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

COURT (PLENARY)

CASE OF H. v. THE UNITED KINGDOM

(Application no. 9580/81)

JUDGMENT

STRASBOURG

8 July 1987

In the case of H v. the United Kingdom*,

The European Court of Human Rights, taking its decision in plenary session in pursuance of Rule 50 of the Rules of Court and composed of the following judges:

Mr. R. RYSSDAL, *President*,
Mr. J. CREMONA,
Mr. Thór VILHJÁLMSSON,
Mr. G. LAGERGREN,
Mr. F. GÖLCÜKLÜ,
Mr. F. MATSCHER,
Mr. J. PINHEIRO FARINHA,
Mr. L.-E. PETTITI,
Mr. B. WALSH,
Sir Vincent EVANS,
Mr. R. MACDONALD,
Mr. C. RUSSO,
Mr. R. BERNHARDT,
Mr. J. GERSING,
Mr. A. SPIELMANN,
Mr. J. DE MEYER,
Mr. N. VALTICOS,

and also of Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 29 November and 1 December 1986, and 28-29 January and 26 May 1987,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The present case was referred to the Court by the European Commission of Human Rights ("the Commission") on 28 January 1986, within the three-month period laid down by Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). The case originated in an application (no. 9580/81) against the United Kingdom of Great Britain and

* Note by the Registrar: The case is numbered 3/1986/101/149. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

Northern Ireland lodged with the Commission on 3 September 1981 under Article 25 (art. 25) by a British citizen whose identity, having regard to the sensitive nature of the case, remains confidential.

2. The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request was to obtain a decision as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Articles 6 and 8 (art. 6, art. 8).

3. In response to the inquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicant stated that she wished to take part in the proceedings pending before the Court and designated the lawyer who would represent her (Rule 30).

4. On 19 March 1986, the President of the Court decided that in the interests of the proper administration of justice this case and the cases of O, W, B and R v. the United Kingdom should be heard by the same Chamber (Rule 21 § 6).

The Chamber of seven judges to be constituted included, as ex officio members, Sir Vincent Evans, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr. R. Ryssdal, the President of the Court (Rule 21 § 3 (b)). On 19 March 1986, the President drew by lot, in the presence of the Registrar, the names of the five other members, namely Mrs. D. Bindschedler-Robert, Mr. G. Lagergren, Mr. C. Russo, Mr. J. Gersing and Mr. J. De Meyer (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43).

5. In his capacity as President of the Chamber (Rule 21 § 5), Mr. Ryssdal consulted, through the Registrar, the Agent of the United Kingdom Government ("the Government"), the Delegate of the Commission and the applicant's lawyer on the need for a written procedure (Rule 37 § 1). Thereafter, in accordance with the President's orders and directions, there were lodged at the registry, on 13 August 1986, a memorandum of the applicant setting out her claim under Article 50 (art. 50) of the Convention and the memorial of the Government.

By letter of 21 October 1986, the Secretary to the Commission informed the Registrar that the Delegate would present his observations at the hearings.

6. On 23 October 1986:

(a) the Chamber decided under Rule 50 to relinquish jurisdiction forthwith in favour of the plenary Court;

(b) the President of the Court directed that the oral proceedings in this case and in the cases of O, W, B and R v. the United Kingdom be conducted simultaneously and that the same should open on 25 November 1986 (Rules 37 § 3 and 38);

(c) the Court decided that, in view of the exceptional circumstances, the hearings should be held in camera (Rule 18).

As regards points (b) and (c), the Court or its President, as the case may be, had previously consulted, through the Registrar, the Agent of the Government, the Delegate of the Commission and the representatives of the applicants.

7. The hearings were held in camera in the Human Rights Building, Strasbourg, on 25 and 26 November 1986. Immediately before they opened, the Court had held a preparatory meeting.

There appeared before the Court:

- for the Government
  Mr. M. WOOD, Legal Counsellor,
  Foreign and Commonwealth Office, Agent,
  The Hon. Michael BELOFF, Q.C.,
  Mr. E. HOLMAN, Barrister-at-Law, *Counsel*,
  Mr. R. AITKEN, Department of Health and Social Security,
  Mrs. A. WHITTLE, Department of Health and Social Security,
  Mr. H. REDGWELL, Lord Chancellor's Department,
  Mr. P. EVANS, Solicitor's Office,
  Gloucestershire County Council, *Advisers*;
- for the Commission
  Mr. H. DANELIUS, *Delegate*;
- for the applicant
  Miss H. MANNERS, Barrister-at-Law, *Counsel*,
  Miss J. ATKINSON, *Adviser*.

The Court heard addresses by Mr. Beloff for the Government, by Mr. Danelius for the Commission and by Miss Manners for the applicant, as well as replies to questions put by the Court and three of its members.

The Government filed various documents during or immediately after the hearings.

AS TO THE FACTS

I. Particular circumstances of the case

A. Background

8. The applicant is a British citizen, born in 1949. Her early life was marked by disruptive and aggressive behaviour, and she spent several periods in mental hospitals after drug overdoses and bouts of violence.

9. In March 1973, whilst in hospital, she married X, a compulsorily detained patient. They had difficulty in managing their financial affairs and were "manipulative" of staff and patients. Both were discharged from hospital in September 1974, but voluntarily remained as out-patients. In February 1975, the applicant rejoined her family and had a pregnancy terminated, but following her return to X was again admitted to a mental hospital. On 23 December 1975, she gave birth to A.

B. Place of safety and interim care orders; wardship of A

10. The local County Council ("the Council"), which had been involved in providing social-worker support to the applicant and X, considered that it was only a matter of time before A suffered if she remained with them. X was very frequently violent or abusive and the applicant was impulsive, unpredictable and liable to irrational outbursts; the help received from the social services was apparently not sufficient to reverse these behavioural patterns. Even the separation of X and the applicant, who on the advice of a welfare worker had been admitted to hospital with A as a voluntary patient on 26 January 1976, was not expected radically to alter the position.

11. The Council therefore applied to a juvenile court for a place of safety order (see paragraph 35 below) in respect of A. Such an order was made on 12 February 1976. On 26 February and 22 March, the juvenile court made interim care orders (see paragraph 41 below) in respect of the child and, on 24 March, following an application by the Council to the High Court, she became a ward of court (see paragraphs 51-53 below).

12. In April 1976, the applicant left X and subsequently, in September 1977, obtained a divorce from him.

C. Initial High Court proceedings concerning access

13. A was placed in a nursery where the applicant saw her for access seventeen times between the spring and autumn of 1976. During some of this period the applicant was in a home for battered wives, where she gave indications of violence on two occasions.

14. On 14 December 1976, the applicant applied, unsuccessfully, to the High Court pursuant to the wardship jurisdiction for staying access. Following a further application of 1 February 1977 to the High Court, she was permitted four hours' access once weekly, initially at the nursery and subsequently at her parents' home. Access visits occurred pursuant to this order until June 1977 and the applicant's overall handling of A was not open to serious criticism. She had in May of that year met H, whom she was later to marry and who had a very significant stabilising effect on her (see paragraph 17 below).

