



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

COURT (PLENARY)

**CASE OF O. v. THE UNITED KINGDOM**

*(Application no. 9276/81)*

JUDGMENT

STRASBOURG

8 July 1987

**In the case of 0 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. 9276/81) against the United Kingdom of Great Britain and

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\* Note by the Registrar: The case is numbered 2/1986/100/148. 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 15 December 1980 under Article 25 (art. 25) by an Irish 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, 8 and 13 (art. 6, art. 8, art. 13).

3. In response to the inquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings pending before the Court and designated the lawyer who would represent him (Rule 30). The Government of Ireland, having been informed by the Registrar of their right to intervene (Article 48, paragraph (b), of the Convention and Rule 33 § 3 (b)) (art. 48-b), indicated that they did not intend to do so.

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 H, 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, the following documents were lodged at the registry:

- on 4 July 1986, memorandum of the applicant setting out his claim under Article 50 (art. 50) of the Convention;
- on 13 August 1986, 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 H, 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

Mr. S. BELLAMY, Barrister-at-Law,  
Mr. N. O'BRIEN, Barrister-at-Law, *Counsel,*

Mr. D. KEARSLEY, Solicitor.

The Court heard addresses by Mr. Beloff for the Government, by Mr. Danelius for the Commission and by Mr. Bellamy 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. At the time of his application to the Commission, the applicant, an Irish national born in 1943, lived in England. He was married in 1967 but was divorced from his wife on 20 October 1981. During their marriage they had seven children, A, B, C, D, E, F and G, born in 1968, 1970, 1971, 1973, 1975, 1977 and 1978 respectively.

9. In 1973, because of accommodation problems, the couple on three occasions put their then children into the voluntary care (see paragraphs 29-31 below) of the local authority ("the Authority"). On 11 January 1974, the local juvenile court made care orders (see paragraphs 21-23 and 25 below) in respect of A, B, C and D. As the applicant had obtained more satisfactory accommodation, these orders were discharged at his request by the juvenile court in June 1975 and replaced by supervision orders (see paragraphs 24 and 27 below).

### **B. 1976 care orders**

10. Following concern as to the children's welfare, brought to a head when the applicant assaulted A, the Authority obtained from the juvenile court on 2 July 1976 care orders in respect of A, B, C, D and E; the latter are hereinafter referred to as "the children", F and G not being the subject of the present proceedings. On 9 September 1976, the Crown Court dismissed the applicant's appeal against this decision; he did not lodge a further appeal (see paragraph 28 below).

11. The children lived at first in a children's home. In December 1976, A and B were placed with foster parents near the town where the applicant lived, and C with other foster parents in the same town. In February 1978, D and E, who had remained in the meantime at the children's home, were placed with foster parents at an address which was not given to the applicant by the Authority. It so decided following a case review held on 17 October 1977 and attended by social workers responsible for the children; the applicant was not informed of the review and was not invited to attend it.

### **C. Access by the natural parents to the children and its termination**

12. Until June or July 1978, the applicant and his wife continued to visit the children - or those whose whereabouts they knew - at least once a week, although the foster parents complained that the visits upset the children. The social worker responsible then proposed that future visits take place at the social services building in the town where the applicant lived. The parents saw there all five children, for about an hour, on 4 July 1978 and A, B and C, for about 45 minutes, on 24 April 1979.

13. An application by the parents, who had taken legal advice with a view to establishing their right to access to the children, to revoke the care orders was rejected on 13 June 1979 by the juvenile court; the proceedings could not lead to a review of the isolated question of access, since the juvenile court, pursuant to the statutory provisions, had to determine whether or not it was appropriate to discharge the care orders as a whole (see paragraphs 27 and 42 below). No appeal was lodged against this decision (see paragraph 28 below).

14. On 14 June 1979, the applicant's solicitors wrote to the Authority's Social Services Department seeking regular access for the parents to the children. In an interim reply of 20 June, the Department indicated that it would be holding a case conference in the near future, but that its policy concerning the children was unlikely to change significantly. A fuller reply, dated 10 July, was in the following terms:

"Further to my letter of the 20th June, a case conference has now been held to determine our future policy in respect of the five ... children in the care of this Authority.

