and, secondly,

because this court and the Administrative Court of Appeal had

interpreted the legal situation differently, the former having

relied on section 11, the latter on section 16 (see paragraphs 34-35

above). In the submission of the Delegate, a decision restricting

fundamental rights should, as a minimum requirement, indicate

clearly the extent of the restriction.

84. The Court observes that, in this respect, it should not be

overlooked that the Social Committee's decision of 21 August 1986

was based on the social welfare officer's report of 15 August 1986

(see paragraph 17 above). This report recommended that Margareta

Andersson should be temporarily prevented from having "any form of

contact with Roger". There is little doubt, therefore, that the

prohibition imposed under section 16 was meant to cover not only

visits, but also communications by telephone and correspondence.

This is confirmed by the Social Council's submissions before the

County Administrative Court at its hearing on 11 September 1986 and

by the very words of the Administrative Court of Appeal's judgment

of 11 November 1986 (see paragraphs 34-35 above).

85. In sum, the contested limitations on access, including

communication by telephone and correspondence, were "in accordance

with the law" within the meaning of Article 8 para. 2 (art. 8-2).

C. Legitimate aim

86. The applicants claimed that the restrictions were not aimed

at finding a solution to Roger's school problems or at protecting

his health, but rather at preventing him from telling others about

the "terrible" living conditions in the foster home.

87. In the Court's view, the relevant Swedish law was clearly

aimed at protecting "health or morals" and "the rights and freedoms"

of children. There is nothing to suggest that it was applied for

any other purpose in the present case.

D. "Necessary in a democratic society"

88. The applicants alleged that the measures at issue could not

be regarded as "necessary in a democratic society". They argued

that they had not been allowed to meet often enough and that the few

meetings which were held had been supervised in a manner which

prevented them from enjoying any form of "family life". For the

same reason they criticised the limitations imposed on their right

to communicate with each other by way of telephone and

correspondence. A number of letters addressed to Roger by his

mother had been stopped by hospital personnel and the foster father.

The latter had moreover prevented him from sending letters to his

mother and from using the telephone. These measures, the applicants

contended, had not only been unnecessary for the purposes of Roger's

care but had, in fact, endangered his health. They had resulted in

his having to wait for two months before receiving medical treatment

for his diabetes. Further, as concluded by Dr Åberg in a medical

opinion submitted by the applicants, it was likely that the

emotional stress which Roger had suffered as a result of being

totally separated from his mother had contributed in a tangible and

even decisive way to his falling ill with diabetes.

89. In the Government's submission, the measures were "necessary

in a democratic society".

They relied on the reasons expounded in the above-mentioned

report of 15 August 1986 - which was the basis for the decision of

21 August 1986 to prohibit access - and on the relevant

administrative courts' judgments upholding the measures (see

paragraphs 17, 34-36, 39-41 and 44 above). They also referred to

the reasons for the prohibition of access of June 1985 (see

paragraphs 10-11 above). In addition, the measures fell to be

examined in the light of the justifications for the care order and

its maintenance in force throughout the period in question, since

the Commission had accepted the compatibility of that order with the

Convention and all the subsequent administrative and judicial

decisions concerning the prohibition of access were based

essentially on the same facts (see paragraphs 12, 15, 65 and 66

above).

As a justification for the stopping of letters, they argued

in particular that Margareta Andersson's attitude to the public care

of Roger and the foster home could obstruct the objective of the

care measures, including the efforts to create a trustful

relationship between him and the foster family, since her way of

explaining the situation to Roger worried and upset him. As a

12 year-old, he had no possibility of understanding on whom he could

rely in such a situation.

With regard to the applicants' contention that the measures

in issue had played a role in Roger's falling ill with diabetes, the

Government invoked a medical opinion by the National Board of Health

and Welfare. This concluded that emotional stress may be one out of

many contributing factors to the development of insulin-dependent

diabetes; however the quantitative significance of such stress had

been greatly exaggerated in the medical opinion submitted by the

applicants.

90. The Commission did not express any opinion on the "necessity"

issue, in view of its conclusion that the restrictions on

communication by correspondence and telephone were not "in

accordance with the law".

91. The Court recalls that in cases like the present a parent's

and child's right to respect for family life under Article 8

(art. 8) includes a right to the taking of measures with a view to

their being reunited (see the Olsson v. Sweden judgment of

24 March 1988, Series A no. 130, pp. 36-37, para. 81, and the

above-mentioned Eriksson judgment, Series A no. 156, pp. 26-27,

para. 71).