15. The applicant subsequently applied to the High Court pursuant to the wardship jurisdiction for care and control of A. During the four-day hearing, which ended on 24 June 1977, she altered her application to one for increased access, including staying access. The Council contended that the existing access arrangements should be retained but not increased. In a report dated 17 February 1977, the Official Solicitor, representing A as guardian ad litem (see paragraph 53 below), expressed no firm view but hoped that the recent improvement in the applicant's behaviour would continue. Evidence was given by four doctors, two (who had not met the applicant) on behalf of the Council and two on behalf of the applicant.

The High Court refused the application, terminated the applicant's access to A and committed A to the care of the Council under section 7(2) of the Family Law Reform Act 1969 (see paragraph 52 below). In the course of his judgment the judge made a recommendation, which was formally recorded in his order of 24 June 1977 and apparently reflected the evidence of one of the doctors and the final submission of the Official Solicitor, that A be adopted. This took the Council and the applicant by surprise as neither of them had dealt with this possibility in their pleadings. However, the applicant did not exercise her right of appeal (see paragraph 53 below).

16. It appears that in the light of this recommendation the Council decided within a short period to place A for adoption. On 21 September 1977, the adoption health forms were sent to the appropriate doctor for completion and, between then and 29 September, the relevant forms were also sent to the applicant. She received, inter alia, the Explanatory Memorandum required by the Adoption Agencies Regulations 1976, the first sentence of which reads: "This Memorandum must be given to the parent ... of a child who is about to be adopted", and she was therefore informed from this moment of the Council's decision. Indeed, it appears that on 29 September a social worker visited the applicant to discuss adoption and her refusal to sign the certificate at the end of the said Memorandum. At this time, the Council withdrew its social-worker support for the applicant, in the context of her relationship with A, since it was no longer envisaged that this relationship should be nurtured. The Council subsequently proceeded to seek - and ultimately, on 12 October 1978, found - prospective adopters.

D. Later High Court proceedings concerning access and adoption

1. Preliminary phase

17. On 24 October 1977, the applicant married H. Thereafter, her mental and physical position stabilised and, by January 1978, there were signs of a substantial improvement in her health. She and her husband persistently but unsuccessfully approached the Council with a view to re-

establishing contact between herself and A, who had remained in a residential nursery. Their interviews with the social services in late 1977 and early 1978 were marked by tension and a deterioration of relations with the social workers. In January 1978, the Council informed them that they would be told as soon as a placement for A was found, so that they could put their point of view in court.

18. In the light of their stable relationship, the applicant and H considered that the Council was unreasonable in refusing them access to A. They therefore instituted, on 13 November 1978, proceedings before the High Court pursuant to the wardship jurisdiction to re-establish access (see paragraph 53 below). According to the Local Ombudsman's report (see paragraph 31 below), they had, on their solicitors' advice, deferred making an approach to the courts so that they could show that the applicant's health had improved and that she had a stable home. The summons issued for access in favour of the applicant was due to be heard on 1 December 1978. On that day, the court ordered H to file evidence in support of the application within twenty-one days and the Council to file evidence twenty-one days thereafter. Leave was granted for A to be examined by a psychiatrist nominated by the Official Solicitor if he saw fit and for all parties to file psychiatric evidence about other parties to the proceedings, including H and A. The summons was then adjourned, with liberty to the parties to restore it.

In subsequent proceedings before the High Court, it was agreed that at the hearing on 1 December 1978, the Council, though apparently without mentioning that it had found prospective adopters in October (see paragraph 16 above), had made its intention to place A for adoption quite clear. All the parties seem to have acquiesced in such placement, to be followed by a combined hearing on the adoption and the access questions, which hearing they clearly envisaged would be held in about six months' time, before the 1979 long vacation. In particular, the applicant made no request that the placement be postponed and the Council raised no objection to filing its evidence within the time-limit set.

19. On 10 January 1979, A was introduced to the prospective adopters for the first time. After a series of visits, the Council placed her with them on 2 March 1979, a fact of which the applicant was not informed.

2. Evidence of H and of the Council

20. Allegedly on account of the Christmas holiday period and the need to seek legal aid, H was late in filing his evidence, which did not reach the High Court until 2 February 1979.

21. The Council thereupon failed to meet its deadline of 23 February 1979. The applicant's solicitor, who had written to the Council on the subject on 15 February without receiving a reply, wrote again on 16 March indicating that, unless its evidence was lodged within seven days, he would

refer the question back to the court. When the Council telephoned him on 26 March to assure him that the filing would be effected within two weeks, he replied that this would not be sufficient and that the matter was urgent. However, he did not at this point make any further approach to the court.

In the meantime, on 27 February, the solicitor had written to the Council asking for a report on A's condition. Following a reminder dated 5 April, the Council replied on 10 April that "A has continued to make good progress and has maintained normal development in all spheres". No reference was made in that letter, or otherwise, to the fact that A had been placed with prospective adopters. The latter had, on 6 March, notified the Council of their intention to apply for her adoption.

22. On 12 April 1979, the Official Solicitor informed the applicant's solicitor in correspondence that he was unable to arrange for his enquiries for the purpose of the access and adoption proceedings to be made until the Council had filed its evidence; he described the delay on the latter's part as "quite unacceptable". The applicant's solicitor instructed London agents with a view to applying for an order directing the Council to file, and he pressed the Council again on the matter on 11 June. On 14 June, he informed the Official Solicitor that the agents were having "extreme difficulty with obtaining dates in London [for a hearing to order the Council to file evidence] due to the recent civil service dispute". The Government have indicated that there does not appear to have been any particular backlog or listing difficulty at that time.

23. On 27 June 1979, the Council informed the solicitor that the relevant affidavits were substantially complete and would be signed in the following week. On 29 June, he nevertheless served a summons, returnable on 31 July, on the Council to order it to comply with the High Court's direction of 1 December 1978. On 27 July, the Council acknowledged by telephone receipt of the summons and stated that the evidence would be available by 31 July. However, it was not. The registrar directed the Council to file within seven days and ordered costs against it.

24. Two affidavits were filed by the Council on 3 August 1979 and were received by the applicant's solicitor on 6 August. On that date, he and his client became aware for the first time that A had been placed for adoption during the previous March (see paragraph 19 above). The Council filed a further affidavit on 10 August. The Official Solicitor received copies of these affidavits on 22 August.

3. The Official Solicitor's report

25. Until August 1979, the Official Solicitor had also been unaware of A's placement for adoption. On 25 September, the applicant's solicitor asked him if his report on the child was now prepared. On 4 October, he replied that no arrangements had yet been made to visit the parties nor had a consultant psychiatrist been instructed; he had, however, been informed by

the Council that the prospective adopters of A had instructed solicitors and proposed to apply to the High Court for leave to commence adoption proceedings (see paragraph 62 below). The Official Solicitor stated: "if this is the case it seems to me that it would be more sensible for your client's application for access and the application for adoption to be heard together, but as soon as I have heard from the foster parents' solicitors the exact position I shall write to you further." The applicant's solicitor replied on 16 October, stressing that since the Council had for so long taken no steps in relation to the proposed adoption proceedings, it should not further delay the hearing of his client's application for access. On 22 October, the Official Solicitor confirmed that he would arrange "in the near future" for the visits and the instruction of the psychiatrist.

