



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF LEVIN v. SWEDEN

(Application no. 35141/06)

JUDGMENT

STRASBOURG

15 March 2012

FINAL

24/09/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Levin v. Sweden,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Dean Spielmann, *President*,

Elisabet Fura,

Karel Jungwiert,

Mark Villiger,

Ann Power-Forde,

Ganna Yudkivska,

André Potocki, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 7 February 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 35141/06) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Swedish national, Ms Eleonor Levin (“the applicant”), on 21 August 2006.

2. The applicant, who had been granted legal aid, was represented by Ms B. Wallman, a lawyer practising in Örebro. The Swedish Government (“the Government”) were represented by their Agent, Mr B. Sjöberg, of the Ministry for Foreign Affairs.

3. The applicant alleged a breach of Article 8 of the Convention in relation to the contact restrictions following the taking into public care of her three children.

4. On 20 January 2009 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the contact restrictions to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. On 1 February 2011 the Court changed the composition of its Sections (Rule 25 § 1 of the Rules of Court) and the above application was assigned to the newly composed Fifth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1967 and lives in Norway.

A. Background and taking into public care

7. The applicant is the mother of three children, T. born in October 1999, S. born in March 2001 and D. born in November 2002. In March 2003, the applicant separated from the children's father, B., and she was eventually granted sole custody of the children, while B. was granted contact rights. The applicant married J. in November 2004.

8. The applicant and her children have been known to the social services since 2002 when a first investigation into their home environment was carried out. During March and April 2005, the personnel at the children's day care centre felt that the applicant was distracted and stressed and the children were hungry and dirty when they arrived at day care in the mornings and were behaving in a wild and hyperactive manner. In view of this, they reported the situation to the social services in Skellefteå. In March the applicant herself contacted the Child and Youth Psychiatric Clinic (*Barn- och ungdomspsykiatrin*; hereafter "BUP") for help, as she considered the situation to be chaotic and she needed help for her son, S., who she claimed destroyed everything at home. BUP reported the family's situation to the social services.

9. On 3 May 2005 the applicant contacted BUP in a state of despair and, in response, a social emergency unit (*social beredskap*) went to the applicant's home, accompanied by police and a chief physician from the adult psychiatric clinic. The authorities found the interior of the home completely destitute; there was hardly any furniture and there was no electricity or running water. The applicant was in a confused state and blamed the mess in the house on S. The social emergency unit decided immediately to place the children, together with the applicant, in a temporary family home (*jourfamiljehem*)¹. On the following day, the applicant was committed to compulsory psychiatric care in accordance with the Act on Compulsory Psychiatric Care (*Lagen om psykiatrisk tvångsvård*, 1991:1128). The applicant claimed that she was not ill but agreed to the

¹ A family home (*familjehem*) is responsible for providing the daily care of the child. However the primary responsibility for the child lies with the social authorities and important decisions concerning the child are made jointly by the social authorities, the biological parents and the family home parents.

placement of the children in the temporary family home. A week later, she was released from psychiatric care and returned to her home.

10. During the summer of 2005 the applicant had frequent contact with the social services. However, she felt misunderstood and harassed by the authorities and wanted to bring her two daughters, T. and D., home. As the social services insisted that the situation was not stable enough for the girls to return to the applicant, she withdrew her consent to their voluntary placement. Hence, the Social Council (*socialnämnden*) in Skellefteå decided to take T. and D. into public care immediately on a provisional basis, pursuant to section 6 of the Act with Special Provisions on the Care of Young Persons (*Lagen med särskilda bestämmelser om vård av unga*, 1990:52; hereafter “the 1990 Act”). The council considered that the measure was necessary in order to protect the children. It also noted that there had been chaos every time the applicant had met with the children during the summer or when she had appeared, often unannounced, at their day care centre, leaving them upset and sad.

11. The applicant, who was represented by legal counsel, opposed the measure but, on 31 August 2005, the County Administrative Court (*länsrätten*) of Västerbotten confirmed the decision of the Social Council.

12. On 19 September 2005 the Social Council applied to the County Administrative Court for a permanent care order in respect of all three children, in accordance with section 2 of the 1990 Act. The council maintained that the applicant had shown a serious lack of ability to care for her children. It submitted a comprehensive investigation report into the family’s situation in support of its request according to which all three children had worn nappies when they arrived at the temporary family home, although T. only at night, and they had been dirty and had an endless appetite. Moreover, T. had no limits towards adults and wanted to control everything and everyone around her. S. had nightmares and had been afraid of sudden movements. He acted in a very stressed and anxious manner when his mother was present. D. had been late in her speech and motor development. The applicant had not been able to set limits for her children and the situation when they met had always become out of control.