92. Prior to their decisions of 6 and 21 August 1986 to prohibit

access, the social welfare authorities had failed in their efforts

to implement the care measures both within and outside

Margareta Andersson's home. Shortly after being placed in the

Clinic in June 1985, Roger had escaped with the assistance of his

mother. The social welfare authorities had then consented to

implement the care measures in her home. However, since this had

proved unsuccessful, Roger had been returned to the Clinic with a

view to placement in a foster home. Again with his mother's

involvement, he escaped to join her. The police had brought him

back to the Clinic where he spent a brief period before being

transferred to the foster home. Moreover, it should be noted that

Margareta Andersson had indicated to the social welfare authorities

her intention of moving to an unknown address or of leaving the

country in order to avoid being "persecuted". She had also exerted

a negative influence on Roger during her visits to the Clinic (see

paragraphs 13, 14 and 17 above).

93. The prohibition of access was, as stated in the decisions of

6 and 21 August 1986, to be effected temporarily until access could

be arranged without harm to Roger. Relatively soon, at the latest

on 11 September 1986 (see paragraph 34 above), the Social Council

announced its intention to hold a meeting between the applicants at

the end of September or the beginning of October. In fact it took

place on 5 October. After this meeting Roger attempted to run away

from the foster home.

It is true that subsequent meetings were held with some

irregularity and often at rather long intervals, but this was partly

due to Margareta Andersson's own attitude. It is also true that the

meetings were closely supervised. However, as from June 1987, the

conditions for meetings were somewhat relaxed in this respect and,

in November that year, Roger was permitted to visit Margareta

Andersson in her own home. The Social Committee decided in February

1988 to arrange such visits on a monthly basis and to organise other

meetings in between at the Helgesson home - at least twice a month,

according to a court ruling of 17 February. Since Roger was

hospitalised, they met instead at the hospital where Margareta

Andersson was permitted to stay overnight. She stayed there for

approximately two weeks altogether during the period between

26 February and 3 May 1988 (see paragraphs 20-27 above).

94. Admittedly, the deterioration of Roger's health must, at

least to some extent, have been related to emotional stress.

However, it has not been established that the deterioration was

caused by the various limitations on access.

95. In the circumstances of the case the restrictions on meetings

between the applicants should however be considered in the broader

context of the restrictions on access as a whole. Indeed, besides

the fact that the applicants' right to visits was severely

restricted, they were also prohibited from having any contact by

mail or telephone during the period from 6 August 1986 to

5 February 1988. As of the latter date, the prohibition was

revoked, except that it was for Roger to take the initiative of

telephone communications. In the Court's view the measures relating

to this period were particularly far-reaching. They had to be

supported by strong reasons and to be consistent with the ultimate

aim of reuniting the Andersson family, in order to be justified

under Article 8 para. 2 (art. 8-2).

96. The reasons adduced by the Government are of a general nature

and do not specifically address the necessity of prohibiting contact

by correspondence and telephone. The Court does not doubt that

these reasons were relevant. However, they do not sufficiently show

that it was necessary to deprive the applicants of almost every

means of maintaining contact with each other for a period of

approximately one and a half years. Indeed, it is questionable

whether the measures were compatible with the aim of reuniting the

applicants.

97. Having regard to all the circumstances of the case, the Court

considers that the aggregate of the restrictions imposed by the

social welfare authorities on meetings and communications by

correspondence and telephone between the applicants was

disproportionate to the legitimate aims pursued and, therefore, not

"necessary in a democratic society". There has accordingly been a

breach of Article 8 (art. 8).

III. ALLEGED VIOLATION OF ARTICLE 13 (art. 13)

98. Article 13 (art. 13) of the Convention reads as follows:

"Everyone whose rights and freedoms as set forth in [the]

Convention are violated shall have an effective remedy before

a national authority notwithstanding that the violation has

been committed by persons acting in an official capacity."

Before the Commission, both Margareta and Roger Andersson

submitted that, in breach of this provision, they had no effective

remedy in respect of their claims under Article 8 (art. 8). The

Government contested this view, which the Commission rejected.

99. At the hearing before the Court on 26 August 1991, counsel

for the applicants did not pursue the claim under Article 13

(art. 13) in respect of Margareta Andersson. The Court finds that

it is not necessary to examine this part of the complaint.

100. The lawyer of the applicants submitted that she subscribed to

the opinion of the minority of the Commission concluding that there

was a breach in respect of Roger Andersson.