26. There followed correspondence between the applicant's solicitor and the solicitors acting for the prospective adopters of A as to whether it was necessary to seek leave to initiate adoption proceedings in the light of the adoption recommendation recorded in the High Court's order of 24 June 1977 (see paragraph 15 above). The former contended that the circumstances of the case had totally changed since then and that leave should therefore be sought anew, A still being a ward of court. The latter stated that they were ignorant of the proceedings taken thus far in wardship but considered that the adoption and access issues should be decided at the same time. By letter of 27 November, the Official Solicitor confirmed that he agreed with the second approach since it would save costs.

27. On 14 January 1980, the applicant's solicitor again pressed the Official Solicitor to proceed in the matter since no further steps had been taken with regard to the proposed adoption proceedings and this was delaying the hearing of his client's application for access. He was informed by the Official Solicitor on 28 January that the latter had received a draft of the evidence to be submitted in relation to the proposed adoption. According to the Government, the Official Solicitor could not commence his enquiries for the combined purpose of the access and the adoption proceedings until he had received this evidence. It appears that the originating summons for the adoption was in fact issued on 30 November 1979 and that the evidence of the prospective adopters was filed on 22 January 1980 and received by the Official Solicitor on 8 February.

The Official Solicitor appears to have commenced his formal enquiries on 12 February and on 3 April he confirmed to the applicant's solicitor that a psychiatrist's report was in the course of preparation, on receipt of which the wardship and adoption reports would be prepared and filed. By 23 May, the Official Solicitor had completed his enquiries and it was possible to fix a date for the hearing. The parties - without reference to the Official Solicitor, who would have preferred an earlier date - chose 8 October, the first available date in term-time; they made no attempt to ask the court to certify

the case as fit for vacation business, which could have enabled it to be heard in August or September.

4. The High Court's decision

28. The hearing before the High Court was actually held on 21 and 22 October 1980. On the following day, the judge made an adoption order in respect of A (who was de-warded), dispensed with the applicant's consent to the adoption (see paragraph 61 below) and refused her access to A.

In a long and detailed review, the judge described the case as "difficult and painful", in particular because the circumstances before him in no way arose from any fault or blameworthy conduct on the applicant's part. As regards the delays since the proceedings were issued on 13 November 1978, he noted that between February and August 1979 both the applicant's solicitor and the Official Solicitor had been "trying their best to obtain the evidence from the Council" and that on 3 August, when that evidence was filed, the applicant and her advisers learned for the first time of A's placement for adoption. Whilst taking the view that the Official Solicitor had "acted with all reasonable promptness", he described the Council's delay, though not deliberate, as "quite deplorable", adding that the apology made by its legal department "does not assist [the applicant] whose case was seriously prejudiced by this delay". He pointed out that "[in adoption proceedings] delay is a potent weapon and courts and practitioners must be vigilant to ensure that the position of natural parents is not prejudiced thereby". Nevertheless, the result of the delay here was that when the case came before the court, A, who was aged four years and ten months, had been with the prospective adopters for nineteen months and had not seen her mother since June 1977, nearly three and a half years previously.

Having taken account of the marked improvement in the applicant's general circumstances, the judge summarised her case as follows: since everyone was agreed that she was now capable of coping with a child, there was no reason why she should not have A back or at least be allowed to attempt a re-introduction to her; the procedures and delays in both the wardship and the adoption applications had been such as to deny justice to her and also to A; in particular, since July 1977 the Council had closed its mind to any possible rehabilitation and had ceased to provide her with any support, being intent on taking A from her and placing A for adoption.

However, the judge held that in deciding whether the applicant's withholding of her consent to the adoption was unreasonable, he had to take account of the facts as they existed at the date of the hearing. Referring to section 3 of the Children Act 1975 (see paragraph 61 below), he noted that the welfare of the child was the first and paramount consideration outweighing all others, but recognised that, in accordance with the case-law of the House of Lords, "the claims of the natural parents must be given great

weight" and that consideration had to be given, albeit to a much lesser extent, to the interests of the prospective adopters.

On the question of access, the judge recognised that, where the "statutory guillotine" of adoption was implemented, its purpose was to sever all connection with the natural parents and to establish a fresh legal relationship with the adoptive parents. He could find no reason to justify the applicant's re-introduction to A in the circumstances and therefore ordered that no access be granted.

E. Appeal proceedings

29. An appeal by the applicant from this decision was dismissed on 14 January 1981 by the Court of Appeal, which also refused leave to appeal to the House of Lords. The Court of Appeal recognised its very limited function in appeals in adoption cases and the limited extent to which it could override the opinion of the first-instance judge, who had heard the witnesses. Having stressed the painful nature of the case and the applicant's legitimate sense of grievance arising from the delay, the Court of Appeal recalled that both the judge and it had to deal with the situation existing at the time of the hearing. It added: "One may make one's criticisms of the conduct of the Council, but the fact remains that we are dealing here with the life of another human being and that is not to be decided in awarding pluses and minuses to parties on the conduct of litigation."

30. The applicant sought leave from the Appeal Committee to appeal to the House of Lords but this was refused on 10 June 1981. A subsequent request by her for legal aid with a view to establishing whether she had a cause of action in damages against the Council for its delay in filing evidence was also unsuccessful.

F. Local Ombudsman

31. The applicant referred the matter to the Local Ombudsman, who has the task of investigating complaints made by a member of the public claiming to have sustained injustice in consequence of maladministration in connection with action taken by a local authority in the exercise of its administrative functions.

The applicant alleged maladministration, in that from mid-1977 the Council had ceased to support her and had thereafter refused to take account of her improved condition and her increasing ability to look after A. She also complained that the Council's conduct had been such as to ensure that she did not have the opportunity of looking after the child and that it had refused to examine fully a request by the applicant and H to be considered as foster or adoptive parents.

In his report of 18 August 1983, the Local Ombudsman recognised that it was "certainly not for [him] to question the merits of [the] court decisions in these proceedings". He concluded that the applicant's complaints revealed no maladministration except in respect of the Council's delay in filing evidence. He stated:

"It is quite clear from this investigation that part of the delay in getting the matter before the Court was caused by the Council, and this has already been criticised by the Judge. This delay was unreasonable and amounts to maladministration, but I must consider what injustice flowed from it. In many cases it could be that the longer the delay, the more difficult it would be for a Court to break a bond with prospective adoptive parents - the Court after all have to consider what is best for the child at the time they come to their decision. Here, however, it is not so simple. [The applicant] felt she was getting better, so to some extent the longer the time for her to improve, the greater would be her chances of success before the Court. I have read the decision of the High Court very carefully, but it seems to me that it is very unlikely indeed that the decision would have been different even if the Council had acted more quickly."

G. Subsequent developments

32. In 1980, the applicant and H discovered A's whereabouts and the identity of the adoptive parents and made various attempts to contact the child, either at home or at school. In consequence, the adopters instituted wardship proceedings with a view to obtaining an injunction preventing such contacts. The failure, on numerous occasions, of the applicant and H to abide by the High Court's orders in this respect has led to contempt of court proceedings against them. Requests by them to the local authority for permission to see A - who remains a ward of court - have been unsuccessful, as have applications to the High Court for leave to issue a summons for access.

II. Relevant domestic law and practice

A. Child care

1. Introduction

33. In the law of England and Wales, there are a number of different and partially co-ordinated procedures for dealing with the welfare of children. Whilst the oldest of these is the wardship jurisdiction of the High Court, it has for many years co-existed with, but not been ousted by, various

statutory provisions whereby a child who is at risk may be put into the care of a local authority.