13. The applicant disputed the measure and claimed that she was capable of caring for her children, who suffered from being separated from her.

14. By judgment of 19 October 2005, after having held an oral hearing, the County Administrative Court granted a permanent care order in respect of each of the three children. It found that, on the basis of all the material in the case, it had been shown that the applicant lacked the ability to care for her children, which had already somewhat impaired their health and development, and that there was a serious risk of further damage unless they were given proper care. Since the applicant did not agree to voluntary care, it was necessary to take the children into public care on a permanent basis.

15. The applicant appealed against the judgment to the Administrative Court of Appeal (*kammarrätten*) in Sundsvall. She had realised that it was not S., but her husband J., who had been responsible for all the destruction in their home. J. had admitted this and they had divorced. However, she did not consider that the children had suffered from this error, although she felt sorry for S. and would have liked to talk to him about it.

16. The Social Council contested the appeal. In its view, the children's behaviour showed that their development had already been harmed and, moreover, the applicant had no insight into her problems and had difficulties in interacting with her children.

17. On 9 January 2006 the Administrative Court of Appeal upheld the lower court's judgment in full. In its opinion it was evident that the children had not received proper care at home. Moreover, the applicant had shown signs of mental ill-health and had behaved in an unbalanced manner. Thus there had been a real risk of damage to the children's health and development. Furthermore, although the court acknowledged that the situation had improved in that the house had been renovated and the applicant had divorced J., it found that the situation was far from being stable, having regard to the serious flaws which had existed, the uncertainty as to whether they still existed and the children's need for care.

18. The applicant appealed to the Supreme Administrative Court (*Regeringsrätten*) which, on 23 February 2006, refused leave to appeal.

B. Contact restrictions

19. Following the granting of the public care order in August 2005, the applicant had contact rights to visit T. for one hour, once every other week, and spoke with her on the telephone once a week. She met S. once every third week in the presence of the social services and she had contact rights to visit D. for one hour every week. In May 2006 the applicant moved to live with her sister in Göteborg, located approximately 1,100 km from Skellefteå, and as a result she travelled to Skellefteå to see her children roughly once a month.

20. In October 2005, the children were placed in three different family homes, all within approximately 50 km of Skellefteå, as one family was not able to provide the care and support that each child needed. However, it was arranged for the children to meet each other approximately once a month to ensure continued good contact between them.

21. In November 2006 the applicant, through her legal counsel, requested the Social Council to allow her more time with her children as she felt that the children were being deprived of contact with her.

22. On 11 December 2006 the Social Council decided to restrict the applicant's contact rights to all three children. It first noted that the children's father, B., had also requested contact rights to the children and

that his contact rights had to be taken into account when deciding on the frequency of the applicant's contact rights, balanced against the best interests of the children. Thus, according to the decision, each parent should meet with the children once every three months in a neutral environment where the family home parents and the social worker responsible for the file should be present. This meant that the applicant would meet her children once every six months.

23. The decision was based on an investigation carried out by the Social Council, in consultation with BUP, into the children's situation. It was finalised on 1 December 2006 and concluded, *inter alia*, the following. All three children had suffered severe harm to their health and development because of the deficiencies in the applicant's ability to care for them. They were vulnerable and sensitive to change. However, since the permanent care order, T. had slowly become more calm and balanced and had started to learn how to play. She and the applicant had been alone during their meetings and had done various things such as going to the playground, the swimming pool or a restaurant. T. had been very tired after the meetings and she had slept badly and wet her bed. After telephone conversations with the applicant, T. had also been anxious and sad. As regards S., he had become calmer and more relaxed since placed in the family home. He still had difficulties sleeping and suffered from stomach pains and vomiting before and after contact with the applicant, despite the meetings having been very structured and held in the presence of the family home father. S. showed clear signs of fear of his mother and he had expressed a fear that she would come and fetch him. Turning to D., it was observed that she had met with the applicant and that they had usually been alone, playing together. After contact with the applicant, D. used to be worried about things the applicant had told her and she regressed somewhat in her development for a few days after each meeting, wetting her bed and having difficulty sleeping. The Social Council concluded in its investigation report that the children had a right to contact with their mother but that their best interests required that the contact be limited in order to ensure their secure and positive development.