101. The dispute before the Court thus concerns whether Roger's

legal guardian, Margareta Andersson, had been prevented from

appealing to the Swedish courts on his behalf. It was common ground

that Article 13 (art. 13) did not require that a 12 year-old child

be able to institute and conduct such proceedings on his own; it was

sufficient for the purposes of this provision that a legal

representative was able to do so on the child's behalf. It is not

in dispute that this was possible under Swedish law and that the

official counsel appointed to assist Roger in proceedings concerning

the care measures (see paragraphs 39, 40 and 44 above) had no power

to initiate court proceedings on his behalf.

102. The applicants considered that since Margareta Andersson had

no means of communicating with Roger, she was not in a position to

learn of any possible infringement of his human rights and was

therefore prevented from representing him properly.

103. The Court is not convinced by this argument. It should be

recalled that during the relevant period Roger and his mother met on

a number of occasions (see paragraphs 20-27 above) and were on good

terms. Consequently, it cannot be said that Margareta Andersson was

prevented from appealing on Roger's behalf against the restrictions

on access.

104. There was therefore no violation of Article 13 (art. 13).

IV. APPLICATION OF ARTICLE 50 (art. 50)

105. Article 50 (art. 50) of the Convention reads:

"If the Court finds that a decision or a measure taken by a

legal authority or any other authority of a High Contracting

Party is completely or partially in conflict with the

obligations arising from the ... Convention, and if the

internal law of the said Party allows only partial reparation

to be made for the consequences of this decision or measure,

the decision of the Court shall, if necessary, afford just

satisfaction to the injured party."

A. Damage

106. Under this provision Margareta and Roger Andersson sought

first 1,000,000 and 2,000,000 Swedish kronor, respectively. At the

hearing their representative explained that Margareta Andersson's

claim was based on the distress which she had experienced as a

result of her separation from Roger and the restrictions on

contacting him; the main ground for Roger's claim was that he had

contracted diabetes as a consequence of stress caused by the

measures in issue (see paragraph 88 above).

Both the Government and the Delegate of the Commission found

the claims excessive.

107. In the Court's view, as mentioned above, the evidence

submitted does not warrant the conclusion that Roger's illness

resulted from the various restrictions on access (see paragraph 94

above). However, there can be no doubt that the measures found to

be in breach of Article 8 (art. 8) caused the applicants

considerable anxiety and distress.

This being so, the Court awards, on an equitable basis, as

required by Article 50 (art. 50), each applicant the sum of

50,000 kronor.

B. Legal fees and expenses

108. The applicants' original claim for legal fees and expenses,

totalling 325,000 Swedish kronor, included the following items:

(a) 319,800 kronor for 206 hours' work by their lawyer

(at 1,300 kronor per hour) in the proceedings before the Commission

and the Court and for 40 hours' travel - "loss of working time" -

(at the same rate) to appear at two hearings in Strasbourg;

(b) 5,200 kronor to cover the work of a translator checking the

English of their lawyer's oral pleadings before the Court.

However, the applicants' lawyer stated at the hearing that

she had underestimated the time spent on preparing her pleadings

before the Court; the effective working time had in fact been

250 hours. She maintained, nevertheless, that her fees would be

325,000 Swedish kronor.

109. The Government accepted item (b) but made several objections

concerning item (a). They questioned whether the amount of working

time spent was necessary. The hourly rate charged was too high and

should be lower for travelling time than working time. Regard

should also be had to the fact that substantial parts of the

applicants' claims had been declared inadmissible by the Commission.

110. Taking account of the Court's case-law in this field as well

as the relevant legal aid payments made by the Council of Europe,

and making an assessment on an equitable basis, the Court considers

that the applicants are jointly entitled to be reimbursed, for legal

fees and expenses, the sum of 125,000 Swedish kronor.

FOR THESE REASONS, THE COURT

1. Holds by eight votes to one that there has been a violation

of Article 8 (art. 8);

2. Holds unanimously that it is not necessary to examine the

complaints under Article 13 (art. 13) with regard to

Margareta Andersson;

3. Holds by five votes to four that there has been no violation

of Article 13 (art. 13) with regard to Roger Andersson;

4. Holds unanimously that Sweden is to pay, within three months:

- to each of the applicants 50,000 (fifty thousand) Swedish

kronor for non-pecuniary damage;

- to the applicants jointly 125,000 (one hundred and

twenty-five thousand) Swedish kronor for legal fees and

expenses;

5. Rejects unanimously the remainder of the claim for just

satisfaction.