Although the terms are not wholly accurate, the legislation is commonly divided into two categories: the first provides for "compulsory care", by establishing machinery whereby a local authority can obtain a court order committing a child to its care; the second concerns "voluntary care", the machinery here being originally designed to meet an emergency situation without the need of recourse to the courts. At any given time, there are approximately 86,000 children in public care in England and Wales, of whom 70,000 are not living with their parents or a relative.

The statutory provisions have been amended on several occasions and many of them were repealed and replaced by the Child Care Act 1980 ("the 1980 Act"), a consolidating measure the greater part of which came into force on 1 April 1981. In the following summary of the law in force at the time of the present case, the original enactments are cited first and any corresponding provision of the 1980 Act in force at the relevant time is indicated in square brackets.

By way of general background information, the summary covers all three of the procedures referred to above (namely those relating to compulsory care, voluntary care and wardship), but in the present case it was the machinery for compulsory care and, above all, the wardship jurisdiction of the High Court which were directly relevant.

2. Compulsory care

34. The principal statute concerning compulsory care is the Children and Young Persons Act 1969 ("the 1969 Act"), as amended by the Children Act 1975 and then partly replaced by the 1980 Act; it enables a local authority to obtain, as a temporary measure, a "place of safety order" and, as longer-term measures, a variety of other orders.

(a) Place of safety order

35. Under section 28(1) of the 1969 Act, any person, including a local authority, may apply to a justice of the peace for authority to detain a child and take him to a place of safety; the justice may grant the application if he is satisfied that the applicant has reasonable cause to believe, inter alia, that the child's proper development is being avoidably prevented or neglected or his health is being avoidably impaired or neglected or he is being ill-treated, or that he is exposed to moral danger.

A "place of safety order" so granted lasts for a maximum of 28 days and cannot be extended. The person detaining the child must as soon as possible take such steps as are practicable for informing his parent of the detention and the reason for it.

If the local authority wishes to retain the child in protective surroundings after the 28-day period, it has either to make the child a ward of court (see

paragraphs 51-53 below), or to institute care proceedings under section 1 of the 1969 Act (see paragraphs 36-38 below), or to apply to a justice or a magistrates' court for an interim order under section 28(6) (see paragraph 41 below); if an application of the last kind is refused, the child's immediate release "may be ordered".

(b) Longer-term measures

(i) Care proceedings

36. Under sections 1 and 2(2) of the 1969 Act, a local authority which reasonably believes that there are grounds for making an order as to the care and control or supervision of a child is, subject to certain exceptions, under a duty to institute care proceedings by bringing the child before a juvenile court.

37. In care proceedings instituted by a local authority, the parties are the local authority and the child, but not the latter's parents. The child is entitled, subject to his means, to legal aid and it is open to him to have his parents conduct the case on his behalf either directly or through a lawyer. If the child is of sufficient competence, he may decide that he wishes to be separately represented.

A natural parent who is not acting on behalf of the child is entitled to be notified of and to attend the hearing and to give and call evidence challenging the allegations made by the local authority. As a matter of practice, the court will also allow such parent to cross-examine witnesses on behalf of the local authority and to have separate legal representation.

38. If the court before which the child is brought is satisfied that one of the grounds specified in section 1 of the 1969 Act exists and that the child is in need of care or control which he is unlikely to receive unless an order is made, it may make, inter alia, a supervision order, a care order or an interim order. The specified grounds include those on which a place of safety order may be made (see paragraph 35 above).

(ii) Relevant orders

39. A supervision order is an order placing the child under the structured supervision of the local authority; subject thereto, he may continue to live with his parents.

40. A care order is an order committing the child to the care of the local authority. The latter will have the same powers and duties with respect to the child as his parent or guardian would have apart from the care order (section 24 of the 1969 Act [10(2) of the 1980 Act]), except that it cannot cause the child to be brought up in any religious creed other than that in which he would otherwise have been brought up and it cannot agree to the child's adoption.

41. An interim order is a care order limited to a specified period not exceeding 28 days; it may be renewed on application (section 22 of the 1969 Act). It may be made if the juvenile court hearing the care proceedings is not in a position to decide which of the other specified orders ought to be made (section 2(10)) or, alternatively, during the currency of a place of safety order (see paragraph 35 above). The powers and duties of the local authority under an interim order are the same as under a full care order (see paragraph 40 above).

(c) Termination, variation or discharge of full care orders

42. A full care order normally terminates when the child in question attains the age of 18 (section 20(3)(b) of the 1969 Act).

In addition, under sections 21(2) and 70(2), the juvenile court may, on application by the child or his parent on the child's (but not his own) behalf and if it considers it appropriate, discharge the care order and may, on discharging it, make a supervision order in respect of the child. Such applications may be made every three months or, with the juvenile court's permission, more frequently (section 21(3)). The paramount consideration in deciding whether to discharge the order is the interests of the child.

(d) Appeals concerning care orders

43. Under sections 2(12) and 21(4) of the 1969 Act, the child in respect of whom the care order was made, or his parent on the child's (but not his own) behalf, may appeal to the Crown Court against the making of a care order, against the refusal of an application to discharge a care order or against the making of a supervision order on its discharge. The Crown Court will review the decision by way of re-hearing the case. From the Crown Court a further appeal may, with leave, be made to the High Court by way of case stated; thereafter an appeal lies to the Court of Appeal and, in rare cases, to the House of Lords.

The local authority has no general right to appeal against a juvenile court's refusal to make a care order, except on a point of law to the High Court.

3. Voluntary care

44. The principal statute concerning voluntary care is the Children Act 1948 ("the 1948 Act"), as amended by the Children Act 1975 and then replaced by the 1980 Act. This legislation in effect enables a parent to place his child into the care of a local authority; at the initial stage the authority acquires no special status in relation to the child but a different situation may arise subsequently.

(a) Reception of a child into care

45. Section 1 of the 1948 Act [2 of the 1980 Act] imposes on the local authority a duty to receive into its care a child under 17 where it appears, inter alia, that his parents or guardian are for the time being or permanently prevented by illness, incapacity or other circumstances from providing for his proper accommodation, maintenance and upbringing and that the intervention of the authority is necessary in the interests of the child's welfare. Whilst the authority must, save as otherwise provided in the Act, keep the child in its care so long as his welfare requires it and he has not attained the age of 18, it is also under a duty to endeavour to secure the resumption of parental care where this appears consistent with the child's welfare.

46. Section 1 of the 1948 Act [2 of the 1980 Act] specifies that it does not entitle the local authority to keep the child in care if any parent or guardian desires to take over that care. However, if the child has been in care throughout the preceding six months, no person may take him away unless he has given at least 28 days' notice of his intention to do so or has the authority's consent (section 1(3A) [13(2)]).

Moreover, if a parent requests the return of the child, the authority is not compelled to comply regardless of his welfare (Lewisham London Borough Council v. Lewisham Juvenile Court Justices [1979] 2 All England Law Reports 297). If it then considers the transfer of care to the parent to be inconsistent with that welfare, it may either pass a parental rights resolution (see paragraph 47 below) or apply to make the child a ward of court (see paragraphs 51-53 below).