As you will no doubt appreciate, our paramount consideration must be the best interests of the children. In coming to a decision the case conference was very aware of Section 59 of the Children Act 1975 which [provides]: 'In reaching any decision relating to a child in their care, a Local Authority should give first consideration to the need to safeguard and promote the welfare of the child throughout his childhood, and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.' As a result of the unsuccessful application by the [applicant and his wife] to have the Care Orders on their children in the care of the [Authority] discharged, the real desire of all these children to remain with their foster parents was emphasised. The case conference therefore decided that the best interests of the children would be served by them remaining on a long term basis with their present foster parents.

The visits which the [applicant and his wife] have made to their children in the past have proved quite unsettling for the children and their foster parents. In view of the fact that we see these children remaining in long term care emphasis should be placed on helping the children feel secure and happy in their foster homes. I therefore have to inform you that in the interests of the children there should be no contact with their natural parents.

I do appreciate that this decision will be a matter of deep disappointment to the [applicant and his wife]. My social worker ... will be in touch with them in the near future and will be pleased to discuss with [them] in more detail the reasons behind this decision."

The applicant asserts that he was not invited to attend the case conference referred to in this letter or consulted beforehand about the decision to terminate access.

#### **D. Wardship proceedings**

15. On 25 February 1980, the parents, in an attempt to raise the question of their access to the children, issued an originating summons as a result of which the latter became wards of court (see paragraphs 36-38 and 43 below). On 2 April, the Authority applied to the High Court for the wardship to be lifted (see paragraph 38 below); the parents contended in reply that while the Authority should continue to have care of the children, they should have access to them.

16. At a hearing held on 6 October 1980, the High Court examined the questions whether it had jurisdiction to consider the parents' application for access in the context of wardship proceedings and whether the wardship should continue. The judge stated:

"... this Court does not sit as a Court of Appeal in relation to decisions of the Local Authority, and can only interfere with a decision of the Local Authority on the basis of the principles governing the interference with statutory discretions given to statutory bodies; that is, this Court can only interfere if it is satisfied that the Local Authority has taken into account matters which it should not have taken into account, or has not taken into account matters which it should have taken into account, or it can interfere if it comes to the conclusion that the Local Authority has come to a decision which no reasonable Local Authority could have come to. It can also interfere, of course, if it were satisfied that the Local Authority had been acting in bad faith."

Given this limited jurisdiction, he held that the Authority's decision to refuse further access was not impeachable on any of the above grounds and therefore must stand. He accordingly terminated the wardship order.

The applicant was advised that although an appeal from this decision would have been possible, it would have had no prospects of success in the light of the relevant case-law (see paragraphs 42-43 below).

#### **E. Subsequent developments**

17. On 25 August 1981, an adoption order was made in respect of D and E, the judge having dispensed with the consent of the applicant and his wife (see paragraph 46 below). The 1976 care orders in respect of these two children thereupon terminated.

The applicant left the United Kingdom in late 1984. It appears that he was not then regularly visiting A and C (the Authority's embargo on access never having been lifted) and that they did not wish him to do so. It also appears that he was not then regularly visiting B, although he had re-established contact with him at the latter's request. B and C are still subject to the 1976 care orders; that in respect of A terminated in 1986, on her attaining the age of 18.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Child care

#### *1. Introduction*

18. 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 the wardship jurisdiction of the High Court which were directly relevant.

#### *2. Compulsory care*

19. 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**

20. 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 36-38 below), or to institute care proceedings under section 1 of the 1969 Act (see paragraphs 21-23 below), or to apply to a justice or a magistrates' court for an interim order under section 28(6) (see paragraph 26 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**

21. 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.

22. 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.

23. 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 20 above).

(ii) Relevant orders

24. 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.

25. 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.

26. 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 20 above). The powers and duties of the local authority under an interim order are the same as under a full care order (see paragraph 25 above).

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

27. 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**

28. 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*

29. 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**

30. 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.

31. 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 32 below) or apply to make the child a ward of court (see paragraphs 36-38 below).

#### **(b) Parental rights resolution**

32. 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**

33. 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**

34. 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**

35. 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*

36. 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.

37. 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.

38. 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*

39. 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.