Done in English and in French, and delivered at a public

hearing in the Human Rights Building, Strasbourg, on

25 February 1992.

Signed: Rolv RYSSDAL

President

Signed: Marc-André EISSEN

Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the

Convention and Rule 53 para. 2 of the Rules of Court, the following

separate opinions are annexed to this judgment:

(a) partly dissenting opinion of Mr Lagergren;

(b) partly dissenting opinion of Mr De Meyer, joined by

Mr Pinheiro Farinha, Mr Pettiti and Mr Spielmann.

Initialled: R.R.

Initialled: M.A.E.

PARTLY DISSENTING OPINION OF JUDGE LAGERGREN

Whilst otherwise agreeing with the majority of the Court, I

am unable to share its opinion that the temporary restrictions on

access, including telephone communication and correspondence, were

in violation of Article 8 (art. 8).

The difference of opinion separating me from my colleagues

concerns the necessity of the interferences in question and the

margin of appreciation which in this context is to be allowed to the

national authorities.

Judge Macdonald has stated: "The margin of appreciation is at

the heart of virtually all major cases that come before the Court,

whether the judgments refer to it expressly or not." (Ronald St.

John Macdonald: "The margin of appreciation in the jurisprudence of

the European Court of Human Rights", Essays in Honour of Roberto

Ago, III, 1987, at p. 208.)

A decade ago Sir Humphrey Waldock similarly stressed the

significance of the doctrine of the margin of appreciation in his

often cited sentence, that this doctrine "is one of the more

important safeguards developed by the Commission and the Court to

reconcile the effective operation of the Convention with the

sovereign powers and responsibilities of governments in a

democracy." (Human Rights Law Journal 1980, at p. 9). This

endorsement by one of the great jurists of our time of judicial

self-restraint is certainly still valid in the present European

situation.

It is nowadays a well-established view within the Commission

and the Court that the primary responsibility for securing the

rights and freedoms enshrined in the Convention lies with the

individual Contracting States and "that it is in no way the Court's

task to take the place of the competent national courts but rather

to review under [the Convention] the decisions they [deliver] in the

exercise of their power of appreciation" (Handyside v. the United

Kingdom judgment of 7 December 1976, Series A no. 24, pp. 23-24,

para. 50). The Strasbourg institutions have also recognised that, in

principle, the domestic authorities are, by reason of their "direct

and continuous contact with the vital forces of their countries", in

a better position than the international judge to determine whether

the Convention rights or equivalent domestic legal norms have been

overstepped (see, ibid., para. 48).

The full implications of the available margin will be

difficult to draw until a larger and more coherent body of law

emerges. However, a basic formulation is to be found in the case of

Rasmussen v. Denmark: "The scope of the margin of appreciation will

vary according to the circumstances, the subject matter and its

background" (judgment of 28 November 1984, Series A no. 87, p. 15,

para. 40; cf. Macdonald, op. cit., at p. 206).

One crucial difficulty in the present case is the necessity

to make a delicate assessment related to a given moment and in a

national context of complex psychological factors and to arrive at

valid impressions of personalities and human relations. Another

difficulty is to balance conflicting private interests and public

obligations.

Since the rationale for the doctrine of margin of

appreciation is that national authorities are deemed to be in a

better position than the international judge to determine whether

interferences with defined human rights are "strictly required", it

is useful in this case to compare the proceedings before the Swedish

courts and the proceedings before the Strasbourg Court - in the

manner in which they actually occurred.

From the decision of the Chairman of the Social Committee

no. 1 of the Social Council at Växjö on 5 June 1985 until the last

decision maintaining the care order (the County Administrative

Court's judgment of 17 February 1988), the case of Margareta and

Roger Andersson, in a unique sequence of proceedings, came six times

before the County Administrative Court, three times before the

Administrative Court of Appeal and three times before the Supreme

Administrative Court. The representative of the Government stated

at the hearing before the Strasbourg Court that the decisions of the

Swedish courts were unanimous. Oral proceedings were regularly held

before the two instances of first and second degree. On most

occasions, Margareta Andersson was present and examined by the

County Administrative Court and the Administrative Court of Appeal.

She was assisted by counsel under the Legal Aid Act

(rättshjälpslagen), while Roger was represented by official counsel

(offentligt biträde). Social welfare officers represented the

Social Council. Two witnesses testified before the County

Administrative Court, which also heard as expert witness, in two

different proceedings, the Deputy Chief Doctor of the Children's and

Juveniles' Psychiatric Clinic at Växjö.