(b) Parental rights resolution

47. If it appears to a local authority in relation to any child who is in its care under section 1 of the 1948 Act [2 of the 1980 Act] that, inter alia, a parent of his is unfit to have the care of the child on account, notably, of his habits or mode of life or of having consistently failed without reasonable cause to discharge the obligations of a parent, the local authority may resolve that there vest in it the parental rights and duties with respect to that child (section 2(1) [3(1)]). The rights and duties which so vest are all rights and duties which by law the mother and father have in relation to a legitimate child and his property, including "a right of access" but excluding the right to agree or refuse to agree to the making of an adoption or certain related orders (section 2(11) of the 1948 Act [3(10) of the 1980 Act] and section 85(1) of the Children Act 1975).

Before passing a parental rights resolution, the local authority must consider a report from its Social Services Department on the desirability of assuming parental rights, which report should contain all the material necessary for the proper exercise of the authority's discretion. In deciding the matter, the authority is to regard the interests of the child as of

paramount importance and the views of the parents on the proposal are to be taken into account.

(c) Objections to parental rights resolutions

48. If the parent has not already consented in writing to the parental rights resolution and his whereabouts are known, he must be served with notice of it, indicating his right to object by counter-notice within one month (section 2(2) and (3) of the 1948 Act) [3(2) and (3) of the 1980 Act]). If such objection is made, the resolution lapses on the expiry of 14 days from service of the counter-notice (section 2(4) [3(4)]). However, within that period, the local authority may "complain" to a juvenile court, in which event the resolution will not lapse until the complaint is determined; on hearing the complaint, the court may order that the resolution is not to lapse, provided that it is satisfied that the grounds for the resolution were made out when it was passed and subsist at the time of the hearing and that the continuation of the resolution is in the child's interest (section 2(5) [3(5) and (6)]).

(d) Termination or discharge of parental rights resolutions

49. A parental rights resolution continues in force until the child attains the age of 18, unless it is previously rescinded by the local authority or terminated by a juvenile court (section 4 of the 1948 Act [5 of the 1980 Act]).

The parent concerned, even if he did not originally object to the parental rights resolution, may apply to a juvenile court for its discharge. The court may grant the application if it is satisfied that there were no grounds for the making of the resolution or that it should be terminated in the child's interests (section 4(3)(b) [5(4)(b)]). An application based on the original foundation for the resolution can, however, be entertained only if lodged within six months of its adoption (section 127 of the Magistrates' Court Act 1980).

(e) Appeals concerning parental rights resolutions

50. Under section 4A of the 1948 Act [6 of the 1980 Act], an appeal (by the parent or the local authority) lies to the Family Division of the High Court from the making by a juvenile court of an order confirming (under section 2(5) [3(6)]) or discharging (under section 4(3)(b) [5(4)(b)]) a parental rights resolution, or from a juvenile court's refusal to make such an order. A further appeal lies to the Court of Appeal and, with leave, to the House of Lords.

4. Wardship

51. The Family Division of the High Court has an inherent jurisdiction, independent of statutory provisions and deriving from the prerogative power of the Crown acting in its capacity as parens patriae, to make a child a ward of court.

52. The effect of wardship is that custody, in a broad sense, of the child is vested in the court itself; it assumes responsibility for all aspects of his welfare and may make orders on any relevant matter whatsoever, notably as regards the care and control of and access to the child and his education, religion or property. In making such orders, the court is required to treat the child's welfare as the "first and paramount consideration" (Guardianship of Minors Act 1971, section 1). Unless terminated earlier by order of the court, the wardship continues until the child attains his majority.

Where there are exceptional circumstances making it impracticable or undesirable for the ward to be, or continue to be, under the care of his parents, the court may make an order committing him to the care of the local authority (Family Law Reform Act 1969, section 7(2)), subject to the power of the court to give directions (Matrimonial Causes Act 1973, section 43(5)(a)). In such circumstances, custody of the child remains with the court and it is for the court, and not the local authority, to take major decisions regarding the ward's future; it retains, inter alia, jurisdiction to make orders for access to the child.

53. Wardship proceedings may be instituted by anyone who can show an appropriate interest in the child's welfare. An application for a wardship order has to be made by originating summons. The child becomes a ward immediately the summons is issued but the wardship automatically lapses after 21 days unless within that time an appointment is made for the hearing of the summons. This appointment is normally held before a registrar who, subject to an appeal to a judge, may give interim directions on such matters as access to the child and may decide that other interested parties be joined in the proceedings.

A judge will hear contested wardship proceedings and also applications - which can be made at any time by any party - for the variation or discharge of an existing wardship order or for directions on such matters as access to or the education of the child. From the judge's order, an appeal lies to the Court of Appeal and thence, with leave, to the House of Lords.

The child may be represented in wardship proceedings by a guardian ad litem appointed by the court; this is usually the Official Solicitor, who is a full-time public employee entirely independent of the executive.

Under the Rules of the Supreme Court, it is possible to seek an order expediting the proceedings, notably if a party thereto is dilatory.

5. Decisions of a local authority relating to a child in its care and judicial review thereof

54. The functions of a local authority in child-care matters are exercised and decisions are taken either by its Social Services Committee or by a sub-committee or an officer to whom powers have been delegated. At the time relevant to the present case, the practice varied from authority to authority, there being no precise requirements or guidance even of a non-statutory kind, and much depended on the nature or gravity of the decision to be taken. Whether the child is in its care by virtue of the 1948 [1980] or the 1969 Act, the local authority must give first consideration to the need to safeguard and promote the child's welfare throughout his childhood, and must so far as practicable ascertain his wishes and feelings regarding the decision and give due consideration to them, having regard to his age and understanding (section 59 of the Children Act 1975 [18(1) of the 1980 Act]).

Authorities' decisions in this area are, in fact, often based on the outcome of case reviews or case conferences. The authority is under a statutory duty to review the case of each child in its care at six-monthly intervals (section 27(4) of the 1969 Act) and, as a matter of practice, the child's position will in addition be regularly examined at case conferences. Reviews and conferences will be attended notably by the social workers responsible and senior officials of the authority's Social Services Department, as well as by such other persons as health visitors, doctors and police officers.

55. A parent may on occasion be allowed or invited to attend a case review or case conference or part thereof, although he has no legal right to do so. His contacts with the social workers constitute the most usual channel for the communication of his views on matters to be decided by the authority.

In the absence of legal proceedings, the parent cannot compel the local authority to produce or permit inspection of the minutes of its relevant meetings or reports produced thereat, although the authority has a discretion to allow such inspection. In proceedings for judicial review (but not in juvenile court proceedings), the court may order the pre-trial disclosure of such documents, but only after leave to institute the proceedings has been obtained (see paragraph 57 below); however, this would be a rare occurrence, the general rule being that the documents are privileged and not open to inspection.

56. A parent whose child is in the care of a local authority is not automatically deprived of access to him. The continuation of access is, however, a matter within the discretionary power of the authority (per Lord Wilberforce in A v. Liverpool City Council [1981] 2 All England Law Reports 385). Thus, under English law, the question whether and to what extent a parent is to have access to his child who is in public care was, at the

relevant time, within the competence of the local authority to decide, without any application to a court.