40. 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 42 below); however, this would be a rare

occurrence, the general rule being that the documents are privileged and not open to inspection.

41. 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.

42. The statutory remedies described in paragraphs 27-28 and 33-35 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)).

43. 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 42 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*

44. 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.

45. 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**

46. 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).

47. 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**

48. O's application (no. 9276/81) was lodged with the Commission on 15 December 1980. The applicant complained of the fact that he was unable to challenge the substance of the Authority's decisions to restrict and then terminate his access to the children; he alleged violations of Article 6 § 1, Article 8 and Article 13 of the Convention (art. 6-1, art. 8, art. 13).

49. On 17 November 1983, the Commission declared the application admissible.

In its report adopted on 3 December 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, while the care orders were in force, was denied a hearing before a court for the determination of his civil right of access to the children (ten votes to two);
- there had been no violation of Article 8 (art. 8) as a result of the alleged lack of a right to a hearing before a court and of an effective legal remedy in respect of his claim for access to the children (unanimous);

- no separate issue arose under Article 13 (art. 13) (ten votes to one, with one abstention).

The full text of the Commission's opinion and of the separate opinion and the partly dissenting opinion contained in the report is reproduced as an annex to the present judgment.

## FINAL SUBMISSIONS MADE TO THE COURT BY THE GOVERNMENT

50. 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

51. The background to the instant case is constituted by certain judicial or local authority decisions regarding the applicant's children A, B, C, D and E. The Court finds it important to emphasise at the outset that the present judgment is not concerned with the merits of those decisions; this issue was not raised by the applicant before the Commission and did not form part of the application which it declared admissible.

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 children or the restriction or termination of the applicant's access to them.

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

52. The applicant alleged that he had been unable to have the question of his access to his children A, B, C, D and E determined in proceedings that complied with Article 6 § 1 (art. 6-1) of the Convention. In his submission, there had accordingly been a violation of that provision, which, so far as is relevant, reads:

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

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

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

53. The Government maintained as their principal plea that Article 6 § 1 (art. 6-1) was not applicable in the present case, since no "right" was in issue. In support of this proposition, they advanced the following arguments.

(a) The concept of a "civil right" within the meaning of Article 6 § 1 (art. 6-1) was admittedly an autonomous one. However, that Article (art. 6-1) had no application unless the matter at issue constituted a legal right in the context of domestic law, to which it was therefore necessary to have regard.

(b) The notion of parental "rights" over children was outmoded; furthermore, according to dicta of English judges, the so-called "right" of access by a parent to his child was preferably described as a right in the child.

(c) In any event, the said right was a "rhetorical" and not a legal one.

(d) Even if there were such a parental right at the outset, it ceased to have a separate existence on the making of a care order or the passing of a parental rights resolution: the effect of these measures was to transfer to the local authority, subject to limited exceptions, all the rights, powers and duties of the parent with respect to the child. The mere possibility or expectation that the authority might, in its discretion, subsequently allow the parent to have access to the child did not constitute a "right".

54. It is true that Article 6 § 1 (art. 6-1) extends only to "contestations" (disputes) over (civil) "rights and obligations" which can be said, at least on arguable grounds, to be recognised under domestic law; it does not in itself guarantee any particular content for (civil) "rights and obligations" in the substantive law of the Contracting States (see, amongst other authorities, the *Lithgow and Others* judgment of 8 July 1986, Series A no. 102, p. 70, § 192).

The Court is not, however, persuaded by the Government's argument that no "right" of the aforementioned kind was at issue in the present case.

55. Underlying the Government's description of the notion of parental rights as outmoded was the view that those rights are derived from parental duties and responsibilities and exist only so long as they are needed for the protection of the person or the property of the child. The main thrust of this view seems to be not to deny the existence of parental rights but rather to stress that they are not absolute and may be overridden if not exercised in accordance with the welfare of the child; indeed, the 1948 Act and the 1980 Act both refer expressly to parental "rights" and the Children Act 1975 even mentions specifically a parental "right of access" (see paragraph 32 above). Again, when the English courts spoke of access as being a right in the child, they appear not to have been asserting the absence of any parental right of access whatsoever, but to have been expressing the principle that in the event of a conflict between concurrent rights of parent and child it is the welfare of the child which should be treated as the paramount consideration.