24. The applicant appealed to the County Administrative Court and requested that she be granted contact rights to her children much more often than only twice a year. She could see no reason for such restricted contact and found it to be contrary to the best interests of the children as they would forget their mother. They had lived with her until May 2005 and they had had a close and warm relationship. She agreed that the children should also see and get to know their father but considered that this should not limit her contact with them. Moreover, she referred to a custody report, dated 28 February 2005, which had been carried out in connection with the custody proceedings following the divorce from B. In the summary of the report it was stated, *inter alia*, that nothing had appeared to call into

question the applicant's ability as a parent to care for her three children and that personnel at the children's day care centre had stated that the children seemed to receive the care they needed from the applicant.

25. The Social Council contested the appeal. It submitted that the children were currently in the process of developing and learning things that they had not had the opportunity to learn before and it was important that this process should not be interrupted, which was the effect of their contact with the applicant. Consultation had taken place with BUP, which agreed with the Social Council that contact restrictions were necessary in order to ensure a positive development for the children. Moreover, it noted that the last meeting between the applicant and her children, on 23 January 2007, had passed without incident, partly because eight adults had been present to ensure the children's well-being.

26. On 2 April 2007 the County Administrative Court rejected the appeal. It noted that a supplementary custody report, dated 25 August 2005, stated that it was clear that there were major flaws in the applicant's ability to care for her children. Thus, having regard to the fact that the children had been feeling ill and anxious in connection with and after their contacts with the applicant, and that they needed time to develop in peace in their family homes, the Social Council had been justified in restricting the applicant's contact rights to her children to twice a year.

27. The applicant lodged an appeal with the Administrative Court of Appeal, maintaining her claims and adding that she wished to see her children at least once a month in order to ensure that they would not forget her. She felt that the family home parents had a negative attitude towards her and that this influenced the children.

28. On 11 October 2007, after having held an oral hearing, the Administrative Court of Appeal upheld the lower court's judgment in full. It noted that BUP had been consulted by the Social Council before its decision.

29. Upon further appeal by the applicant, the Supreme Administrative Court refused leave to appeal on 10 December 2007.

30. Every three months, the Social Council reconsidered the contact restrictions and decided to maintain the restrictions in place. It would appear that the applicant did not appeal against these until the council's decision of 11 August 2008 which she appealed against to the County Administrative Court, requesting that her contact rights to her children be increased to one visit per month to begin with and, after three months, to spend one weekend a month with them alone. She stated, *inter alia*, that she had moved to Norway, found a job and was in a steady relationship with a new man, and thus, felt very well.

31. In its decision, the Social Council had observed that despite the applicant's visits having been planned and very structured, the children had still had negative reactions before and after each meeting in the form of

anxiety, stomach aches, bedwetting, becoming insecure and regressing in their development. It further noted that during the visit in December 2007, the applicant's mother had also been present which had been a positive addition. She had expressed a wish to see her grandchildren once a year, to which the council agreed. It also noted that the applicant had sent postcards and letters to the children which they appreciated. As concerned the visits, the council observed that they were always very well planned and structured with the support of the family homes and that the applicant and the children played together, ate and talked. The family homes also showed photos and films from the children's meetings and their activities.

32. On 14 November 2008 the court, after having held an oral hearing, decided to increase the applicant's contact with her children to four times per year, for four hours each time. It noted that the limited contact had been in place for roughly two years and had contributed to the children developing positively during this time. Although it agreed with the Social Council that continued limitations on the applicant's contact with her children were necessary due to the children's needs, it noted that the applicant had not interfered in an inappropriate manner in the care of her children. Moreover, the last two times they had met had generally gone well. Therefore, the court found that with the support of the Social Council and the family homes during the meetings, these could be increased to four times per year for the applicant. In its view, this would provide the children with a good contact with their mother while not jeopardising their continued development.

33. The applicant appealed to the Administrative Court of Appeal, maintaining that she wanted contact rights with her children during one weekend per month, without the presence of others, in order to ensure that she and the children would establish a good contact.

34. The Social Council contested the appeal and maintained the reasons set forth in its decision.

35. The Administrative Court of Appeal requested the Social Council to obtain the children's point of view on increased contact with their mother. Consequently, the council met with the children individually but in the presence of their family home parents where they spoke about various things, including how they felt about seeing their mother more often. T. said that she did not want to meet her mother more than twice a year and that she did not want to be alone with her or stay with her. According to T., the meetings were very tiresome, demanding, she had a headache and could not concentrate in school before and after the meetings. She started crying and had a stomach ache during the conversation for which reason they had to cut it short. Following the conversation, she wet her bed at night, cried a lot and said that she was afraid. As for S., he did not want to talk about his mother. He reacted in a negative, frightened manner and almost started crying. He later said that he only wanted to see her once a year and that he did not want

to be alone with her. It was noted that he was very anxious and afraid to meet his mother and had strong physical reactions both before and after the meetings, including stuttering, becoming aggressive and being afraid of physical contact. Turning to D. she said that she became tired when meeting her mother and siblings but that it was nice to dress up and eat good food. It was noted that D. was the most positive about the meetings with the applicant but that she did not want to meet with her alone. Moreover, the negative reactions that she had had during earlier meetings had improved somewhat.