Both the 1948 [1980] Act and the 1969 Act reflect the general idea that continuation of parental access to children in public care is in many cases normal and desirable: the former allows the local authority to contribute to the costs of parental visits and the latter makes special provision for certain cases where the parents have not visited the child during a certain period of time.

57. The statutory remedies described in paragraphs 42-43 and 48-50 above, whereby a parent may challenge or seek the discharge of a care order or a parental rights resolution, are directed to the order or resolution as such, there being, at the relevant time, no specific statutory remedy whereby he could contest the isolated issue of a decision to restrict or terminate his access to his child.

A decision of a local authority concerning access can, however, be challenged by way of an application for judicial review. Anyone who wishes to make such an application must first seek, normally within three months of the decision, the leave of the court. The circumstances where judicial review will lie may be briefly summarised as follows:

(a) the authority acted illegally, ultra vires or in bad faith;

(b) the authority failed to take into account relevant considerations, took account of irrelevant considerations or came to a decision to which no reasonable authority could have come (Associated Provincial Picture Houses, Ltd. v. Wednesbury Corporation [1948] 1 King's Bench Reports 223);

(c) the authority failed to observe statutory procedural rules or to act fairly (see notably R v. The Bedfordshire County Council, ex parte C and R v. The Hertfordshire County Council, ex parte B, Times Law Reports, 19 August 1986).

The remedy of judicial review is concerned with reviewing not the merits of the decision in question but rather the decision-making process itself, and the court will not act as a "court of appeal" from the body involved. Thus, where on a successful application for judicial review the court quashes an authority's decision, it will normally remit the matter to the authority for reconsideration; it may, however, also direct the authority to reach a conclusion in accordance with the court's findings (Rules of the Supreme Court, Order 53, rule 9(4)).

58. In certain circumstances, the wardship jurisdiction may also be invoked to question the decisions of a local authority or a juvenile court relating to a child in the former's care. The general rule is that the prerogative power of the Crown is not for all purposes ousted or abrogated by the exercise of the duties and powers conferred on local authorities by legislation. In the leading case of A v. Liverpool City Council, the House of Lords examined the relationship between the wardship jurisdiction and the

authorities' statutory powers. Their Lordships were unanimously of the view that the courts had no reviewing powers as to the merits of local authority decisions, notably on such matters as access to the child: the general inherent power of the court in its wardship jurisdiction was available to fill gaps or supplement the powers of local authorities but not to supervise (except on judicial review principles; see paragraph 57 above) the exercise of discretion within the field committed to them by statute. Sometimes, however, the local authority itself may invite the supplementary assistance of the court and the wardship may then be continued with a view to action by the court.

The foregoing limits on the High Court's powers apply only where the wardship proceedings concern a child who is already in public care. If he is not, the High Court can examine fully such questions as access and make such order as it considers to be in his best interests.

6. Subsequent developments

59. The inability of parents to approach the courts, save as explained above, where decisions are made by a local authority affecting access to their children led Parliament, in the Health and Social Services and Social Security Adjudications Act 1983, to modify the law on this point.

Under the new provisions - which came into force on 30 January 1984, that is after the events giving rise to the present case -, a local authority may not refuse to make arrangements for access to a child in care and may not terminate such arrangements unless it has first given notice to the parent. The latter then has a right to apply to a juvenile court for an access order, requiring the local authority to allow access subject to such conditions as the court may specify. Where an access order has been made, there is a right to apply for variation. An appeal against the juvenile court's decision lies to the High Court. Any court dealing with the matter must regard the welfare of the child as the first and paramount consideration.

This new remedy applies only to decisions refusing or terminating access; in all other cases, the nature and extent of access remain within the local authority's discretion.

60. In December 1983, the Government published a Code of Practice on Access to Children in Care. This document stresses the importance of involving the child's natural parents in the local authority's decision-making process in this area and of informing them fully and promptly as to the substance of decisions concerning access.

B. Adoption

61. A court cannot make an adoption order in respect of a child unless, inter alia, it is satisfied that each parent freely and unconditionally agrees (Children Act 1975, section 12). However, such agreement may be

dispensed with upon a number of grounds specified in that section, notably that the parent is withholding consent unreasonably or has persistently failed without reasonable cause to discharge his parental duties. In reaching any decision relating to the adoption of a child, a court must have regard to all the circumstances, first consideration being given to the need to safeguard and promote his welfare throughout his childhood (Children Act 1975, section 3).

62. Adoption proceedings in respect of a child who is a ward of court may not be instituted without the leave of the High Court. On an application for leave, the court's function is to consider whether the proposed adoption application is one that might reasonably succeed, the merits of the matter being examined subsequently, once leave has been granted and after compliance with the requirements concerning notices and reports.

PROCEEDINGS BEFORE THE COMMISSION

63. Mrs. H's application (no. 9580/81) was lodged with the Commission on 3 September 1981, on behalf of herself and her daughter A. Mrs. H complained, inter alia, that she was denied a hearing within a reasonable time of her application of 13 November 1978 for access to A; she alleged violation of Article 6 § 1 (art. 6-1) of the Convention and of Article 13 read with Article 8 (art. 13+8).

64. On 13 March 1984, the Commission declared admissible Mrs. H's complaints concerning the length and effectiveness of the remedies available to her and the extent that they ensured respect for her family life; it declared inadmissible ratione personae the application in so far as it had been brought on behalf of A and inadmissible as manifestly ill-founded Mrs. H's complaint that the decisions refusing her access to and allowing the adoption of A constituted an unjustified interference with her (Mrs. H's) right to respect for her family life.

In its report adopted on 18 October 1985 (Article 31) (art. 31), the Commission expressed the opinion that:

- there had been a violation of Article 6 § 1 (art. 6-1) in that the applicant's civil right of access to A was not determined within a reasonable time (unanimous);

- there had been a violation of Article 8 (art. 8) in that the length of the proceedings concerning the applicant's access to A failed to show respect for her family life (twelve votes to two, with one abstention).

The full text of the Commission's opinion is reproduced as an annex to the present judgment.

FINAL SUBMISSIONS MADE TO THE COURT BY THE GOVERNMENT

65. At the hearings on 25-26 November 1986, the Government requested the Court to decide and declare:

> "- first, that there has been no violation of Article 8 (art. 8) of the Convention in the case of any of the applicants;
>
> - second, that there has been no violation of Article 6 § 1 (art. 6-1) of the Convention in the case of any of the applicants;
>
> - third, that in the case of the applicants [O, W, B and R] no separate issue arises under Article 13 (art. 13), but that if it does there has been no breach of Article 13 (art. 13) either".

AS TO THE LAW

I. SCOPE OF THE ISSUES BEFORE THE COURT

66. The background to the instant case is constituted by certain judicial or local authority decisions regarding the applicant's child A. The Court finds it important to emphasise at the outset that the present judgment is not concerned with the merits of those decisions; although this issue was raised by the applicant before the Commission, it was declared inadmissible.

Since the Commission's admissibility decision delimits the compass of the case brought before the Court (see, as the most recent authority, the Johnston and Others judgment of 18 December 1986, Series A no. 112, p. 23, § 48), the latter is not in the circumstances competent to examine or comment on the justification for such matters as the taking into public care or the adoption of the child or the restriction or termination of the applicant's access to her.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 (art. 6-1)

67. The applicant alleged that the length of the court proceedings which she instituted on 13 November 1978 regarding her access to A had exceeded a "reasonable time" and that she had therefore been the victim of a violation of Article 6 § 1 (art. 6-1) of the Convention, which, so far as is relevant, reads:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

This submission was contested by the Government, but accepted by the Commission.