Margareta Andersson attended the short hearing before the

Strasbourg Court, but she remained silent. Thus, the Court did not

have the benefit of listening directly, as the "principle of

immediacy" requires, to statements by Margareta Andersson herself,

nor did the Court hear statements of social welfare officers or

testimony of witnesses.

In this respect, the representative of the Government stated

before the Court that if the facts upon which the judgments of the

national courts and the decisions of the social authorities were

based and the necessity of the interference were questioned, it was

the Government's view that witnesses should also testify before the

Strasbourg Court. Testimony by the social welfare officers and the

foster parents might be necessary in such a case. It would be a

very serious thing to disregard the decisions in question without

having access to such direct information.

In view of the procedural situation and with regard to the

nature and complexity of the factual issues to be decided in the

present case, the national authorities are, in my opinion, entitled

to a wide margin of appreciation. In this context, reference should

be made to the Brandstetter v. Austria judgment in which the Court

held: "According to [the Court's] case-law, it is, as a rule, for

the national courts to assess the evidence before them" (judgment of

28 August 1991, Series A no. 211, p. 23, para. 52). A similar approach

is to be found in the markt intern Verlag GmbH and Klaus Beermann

judgment: "... the European Court of Human Rights should not

substitute its own evaluation for that of the national courts in the

instant case, where those courts, on reasonable grounds, had

considered the restrictions to be necessary" (judgment of

20 November 1989, Series A no. 165, p. 21, para. 37).

The situation was different in the Olsson case, concerning,

inter alia, the implementation of care decisions in respect of the

three Olsson children. There the crucial point of fact was not

disputed, i.e. that Helena and Thomas were placed at a great

distance from their parents and from Stefan. From these facts the

Court concluded that the very placement of the children adversely

affected the possibility of contacts, in a manner inconsistent with

the ultimate aim of reuniting the Olsson family (Olsson v. Sweden

judgment of 24 March 1988, Series A no. 130, pp. 36-37, para. 81).

The representative of the Government stressed throughout the

Strasbourg proceedings that although the Swedish decisions imposed

prohibitions on access, including contact by telephone and

correspondence, such prohibitions were not as categorical as it may

appear. The social welfare authorities could always "allow visits

or other forms of contacts to the extent it [was] deemed possible

without risking the purpose of the care or without risking harm to

the child's welfare". (See, also, paragraph 44 of the judgment).

Specifically, as to the restrictions on communication by

correspondence and telephone, the following statements by the

representative of the Government before the Commission are of a

certain relevance: "Mrs Andersson always had the possibility of

talking to the foster parents and to the extra foster home and also

to Roger's teacher so as to keep herself informed about Roger's

health and development. She also made use of the possibility and

often talked to the foster parents, as well as the extra foster

parents ... To what extent it has been possible for Roger to

contact his mother by phone is not known for certain to the

Government" (verbatim record of hearing on 10 October 1989, p. 8;

see, also, paragraph 28 of the judgment). Indeed, the effect of the

restrictions on communications in this particular case are difficult

to measure, since there must have been several easy ways of avoiding

such restrictions.

Since the reasons for the care decisions and those for the

restrictions on access, including telephone communication and

correspondence, are to a great extent similar, it should not be

overlooked that the Commission declared the complaints related to

the care decisions inadmissible as being manifestly ill-founded (see

paragraph 90 of the judgment). On the merits of the case, the

Commission never reached any decision on the necessity of the

restrictions on access and on telephone communication and

correspondence.

In the light of the considerations set out above, and since

there is no reason to doubt that the Swedish courts exercised their

discretion carefully and in good faith and on the basis of an

adequate knowledge of the facts, I am not prepared to find that the

temporary restrictions on access, including telephone communication

and correspondence, imposed by the national authorities in their

privileged position, overstepped the limits of what might be deemed

necessary in a democratic society within the meaning of

Article 8 para. 2 (art. 8-2).

I therefore consider that no violation of the requirements of

Article 8 (art. 8) has been established.

PARTLY DISSENTING OPINION OF JUDGE DE MEYER, JOINED BY

JUDGES PINHEIRO FARINHA, PETITTI AND SPIELMANN

(Translation)

In our opinion, the present case gave rise to a breach of

Article 13 (art. 13) of the Convention in respect of Roger

Andersson.

As a result of the prohibition on the applicants from having

access to each other, the child's entitlement to be represented by

his mother could not be effectively used with a view to exercising

the right to a remedy guaranteed by this provision.