36. In February 2009 the applicant voluntarily underwent a neuropsychological examination during two days at Stavanger University Hospital, upon request by the Social Council. The council wanted to know if the applicant suffered from a disorder or mental illness and, if so, what support she would need. The examination concluded that the applicant fulfilled the criteria for Attention Deficit Hyperactivity Disorder (ADHD) that was mainly inattentive in nature. It recommended supplementary examinations and made a number of proposals for supportive measures, including establishing fixed structures and routines in her daily life. It was also stressed that this specific impairment of her capabilities could hardly be sufficient to “disqualify her as a parent”.

37. On 7 May 2009 the Administrative Court of Appeal upheld the lower court’s judgment in full. It concluded that it would not be in the best interest of the children to increase the applicant’s contact rights further than decided by the lower court, in particular due to the negative reactions of T. and S. before, during and after the meetings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

38. According to section 1 § 2 and section 2 of the 1990 Act, compulsory public care is to be provided if there is a clear risk of impairment of the health and development of a person under 18 years of age due to ill-treatment, exploitation, lack of care or any other condition in the home and if the necessary care cannot be provided with the consent of the child’s guardian. The decision to place a child in public care is made by the County Administrative Court following an application from the Social Council (section 4).

39. Chapter 1, section 2 of the Social Services Act (*Socialtjänstlagen*, 2001:453; hereafter the “2001 Act”) provides that particular attention must be given to the best interests of the child when measures within the social services affect him or her. Likewise, Section 1 § 5 of the 1990 Act states that the best interests of the young person shall be decisive when decisions are made under the Act. Moreover, Section 1 § 6 of the 1990 Act prescribes that the young person’s point of view shall, as far as possible, be clarified

and that the young person's will shall be taken into account, with due consideration to his or her age and maturity.

40. According to section 11 of the 1990 Act, the Social Council decides on the details of the care, in particular, how the care is to be arranged and where the young person is to live. Moreover, under section 14, the council shall ensure that the young person's need for contact with his or her parents or other guardians is met to the utmost possible extent. If necessary, the council may decide how this contact is to be arranged. In the preparatory works to the 1990 Act (Government Bill 1979/80:1, p. 602), it is noted that the provisions on contact restrictions are to be applied restrictively. The Social Council must have strong reasons to decide on contact restrictions between a young person and his or her parents. However, it can happen that the parents intervene in the care in an inappropriate manner. Their personal situation, for instance serious abuse or a grave mental illness, may be such that they should not see their child for a limited period of time.

41. According to Chapter 6, section 1 of the 2001 Act, care outside a young person's home shall be provided either in a family home or in a home for care and residence. Moreover, the care should be designed to promote the affinity between the young person and his or her relatives and others closely connected to him or her, as well as contact with his or her home surroundings.

42. Contact restrictions shall be reviewed every third month by the Social Council pursuant to section 14 of the 1990 Act. Appeal against the council's decision in this respect lies to the administrative courts (section 41).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

43. The applicant complained that the limited contact rights to her three children violated her rights under Article 8 of the Convention, which in relevant parts reads as follows:

“1. Everyone has the right to respect for his ... family life ...

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.”

A. Admissibility

44. The Government submitted that the applicant had failed to exhaust domestic remedies available to her since, in the new proceedings concerning the contact restrictions, the applicant could appeal against the Administrative Court of Appeal's judgment of 7 May 2009 to the Supreme Administrative Court.

45. The Court notes that the applicant's complaint before the Court relates to the contact restrictions imposed on her by the Social Council's decision of 11 December 2006 against which she appealed to the Administrative County Court and then further to the Administrative Court of Appeal and, lastly, to the Supreme Administrative Court which refused leave to appeal on 10 December 2007. Thus in relation to her complaint before the Court, the applicant must be considered to have exhausted domestic remedies. The fact that domestic law prescribes that contact restrictions shall be reviewed by the Social Council every three months, and that appeal against its decision in this regard lies to the administrative courts, does not alter this conclusion. In the Court's view, these subsequent proceedings may be taken into account by the Court in the consideration of the merits of the case but cannot have an influence in determining the formal admissibility criteria. It follows that the Government's objection must be dismissed.