A. Applicability of Article 6 § 1 (art. 6-1)

68. The Government maintained that Article 6 § 1 (art. 6-1) was not applicable to the proceedings in question. They argued that the effect of the High Court's committal of A to the care of the Council on 24 June 1977 (see paragraph 15 above) was that thereafter, subject to any direction of the Court in wardship, the Council stood in the shoes of the parents and was entitled to exercise the rights previously exercised by them, including the right to regulate the child's association with other persons. It could therefore exclude the natural parents from access. Consequently, the applicant retained no separate or residual right of access to the child and the proceedings thus did not concern a "right" of hers. Alternatively, the Government submitted, any such right of access had already been "determined" by the High Court when on 24 June 1977 it stopped the applicant's access to A (ibid.).

69. The Court is not persuaded by these arguments. As the Commission rightly pointed out, the proceedings in question related not only to the applicant's access to A but also to the latter's adoption. Their outcome was thus decisive for the future relations between mother and child, in that they could - and did - lead to the total dissolution of their natural ties. Since those ties constitute the very substance of family life, the Court entertains no doubt that the proceedings involved the determination of a "civil right" of the applicant.

Article 6 § 1 (art. 6-1) is therefore applicable.

B. Compliance with Article 6 § 1 (art. 6-1)

1. Period to be taken into consideration

70. The period to be taken into consideration for the present purposes started on 13 November 1978, when the applicant instituted the proceedings, and ended on 10 June 1981, when the Appeal Committee refused leave to appeal to the House of Lords (see paragraphs 18-30 above). It was thus a period of two years and seven months.

2. Relevant criteria

71. The reasonableness of the length of proceedings is to be assessed according to the particular circumstances and having regard, notably, to the complexity of the case, to the conduct of the parties and the authorities concerned and to what was at stake in the litigation for the applicant; in

addition, only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see, for example, the Buchholz judgment of 6 May 1981, Series A no. 42, pp. 15-16, § 49, and the Zimmermann and Steiner judgment of 13 July 1983, Series A no. 66, p. 11, § 24).

(a) Degree of complexity of the case

72. The proceedings were admittedly somewhat complex because there were several parties thereto - the applicant, her husband, the prospective adopters, the Official Solicitor in his capacity as guardian ad litem and the Council. A considerable amount of evidence had to be collected and filed and its assessment was a most difficult task.

(b) Conduct of the parties

(i) The applicant and her husband

73. The Government emphasised that the applicant had not appealed against the High Court's decision of 24 June 1977 terminating her access to A (see paragraph 15 above). Furthermore, she had allowed approximately seventeen months to elapse before raising the issue of access again on 13 November 1978, although she had known since September 1977 of the Council's decision to place A for adoption (see paragraph 16 above).

The Court notes that the applicant had deferred an approach to the courts so that she could show that her health had improved and that she had a stable home (see paragraph 18 above). Moreover, previously and as soon as her condition permitted, she had made persistent attempts to settle the matter amicably with the Council (see paragraph 17 above). Above all, her delay in instituting proceedings is in any event not decisive in the present context: what the Court has to do under Article 6 § 1 (art. 6-1) is to assess the reasonableness of the length of the proceedings as they actually took place.

74. The applicant's husband was slightly more than one month late in filing his evidence with the High Court (see paragraphs 18 and 20 above). This delay, allegedly attributable to the intervening Christmas holiday period, cannot be said to have been of major consequence when seen against the overall length of the proceedings.

75. The Government maintained that the applicant herself bore some responsibility for the length of the proceedings, in that she could have taken more effective steps at an earlier date to expedite the filing of the Council's evidence.

Admittedly, it was not until 29 June 1979 that the applicant's solicitor sought an order requiring the Council to file its evidence, although it should have done so by 23 February 1979 (see paragraphs 18, 21 and 23 above). On the other hand, he had in the interval pressed the Council on the matter

on several occasions (see paragraphs 21-22 above) and he was entitled to rely on the assurances which he received. Moreover, it has to be remembered that it was not until the Council did file its evidence, in August 1979, that the applicant learned that A had already been placed for adoption (see paragraph 24 above); the true degree of urgency of the matter was thus not brought home to her until then.

76. The Government also pointed out that the applicant did not seek to have the case certified as fit for vacation business.

It is true that such a step could have enabled a hearing to be held in August or September, rather than in October, 1980 (see paragraphs 27-28 above). No reasons have been given to the Court for the failure to make an application of this kind, and it notes that the October hearing date was chosen by agreement between the parties, other than the Official Solicitor.

77. The Court also observes that the applicant apparently did not seek postponement of A's placement for adoption or insist on having the access issue heard separately from the adoption issue (see paragraphs 18 and 25 above). However, an application for postponement might well have lengthened, rather than shortened, the proceedings and a request for severance of the issues would almost certainly have been met by the argument that it would not be in the child's interests if the mother's access were to be restored, only to be taken away again if adoption was later ordered.

(ii) The prospective adopters

78. Although the prospective adopters of A had notified the Council as early as 6 March 1979 of their intention to apply for adoption, their summons was not issued until 30 November 1979 and their evidence was not filed until 22 January 1980 (see paragraphs 21 and 27 above).

However, to apply to adopt a child is clearly a step of such far-reaching implications that it cannot be taken hastily. Prospective adopters have every justification for not embarking on such a course unless they have first had sufficient time for careful reflection and, in particular, for gauging the development of relations between them and the child.

(iii) The Official Solicitor

79. Although the Official Solicitor had been involved in the proceedings from their outset in 1978, he did not complete his enquiries until May 1980 (see paragraphs 18 and 27 above).

Nevertheless, it has to be remembered that since the access and the adoption issues were being dealt with together, he was unable to start work on his report until all the necessary evidence had been filed, including that of the Council and of the prospective adopters - that is, until January 1980 (see paragraph 27 above). In these circumstances, the Court shares the view

of the High Court that he "acted with all reasonable promptness" (see paragraph 28 above).

(iv) The Council

80. The Court observes, in the first place, that it cannot understand why the Council informed neither the applicant nor the Official Solicitor promptly of the fact that A had been actually placed for adoption in March 1979 (see paragraphs 19, 21, 24 and 25 above). To have done so would have been natural and would have enabled all concerned to regulate their conduct in the proceedings more effectively.

81. The Council should have filed its evidence by 23 February 1979 but did not do so until 3 August 1979 (see paragraphs 18, 21 and 24 above). The High Court described this delay - of more than five months - as "quite deplorable" and seriously prejudicial to the applicant (see paragraph 28 above) and the Government themselves admitted that no tenable explanation could be given for it. They added, however, that the result of the proceedings might have been the same even if the Council had acted more quickly, a view which was shared by the Local Ombudsman (see paragraph 31 above).

As to this latter argument, the Court points out once again that its task under Article 6 § 1 (art. 6-1) is to assess the reasonableness of the length of the proceedings as they actually took place and their outcome is not decisive in this context. In fact, the delay in question was extremely serious, lacked any apparent justification and perforce had repercussions as regards the dates on which the subsequent stages of the proceedings were completed.