56. In the normal and natural course parent and child will live together and no problem will arise as regards the parental right of access. It is on the occurrence of some event that disturbs the ordinary pattern of family life by separating them - for example, matrimonial proceedings or the taking of a child into public care - that parental entitlement to access will become an issue in practice. It is therefore more important to focus on the position that obtains in English law in this respect once the relevant legislation has been brought into play.

57. The *raison d'être* of the legislation concerning the taking of a child into public care is that, having regard to the background circumstances, the interests of the child may require that the local authority shall have parental powers for certain purposes. This result is achieved either by the making of a care order committing the child to the care of the local authority, in which event it will have nearly all the same powers and duties with respect to the child as his parent would have apart from the order, or by the adoption of a parental rights resolution, in which event there will vest in the authority nearly all the rights and duties which by law the parent has in relation to the child (see paragraphs 25 and 32 above).

It is true that, in the case of a parental rights resolution, the rights which vest in the authority are specifically stated to include "a right of access" (see paragraph 32 above), but neither for that measure nor for a care order does the legislation stipulate in terms that there shall thenceforth be no contact between parent and child. The position in English law is that the taking of a child into public care by one of these means does not automatically deprive the parent of access to him; its effect is that the continuation of access becomes a matter within the discretionary power of the local authority (see paragraph 41 above).

58. The existence of a power on the part of the authority to decide to allow only restricted or even no visits to the child by his parent does not, in the Court's understanding, necessarily mean that there is no longer any

parental right in regard to access once one of the measures in question has been taken.

As the Government accepted, the statutes clearly recognise the continuation of parental access as generally desirable (see paragraph 41 above). Moreover, the Code of Practice on Access to Children in Care issued in December 1983 (see paragraph 45 above) expressly acknowledges that for most children there will be no doubt that their interests will best be served by efforts to sustain links with their natural families. It would be inconsistent with this aim if the making of a care order or the adoption of a parental rights resolution were automatically to divest a natural parent of all further rights and duties in regard to access.

The effect of these measures is not to extinguish all rights and responsibilities of the natural parent in respect of the child. Thus, for example, subject to the power of the court - and not the local authority - to dispense with his consent, he retains the right to agree or refuse to agree to the child's adoption (see paragraphs 25, 32 and 46 above). Again, and even more importantly for the present purposes, he enjoys a continuing right to apply to the courts for the discharge of the order or resolution on the ground that such a course is in the child's interests (see paragraphs 27 and 34 above). The issue for determination in such proceedings is the restoration of parental rights in regard to custody and control of the child. It would appear to the Court that the determination of a parental right is equally in issue where, during the currency of the order or resolution, a parent claims that the continuance or renewal of access is in the child's interests. That this is so is now confirmed by the provisions of Part IA of the 1980 Act, inserted by the Health and Social Services and Social Security Adjudications Act 1983 (see paragraph 44 above), which are founded on the existence of just such a right on behalf of the parent.

Moreover, the extinction of all parental right in regard to access would scarcely be compatible with fundamental notions of family life and the family ties which Article 8 (art. 8) of the Convention is designed to protect (see, amongst other authorities, the *Marckx* judgment of 13 June 1979, Series A no. 31, p. 21, § 45).

The Court thus concludes that it can be said, at least on arguable grounds, that even after the making of the care orders the applicant could claim a right in regard to his access to A, B, C, D and E.

59. According to the Court's established case-law, Article 6 § 1 (art. 6-1) will not be applicable unless two further conditions are satisfied: the right at issue must have been the object of a "contestation" (dispute) and must be "civil".

That there was a dispute between the applicant and the Authority on the access question is clear and, indeed, this was not denied by the Government. They also accepted that if there was a parental "right" of access, it was a

"civil" right. Since access forms an integral part of family life, the Court entertains no doubts on this latter point.

60. Article 6 § 1 (art. 6-1) is therefore applicable in the present case.

In reaching this conclusion, the Court has not been unmindful of the arguments advanced by the Government in favour of leaving discretion as to access to the local authority rather than to the courts, such as the large number of children in public care and the need to take decisions urgently and without delay, through specialised social workers and as part of a continuous process. On the other hand, this is an area in which it is essential to ensure that the rights of individual parents are protected in accordance with Article 6 § 1 (art. 6-1). Furthermore, Article 6 § 1 (art. 6-1) does not require that all access decisions must be taken by the courts but only that they shall have power to determine any substantial disputes that may arise.