46. The Court further notes that the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Parties' submissions

(a) The applicant

47. The applicant submitted that since her children had been taken into compulsory public care, she had taken all possible legal action for contact with her children. She stressed that she was a kind and loving mother who cared for her children and wanted to be reunited with them. However, the Social Council had shown little or no interest in keeping her informed about her children's development and their situation. She had not received information from either the council or the family homes about her children and she was not even allowed telephone contact with them. Moreover, the council's contact with her was extremely rare and it knew nothing about her current life and situation. In this connection, the council had not made any changes in their approach towards her despite having received the

neuropsychological report (see § 36 above) in which the doctors had made certain recommendations on how better to interact with her.

48. In her view, it was important to note that, in a report in relation to custody proceedings in February 2005, the same Social Council had found that there were no circumstances to question her ability to care for her children. In the same report, the children's day care centre had stated that the children received the care they needed from her and the personnel spoke positively about her commitment to her children. The family situation had changed because of her former husband, J.'s, mental illness and the destruction of their home had been a terrifying experience. The children had been taken into care during this dramatic period and she had so far not been able to explain to her children what had really happened.

49. She further noted that the opinions by BUP were not based upon actual meetings and examinations of the children but upon information from the Social Council. This meant that the opinion of BUP could have been influenced by the attitude of the council towards her. Moreover, the assessment of the children referred to by the Social Council and the Government dated back to 2006.

50. The applicant considered that her contact with the children was unnatural as she was never allowed to be alone with them. The six family home parents as well as two social workers were always present. Moreover, she felt uncomfortable as the visits were held in public places, such as a restaurant, although it was a very private matter. In the applicant's view, this could not be in the best interest of the children. The authorities were responsible under the 1990 Act to ensure that the children's need for contact with their parents was met and it was important that this happened in a more natural way and more often.

51. In conclusion, the applicant maintained that the restricted contact rights to her children violated her right to respect for her family life under Article 8 of the Convention.

(b) The Government

52. The Government acknowledged that the contact restrictions constituted an interference with the applicant's right to respect for her private and family life but that these limitations were in accordance with the law, pursued a legitimate aim and were necessary in a democratic society. They stressed that it was the best interests of the children which were of crucial importance and that the domestic authorities had constantly based their measures on the established need to protect the children, having regard to the applicant's conduct and behaviour and their negative reactions to this. Here the Government observed that each meeting with the applicant had been trying for the children and that the applicant's behaviour had made them feel scared, bad or ill at ease and that they had reacted in different ways to the visits, *inter alia*, through sleeping difficulties, bed wetting,

anxiety and depression. Moreover, an extension of the visits would have been against the expressed will of the children. Therefore, the Social Council had feared that the visits would ultimately be detrimental to the children's well-being and contrary to their best interest.

53. According to the Government, the authorities had strived at all times to find a proper balance between, on the one hand, the applicant's interest in having contact with her children and, on the other hand, the children's interest in enjoying the good parts of their contact with the applicant and at the same time being protected from the negative sides of this contact. In this respect, the Government underlined that one starting point for the 1990 Act was the child's right of contact with his or her parents and not the parents' right of contact with the child as reflected in the United Nations Convention on the Right of the Child, in particular, its Article 9 § 3.

54. Moreover, the Government noted that the Court has repeatedly held that its task is not to substitute itself for the domestic authorities but rather review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (*Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55). In line with this, they stressed that the national authorities had benefited from direct contact with the applicant and the children, as well as the family homes, in different situations and constellations. The contact restrictions had also gained support from a number of consultations with BUP which had provided several expert opinions over the years. Furthermore, the Social Council had carried out their investigations in the case with all due care and had reviewed their decision, as required by law, every three months. Thus, the issue of the applicant's parental ability had been examined anew frequently and at regular intervals. In the Government's view, it would be hard to question the assessments made by the domestic authorities without having had the benefit of the insight into the case accrued by these authorities.

55. Lastly, the Government noted that, in November 2008, the applicant had been granted increased contact rights with her children in that she was allowed to meet them four times a year for four hours each time.

56. Having regard to all of the above, the Government considered that it was evident that the domestic authorities' decisions and judgments had been taken in the best interest of the children and that they had been based on reasons that were both relevant and sufficient for the purpose of Article 8 § 2 of the Convention and within their margin of appreciation.