82. The Commission drew attention to the fact that the Council took no steps to ensure that the summons for the adoption of A was issued promptly by the prospective adopters.

It is true that at the relevant time responsibility for the child still lay with the Council, to whose care she had been committed on 24 June 1977 (see paragraph 15 above). Indeed, the Government accepted that the Council might have been able to exert some influence on the prospective adopters. On the other hand, for the reasons already given by the Court in paragraph 78 above, it could scarcely force their hands.

(c) Conduct of the courts concerned

83. As to the conduct of the courts concerned, no question arises as regards the Court of Appeal: the High Court gave its decision in October 1980 and the applicant’s appeal was dismissed on 14 January 1981, a period which was clearly reasonable (see paragraphs 28 and 29 above). Similar considerations apply to the subsequent interval, preceding refusal by the Appeal Committee of leave to appeal to the House of Lords (see paragraph 30 above).

84. As for the High Court, the principal periods in its proceedings may be identified as follows:

(i) between its procedural directions and the filing of the Council's evidence (1 December 1978 to 3 August 1979);

(ii) between the filing of the Council's evidence and the completion of the Official Solicitor's enquiries (3 August 1979 to 23 May 1980);

(iii) between the completion of the Official Solicitor's enquiries and the High Court's decision (23 May to 23 October 1980).

The greater part of period (i) - some eight months - reflects the delay on the part of the Council, a public authority whose acts are attributable to the State (see paragraph 71 above), in filing its evidence. Yet the obligations of the Council, to whose care A had been committed, included that of ensuring that the proceedings were conducted with reasonable speed and in the child's interests.

Period (ii) - nearly ten months - covers not only the preparation of the Official Solicitor's report but also the issuing of the prospective adopters' summons for adoption and the filing of their evidence. The existence of this period is basically attributable to the High Court's decision that the proceedings should deal with both the access and the adoption issues. On the ground already indicated in paragraph 77 in fine above, the Court finds this decision reasonable.

Period (iii) - five months - relates principally to the fixing of the hearing date. Since this appears to have been done with the agreement of the parties, other than the Official Solicitor (see paragraph 27 above), no criticism can in the circumstances be levelled at the High Court in this respect.

(d) Importance of what was at stake for the applicant

85. In the present case, the Court considers it right to place special emphasis on the importance of what was at stake for the applicant in the proceedings in question. Not only were they decisive for her future relations with her own child, but they had a particular quality of irreversibility, involving as they did what the High Court graphically described as the "statutory guillotine" of adoption (see paragraph 28 above).

In cases of this kind the authorities are under a duty to exercise exceptional diligence since, as the Commission rightly pointed out, there is always the danger that any procedural delay will result in the de facto determination of the issue submitted to the court before it has held its hearing. And, indeed, this was what happened here.

3. Overall assessment

86. Having weighed together all the relevant factors, the Court has come to the view, above all in the light of the considerations set out in paragraph 85 above, that the proceedings complained of were not concluded within a "reasonable time".

There has therefore been a violation of Article 6 § 1 (art. 6-1).

III. ALLEGED VIOLATION OF ARTICLE 8 (art. 8)

87. The applicant further alleged that, in view of the delays which had occurred, the proceedings instituted by her on 13 November 1978 regarding her access to A had failed to show respect for her family life and that she had thus been a victim of a violation 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 submission was contested by the Government, but accepted by the Commission.

88. The Government argued in the first place that the delay in the proceedings did not constitute a violation of Article 8 (art. 8), since the right protected thereby was the applicant's right of access to A and that right had already been terminated - and justifiably so - by the High Court's decision of 24 June 1977 (see paragraph 15 above).

The Court would simply recall that the proceedings which were the subject of the applicant's complaint related to adoption as well as access (see paragraph 69 above).

89. The Government submitted in the second place that procedural matters were not an element in the protection afforded by Article 8 (art. 8) and that the length of proceedings was therefore not relevant under that Article (art. 8).

As the Court has pointed out in paragraph 85 above, the proceedings, in addition to their particular quality of irreversibility, lay within an area in which procedural delay may lead to a de facto determination of the matter at issue. That this was so on the present occasion is confirmed by the High Court's observation that the applicant's case "was seriously prejudiced" by the delay (see paragraph 28 above). The Court therefore considers that the duration of the proceedings is a factor that may properly be taken into account in the present context (see also the W v. the United Kingdom judgment of today's date, Series A no. 121, § 65).

90. Concerning as they did the question of the applicant's future relations with her child, the proceedings related to a fundamental element of family life. Irrespective of their final outcome, an effective respect for the applicant's family life required that that question be determined solely in the

light of all relevant considerations and not by the mere effluxion of time. Since it was not, there has been a violation of Article 8 (art. 8).

IV. APPLICATION OF ARTICLE 50 (art. 50)

91. Article 50 (art. 50) of the Convention reads as follows:

> "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."

92. The applicant sought just satisfaction under this provision, but has not yet quantified her claim. At the Court's hearings on 25-26 November 1986, the Government reserved their position on this issue.

Since the question of the application of Article 50 (art. 50) is therefore not yet ready for decision, it is necessary to reserve the matter and to fix the further procedure, taking due account of the possibility of an agreement between the respondent State and the applicant (Rule 53 §§ 1 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT

1. Holds unanimously that Article 6 § 1 (art. 6-1) is applicable in the present case;

2. Holds unanimously that Article 6 § 1 (art. 6-1) was violated;

3. Holds by sixteen votes to one that Article 8 (art. 8) was also violated;

4. Holds unanimously that the question of the application of Article 50 (art. 50) is not ready for decision;

accordingly,

(a) reserves the whole of the said question;

(b) invites:

(i) the applicant to submit, within the forthcoming two months, full written particulars of her claim for just satisfaction;

(ii) the Government to submit, within two months of receipt of those particulars, their written comments thereon and, in particular, to notify the Court of any agreement reached between them and the applicant;

(c) reserves the further procedure and delegates to the President of the Court power to fix the same if need be.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 8 July 1987.

Rolv RYSSDAL
President

For the Registrar
Jonathan L. SHARPE
Head of Division in the registry of the Court

In accordance with Article 51 § 2 (art. 51-2) of the Convention and Rule 52 § 2 of the Rules of Court, the following separate opinions are annexed to the present judgment:

- dissenting opinion of Mr. Gersing;

- opinion of Mr. De Meyer.

R.R.
J.L.S.

DISSENTING OPINION OF JUDGE GERSING

In my view, the length of the court proceedings falls to be considered only under Article 6 § 1 (art. 6-1), which in this respect is the lex specialis. I cannot accept the extensive interpretation of Article 8 (art. 8) which the majority of the Court has applied as regards those proceedings in paragraphs 89-90 of the judgment and I have therefore voted for a non-violation of Article 8 (art. 8).

SEPARATE OPINION OF JUDGE DE MEYER

The views expressed in my individual separate opinion concerning the case of W v. the United Kingdom[1] also apply to the present case.

As far as this case is concerned, I feel, more particularly, that the Court should, as regards the right to respect for family life, also have given consideration to the fact that no account was taken by the local authority of the improvement in the applicant's condition since 1977 or of her representations on this point (§§ 14 and 17 of the judgment).

[1] Series A no. 121, p. 42