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

61. The Government pleaded in the alternative that even if the applicant had retained some residual right of access, he enjoyed in domestic law judicial protection of that right of a kind which satisfied the requirements of Article 6 § 1 (art. 6-1). They referred in this connection to the possibility of challenging the care orders, of applying for judicial review or of instituting wardship proceedings. The applicant contended - and the Commission concluded - that in none of these proceedings would the scope of the court's review be such that those requirements were met.

62. At the relevant time, a parent certainly had some possibilities of challenging a care order, either by intervening in the proceedings in which it was made, or by lodging a subsequent appeal, or by applying for its discharge at a later date (see paragraphs 22, 27 and 28 above).

It is true that a successful challenge would resolve the access issue indirectly. However, as the Government accepted, proceedings of this kind are directed to the care order as such and not to the isolated issue of access (see paragraph 42 above). Yet whether a child should be in public care and whether his parent should have access to him are matters to which different considerations may well apply. Again, the parent may have no desire to challenge the order, being content for the time being at least to see his contacts with his child maintained. Yet again, he may be able to adduce reasons warranting a continuation or restoration of access but not of his care of the child. Furthermore, a challenge of the order by the parent may prompt, on the part of the local authority, opposition which would not be forthcoming if the proceedings were confined to the access issue.

63. An application for judicial review or the institution of wardship proceedings does enable the English courts to examine a local authority's decision in the matter of access by a parent to his child who is in public

care. These two remedies provide valuable safeguards against exercise by the authority of its discretion in an improper manner.

Nevertheless, on an application for judicial review, the courts will not review the merits of the decision but will confine themselves to ensuring, in brief, that the authority did not act illegally, unreasonably or unfairly (see paragraph 42 above). Where, as in the instant case, a care order is in force, the scope of the review effected in the context of wardship proceedings will normally be similarly confined (see paragraph 43 above).

In a case of the present kind, however, there will in the Court's opinion be no possibility of a "determination" in accordance with the requirements of Article 6 § 1 (art. 6-1) of the parent's right in regard to access, as analysed in paragraph 58 above, unless he or she can have the local authority's decision reviewed by a tribunal having jurisdiction to examine the merits of the matter. And it does not appear from the material supplied by the Government or otherwise available to the Court that the powers of the English courts were of sufficient scope to satisfy fully this requirement during the currency of each of the care orders.

64. There was accordingly a violation of Article 6 § 1 (art. 6-1).

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

65. The applicant alleged that he had been the 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 violation was claimed to have arisen on two grounds:

(a) the procedures followed by the Authority in reaching its decision to terminate the applicant's access to his children A, B, C, D and E; and

(b) the absence of an effective remedy whereby he could challenge that decision or earlier decisions restricting his access.

66. As regards the first ground, whilst the Commission did not, in its admissibility decision of 17 November 1983, expressly declare inadmissible the question of the procedures followed by the Authority, it did not examine this point on the merits, having interpreted the applicant's complaint as being apparently confined to the absence of an effective remedy. When the applicant reverted to the former question at the hearings before the Court, the Government replied that it was too late to raise it.

In its report, the Commission observed that there was some uncertainty about the extent to which the applicant was informed and heard about measures taken in regard to his children. However, irrespective of the questions of interpretation of Article 8 (art. 8) which this issue raises (see the *W v. the United Kingdom* judgment of today's date, Series A no. 121, §§ 59-64), the Court does not consider that the material before it, in particular that supplied by the applicant, is sufficient to establish a violation of that provision on this point.

67. As to the second ground relied on by the applicant, the Commission concluded that the alleged lack of an effective legal remedy in respect of his claim for access to his children did not in the circumstances of the case amount to a violation of Article 8 (art. 8). The Government, for their part, submitted that there was nothing in Article 8 (art. 8) which required any particular procedures or any particular remedy.