2. *The Court's assessment*

57. The Court notes from the outset that, according to well established case-law, the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (see, among other authorities,

K. and T. v. Finland [GC], judgment of 12 July 2001, *Reports* 2001-VII, § 151). The Social Council's decision, confirmed by the national courts, to restrict the applicant's contact rights to her children, amounted to an interference with the applicant's right to respect for her family life as guaranteed by Article 8 § 1 of the Convention. Any such interference constitutes a violation of this Article unless it is "in accordance with the law", pursues an aim or aims that are legitimate under Article 8 § 2 and can be regarded as "necessary in a democratic society".

58. The Court is satisfied that the impugned measure had a basis in national law, namely the 1990 Act, and aimed at protecting the "health and morals" and the "rights and freedoms" of the children.

59. In determining whether the measure was "necessary in a democratic society", the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify it were relevant and sufficient for the purposes of Article 8 § 2 (see, *inter alia*, *Kutzner v. Germany*, no. 46544/99, § 65, ECHR 2002-I). Account must also be taken of the fact that the national authorities have the benefit of direct contact with all persons concerned (see *Olsson v. Sweden (no.2)*, judgment of 27 November 1992, Series A no. 250, § 90). Thus, it is not the Court's task to substitute itself for the domestic authorities in the exercise of their responsibilities regarding public care and contact but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see, for instance, *Hokkanen v. Finland*, cited above, § 55; and *Johansen v. Norway*, judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-III, § 64).

60. Still, the Court reiterates that, following any removal into care, stricter scrutiny is called for in respect of any further limitations by the authorities, for example on parental rights or contact, as such further restrictions entail the danger that the family relations between the parents and a young child are effectively curtailed (see *Johansen v. Norway*, cited above, § 64, and *Kutzner v. Germany*, cited above, § 67).

61. Moreover, as regards the extreme step of severing all parental links with a child, the Court has taken the view that such a measure would cut a child from its roots and could only be justified in exceptional circumstances or by the overriding requirement of the child's best interests (see *Johansen*, cited above, § 84, and *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX).

62. Turning to the present case, the Court notes from the outset that the Social Council has consistently strived to keep the contact between the applicant and her children, the children and their father, B., as well as between the three children. Thus, it is apparent to the Court that the Social Council has at no point taken any measures to sever all links between the family members or had any such intentions. On the contrary, it appears to have continuously tried to find a balance where the interests of all parties

are taken into account to ensure that the various family members can maintain contact and develop their relationship in a positive manner. In this respect, the Court observes that the three children meet each other with their family home parents approximately once a month, as well as when they meet the applicant and B. Moreover, B. meets the children twice a year and the applicant's mother has also been present at some of the applicant's meetings with the children. During the meetings with their parents, the children and their family homes show photos and films of their activities to include their parents in their lives. Furthermore, it would seem that all family members are free to send and receive letters and postcards from each other. The Court also notes that the applicant and B. remain the legal guardians of the children and that the Social Council has taken no measures to transfer this right to the family homes. In these circumstances, the Court finds no reason to question that the ultimate goal of the Swedish authorities is to improve the relationship between the applicant and her children in order for them one day to reunite or at least have a good and close relationship.

63. As concerns the limitations on the applicant's contact rights to her children, the Court notes that when the children were first taken into public care in August 2005, the applicant met T. for one hour, once every two weeks, and spoke with her on the telephone once a week. She met S. once every third week in presence of the social services and she saw D. for one hour every week. After she moved to live with her sister in Göteborg in May 2006, the applicant travelled to see her children approximately once a month until the restrictions complained of to the Court were imposed in December 2006. These restrictions, which limited the applicant's contact with her children to twice per year, were in place for approximately two years from the Social Council's decision of 11 December 2006, upheld by the administrative courts, and until the County Administrative Court's judgment of 14 November 2008 when it decided to increase the contact to four visits per year, a judgment upheld by the Administrative Court of Appeal.

64. The Court agrees with the applicant that these restrictions were severe and it does not question that this period was difficult for the applicant as she would have liked to see her children more often. However, when deciding whether or not the measure violated the applicant's rights under Article 8 of the Convention, the Court has to balance the interest of the applicant to have increased contact with her children against the interests of the children to have a secure and stable environment in which to develop. In doing so, the Court attaches particular importance to the best interests of the children which, depending on their nature and seriousness, might override those of the applicant. In essence, it is the best interest of the children that is of crucial importance (*Johansen v. Norway*, cited above, §§ 64 and 78).

65. In this respect, the Court would like to highlight the following from the assessments and findings of the domestic authorities and courts. When the children were taken into public care in 2005, their health and development had already been harmed by the lack of care in their home. Thus, they had to be placed in different family homes as one family home could not provide the care and support that each child needed. Moreover, from the very negative physical and mental reactions of the children before, during and after meetings with the applicant, notably their anxiety, bed wetting, nightmares and the regression in their development, the domestic courts found that the applicant's contact rights had to be limited in order to protect the children from further harm to their development and health and to ensure that they would have some stability and calm in their daily life. This was also found to be necessary so that the children could begin to evolve in those areas where they were lacking and to develop positively without the regular set-backs that the meetings with their mother entailed.

66. Moreover, the Court notes that the children's father, B. had also requested contact with them on a regular basis. Since he was their legal guardian jointly with the applicant, he had the same right to contact with the children as her. However, it is clear to the Court that this must have been an added stress factor for the children since they had very few, if any, memories of B., not having seen him since their parents divorced in 2003. Thus, in order not to cause too much anxiety and upset for the children, the Social Council had to balance the interest of each parent to see their children against the children's continued positive development, resulting in fewer visits for each parent, which the Court finds to be a logical solution to ensure that the best interest of the children was protected.

67. Here the Court would like to point out that the children's own opinion about how often they wanted to see their mother was obtained upon request by the Administrative Court of Appeal in the proceedings where contact was increased to four times per year. They expressly stated that they did not want to see their mother more than twice a year and they did not want to see her alone or stay with her. In particular T. and S., at the time nine and seven years old, were very negative in their reactions toward their mother and S. even showed clear signs of fear of his mother. This cannot, according to the Court, be ignored or trivialised, in particular because it reflects the negative reactions that the children have displayed since the initial visits by their mother following their placement in public care.

68. Lastly, the Court notes that the applicant has been represented by legal counsel throughout the proceedings at the national level, ensuring that her interests have been taken into account and protected. Moreover, it observes that the national courts have recognised, through the increased contact rights, the improvements in the applicant's living situation and in the fact that she has not intervened inappropriately in the care of her children. In this respect, it also notes that the Social Council continuously

reconsiders the applicant's contact rights every third month and provides her with a written decision, which includes the council's evaluation of each child and its reasons for the decision. Although the applicant could appeal against each of these decisions, she did not do so until the decision of 11 August 2008 and then the County Administrative Court increased her contact rights to four times a year. In the Court's view, it cannot be ruled out that had she appealed against one of the earlier decisions by the Social Council, she might have been granted increased contact rights sooner. In any event, this avenue continues to be open to her if she is dissatisfied with the Social Council's decisions.

69. All of the foregoing considerations are sufficient to enable the Court to conclude that the imposed contact restrictions were taken to protect the best interests of the children and that this interference with the applicant's rights was therefore proportionate to the legitimate aim pursued and within the margin of appreciation of the domestic authorities. There has accordingly been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares* the application admissible unanimously;
2. *Holds* by 6 votes to 1 that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 15 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Power-Forde is annexed to this judgment.

D.S.
C.W.

DISSENTING OPINION OF JUDGE POWER-FORDE

1. I am unable to join the majority in finding no violation of Article 8 of the Convention in this case. Child care proceedings are complex and a wide margin is granted to the domestic authorities in taking a child into public care. However, this Court cannot abandon its supervisory role, particularly where a serious and permanent interference with the right to respect for family life has occurred. Once admitted into public care, a stricter scrutiny is called for in respect of any further limitations, such as, restrictions on parental rights of access.

2. I have two difficulties with this case. The first pertains to the speed with and extent to which parental access to the children was reduced which, for me, raises a serious question as to proportionality; the second relates to the failure on the part of the authorities to discharge their positive duty to take measures to facilitate family reunification (see *X v. Croatia*, no. 11223/04, 17 July 2008; *K.A. v. Finland*, no. 27751/95, 14 January 2003; and *R. v. Finland*, no. 34141/96, § 89, 30 May 2006).

3. During a difficult period of crisis in her life, the applicant, a vulnerable and concerned mother, telephoned the social services in May 2005 to seek help in coping with her three young children—then aged 6, 4 and 3 years, respectively. That she took the initiative in protecting her children from her own temporary inability to care for them is an important factor in this case. There was no history of criminal conduct, substance abuse or sexual abuse but the children were, clearly, neglected and in need of immediate attention. Correctly, in my view, the Swedish authorities responded and sought a temporary care order.