Having regard to its decision, in the context of Article 6 § 1 (art. 6-1), that the applicant should have been able to have the question of his access to his children determined by a tribunal (see paragraphs 52-64 above), the Court does not find it necessary to examine under Article 8 (art. 8) his complaint concerning an absence of remedies.

#### IV. ALLEGED VIOLATION OF ARTICLE 13 (art. 13)

68. The applicant alleged that no effective remedies were available to him in the matter of access to his children A, B, C, D and E and that he had on that account been a victim of a violation of Article 13 (art. 13) of the Convention, which reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission expressed the opinion that no separate issue arose under Article 13 (art. 13). The Government agreed, but submitted in the alternative that effective remedies were available.

69. Having regard to its decision on Article 6 § 1 (art. 6-1), the Court considers that it is not necessary to examine the case under Article 13 (art. 13); this is because its requirements are less strict than, and are here absorbed by, those of Article 6 § 1 (art. 6-1) (see, notably, the *Sporrong and Lönnroth* judgment of 23 September 1982, Series A no. 52, p. 32, § 88).

#### V. APPLICATION OF ARTICLE 50 (art. 50)

70. 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."

71. The applicant sought just satisfaction under this provision, but has not yet quantified his 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 fifteen votes to two that there has been no violation of Article 8 (art. 8) as regards the procedures followed;
4. Holds by fifteen votes to two that it is not necessary to examine under Article 8 (art. 8) the complaint concerning an absence of remedies;
5. Holds unanimously that it is not necessary also to examine the case under Article 13 (art. 13);
6. 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 his 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:

- joint opinion of Mr. Lagergren, Mr. Pinheiro Farinha, Mr. Pettiti, Mr. Macdonald, Mr. De Meyer and Mr. Valticos;
- joint opinion of Mr. Pinheiro Farinha, Pettiti, De Meyer and Valticos;
- joint opinion of Mr. Pinheiro Farinha and Mr. De Meyer;
- individual opinion of Mr. De Meyer.

R.R.  
J.L.S.

O. v. THE UNITED KINGDOM JUDGMENT  
JOINT SEPARATE OPINION OF JUDGES LAGERGREN, PINHEIRO  
FARINHA, PETTITI, MACDONALD, DE MEYER AND VALTICOS  
JOINT SEPARATE OPINION OF JUDGES LAGERGREN,  
PINHEIRO FARINHA, PETTITI, MACDONALD, DE MEYER  
AND VALTICOS

The views expressed in our joint separate opinion concerning the case of  
W v. the United Kingdom<sup>1</sup> also apply to the present case.

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<sup>1</sup> Series A no. 121, p. 39

O. v. THE UNITED KINGDOM JUDGMENT  
JOINT SEPARATE OPINION OF JUDGES PINHEIRO FARINHA, PETTITI,  
DE MEYER AND VALTICOS

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JOINT SEPARATE OPINION OF JUDGES PINHEIRO  
FARINHA, PETTITI, DE MEYER AND VALTICOS

The remark made in paragraph 1 of our joint separate opinion concerning the case of *W v. the United Kingdom*<sup>1</sup> also applies to the present case.

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<sup>1</sup> Series A no. 121, p. 39

O. v. THE UNITED KINGDOM JUDGMENT  
JOINT SEPARATE OPINION OF JUDGES PINHEIRO FARINHA AND DE  
MEYER

JOINT SEPARATE OPINION OF JUDGES PINHEIRO  
FARINHA AND DE MEYER

The views expressed in our joint separate opinion concerning the case of *W v. the United Kingdom*<sup>1</sup> also apply, *mutatis mutandis*, to the present case.

As far as this case is concerned, we also consider that there was a violation of the applicant's right to respect for his family life:

(i) in that he was not duly consulted, heard and informed as regards the measure taken in February 1978 (§ 11 of the judgment);

(ii) in that it has not been shown that he was duly consulted, heard and informed as regards the measure imposed on him in July 1979 (§ 14 of the judgment).

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<sup>1</sup> Series A no. 121, p. 40-41.

INDIVIDUAL SEPARATE OPINION OF JUDGE DE MEYER

The views expressed in my individual separate opinion concerning the case of *W v. the United Kingdom*<sup>1</sup> also apply, *mutatis mutandis*, to the present case.

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<sup>1</sup> Series A no. 121, p. 42.