4. What I find disturbing in this case is that within some 20 weeks of that initial call for help being made, a decision was taken by the social services regarding long term placement of the children and a *permanent* care order was sought. I am aware that the complaint concerning the making of that order has previously been declared inadmissible but the complaint concerning the contact restrictions which flowed therefrom is not. After the permanent order was granted, the entire family was broken up. Within seven months of that initial call for help, the three children were separated and sent to live in different homes. Undoubtedly distressed, the applicant went to live with her sister but was prepared to travel over 1,000 kilometres every month in order to see her children. Indeed, she was willing to do so more frequently but her appeals for increased access were rejected (§§ 21 and 22 of the judgment).

5. To split up a family is an interference of a very serious nature (*X v. Croatia*, cited above, and *R. and H. v. the United Kingdom*, no. 35348/06, 31 May 2011) and should only be applied in exceptional circumstances. That a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit is a ‘guiding

principle’ in this Court’s case law under Article 8. Any measures implementing it should be consistent with the ultimate aim of reuniting the natural parent and the child (see *Olsson v. Sweden (no. 1)*, 24 March 1988, § 81, Series A no. 130, and *R. v. Finland*, cited above, § 89).

6. In *K.A. v Finland* (cited above, § 138) the Court noted that “*the possibilities of reunification may be progressively diminished and eventually destroyed if the biological parents and the child are not allowed to meet each other at all or only so rarely that no natural bonding between them is likely to occur*”. The speed with which the decision regarding long-term placement was made and the stringent restriction on access that flowed therefrom is a strong indicator that the possibility of reunification was never, seriously, considered let alone pursued. On any assessment, there appears to have been a manifest prematurity in deciding upon the future of this family. The restrictions imposed at such an early stage in the proceedings cannot but have significantly hindered any possibility of reunification and cannot have been consistent with what the Court’s case-law identifies as the ‘ultimate aim’ of care proceedings.

7. Rather than exploring ways of assisting and supporting the applicant to parent and care for her children, the authorities’ principal objective, from the outset, appears to have been the long term placement of the children and the maintenance of the restrictions imposed. This, they considered, to be in the children’s best interests having regard to their initial state of neglect and the obvious distress which seeing their mother provoked. However, one cannot but question whether it can ever be in a child’s best interests to have its established relationship with its biological mother ruptured so suddenly and contact with her reduced so radically within such a short period of time, particularly, in circumstances where the main problem in the family home was one of neglect – as distinct from serious violence or abuse. By bringing about such far-reaching and radical changes in the lives of three young children which saw them, suddenly, deprived of their mother’s care – (however temporarily inadequate that may have been) – the authorities cannot but have contributed to the emotional and psychological distress symptoms displayed by them whenever they met with their mother. Ironically, it was these very stress symptoms which were then relied upon by the authorities in support of their applications for the maintenance of such ongoing restrictions.

8. In accepting such grounds as the basis for maintaining severely limited parental access, the domestic courts appear not to have considered or assessed the social council’s own contribution to the children’s traumatic reaction upon seeing their mother. Furthermore, at no stage in the proceedings did the domestic courts hear the children themselves either directly or by way of video link. Whilst the Court of Appeal in 2008 directed that their point of view be obtained, there is a manifest want of independence in the manner in which this ‘evidence’ was ascertained – the

children being interviewed by only one of the parties to the proceedings (the council), in a non-neutral environment and in the presence of their substitute carers. The potential for a conflicted emotional response within the children (then aged 9, 7 and 6) was evident and yet no measures were taken to facilitate a more independent expert assessment of their feelings and wishes.

9. Furthermore, the domestic courts appear to have given little weight to the fact that after the period of personal crisis had ended, the applicant made a good recovery, found employment and stabilised her life situation. She complied, fully, with a request by the social council to undergo neuropsychological assessment. Despite the fact that the result of this assessment stressed that such impairment of her capabilities as existed ‘*could hardly be sufficient to disqualify her as a parent*’ – there has been no increase in parental access. She currently sees her children for just 16 hours per year (§ 32 of the judgment).

10. As in the case of *R. v. Finland* (cited above), I find that the picture which transpires from the facts of this case is one of ‘a determination on the part of the social authorities not to consider reunification’ of the applicant with her children as a serious option, instead firmly proceeding from a presumption (reached with significant speed) that the children would be placed in long-term foster care with severely restricted parental access. It is clear that when the applicant first contacted the social services, this family was in need of care and support. However, once they became involved, I cannot discern any serious and sustained effort on their part directed towards facilitating a possible family reunification, such as, could reasonably be expected for the purposes of Article 8 § 2 of the Convention.