

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

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr J. Cremona,
Mr F. Gölcüklü,
Mr J. Pinheiro Farinha,
Mr L.-E. Pettiti,
Mr A. Spielmann,
Mr J. De Meyer,
Mr F. Bigi,
Mr G. Lagergren, ad hoc judge,

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

Having deliberated in private on 27 August 1991 and 20 January 1992,

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

Notes by the Registrar

* The case is numbered 61/1990/252/323. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the Government of the Kingdom of Sweden ("the Government") on 14 and 17 December 1990 respectively, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12963/87) against Sweden lodged with the Commission under Article 25 (art. 25) by Mrs Margareta Andersson and her son Roger Andersson, who are Swedish nationals, on 13 February 1987.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Sweden recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request and of the Government's application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 8 (art. 8) of the Convention and also, in the case of the request, Article 13 (art. 13).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicants stated that they wished to take part in the proceedings and designated the lawyer who would represent them (Rule 30).

3. The Chamber to be constituted included ex officio Mrs E. Palm, the elected judge of Swedish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). However, on 8 January 1991 Mrs Palm had withdrawn from consideration of the case pursuant to Rule 24 para. 2 and by letter of 22 February the Agent of the Government notified the Registrar of the appointment of Mr Gunnar Lagergren, former member of the Court, as an ad hoc judge (Article 43 of the Convention and Rule 23) (art. 43). On 21 February, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr J. Cremona, Mr F. Gölcüklü, Mr J. Pinheiro Farinha, Mr A. Spielmann, Mr J. De Meyer, Mr I. Foighel and Mr F. Bigi (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr Foighel, who was unable to attend, was replaced by Mr L.-E. Pettiti, substitute judge (Rule 22 para. 1 and Rule 24 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Government, the Delegate of the Commission and the lawyer for the applicants on the organisation of the procedure (Rules 37 para. 1 and 38).

5. Thereafter, in accordance with the President's orders and directions, the Registrar received from the applicants and the Government, on various dates between 15 March and 26 August 1991, their respective observations, the applicants' claims under Article 50 (art. 50) of the Convention and a number of documents. In a letter of 30 May, the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

On 4 July and 5 August 1991 the Commission filed a number of documents which the Registrar sought from it on the President's instructions.

6. As further directed by the President, the hearing took place in public in the Human Rights Building, Strasbourg, on 26 August 1991. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr C.H. Ehrenkrona, Legal Adviser,
Ministry for Foreign Affairs, Agent,
Mr R. Gustafsson, Legal Adviser,
Ministry of Health and Social Affairs, Adviser;

(b) for the Commission

Mr H. Danelius, Delegate;

(c) for the applicants

Mrs S. Westerberg, lawyer, Counsel,
Mrs B. Hellwig, Adviser.

The Court heard addresses by Mr Ehrenkrona for the Government, by Mr Danelius for the Commission and by Mrs Westerberg for the applicants as well as their replies to questions put by the Court and by some of its members individually.

7. On 5 and 13 September 1991, respectively, the registry received further replies in writing from the applicants and the Government to questions put at the hearing.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

8. Mrs Margareta Andersson and her son Roger Andersson were born in 1951 and 1974 respectively and are both Swedish citizens. They resided first at Växjö but in 1985 they moved to Nybro.

9. On 5 June 1985 the Chairman of the Social Committee no. 1 of the Social Council (socialnämndens socialutskott I) of Växjö decided that Roger should be immediately taken into public care on a provisional basis under section 6 of the 1980 Act containing Special Provisions on the Care of Young Persons (lagen 1980:621 med särskilda bestämmelser om vård av unga - "the 1980 Act"). The purpose of this decision was to enable an investigation into his situation by the Children's and Juveniles' Psychiatric Clinic ("the Clinic") at Växjö. The decision was based on a social welfare officer's report of the same date which noted inter alia the following. When Roger started school in 1981 it had been observed that he was lacking in social adaptation and maturity, he was behaving in a very shy, inhibited and insecure manner. The social welfare authorities at Växjö had then made several suggestions to help Roger which Margareta Andersson rejected. As from December 1984 Roger stopped attending school regularly. He and his mother later moved to an address unknown to the social welfare authorities which the latter managed to trace (at Nybro) after an investigation. The report concluded that since Roger's health and development were seriously disturbed in connection with his mother's behaviour, it was likely that he had been treated in a mentally harmful manner for a considerable period of time. In view of the fact that his health and development were increasingly in danger and that Margareta Andersson would obstruct the investigation, the need for public care was urgent.

10. On 11 June 1985 the social welfare authorities decided to prohibit contacts between the applicants, pending a decision of the County Administrative Court (länsrätten) at Växjö on the care issue. They permitted however some contacts by telephone. The prohibition was to be reviewed as soon as it was deemed not to be harmful to Roger to have contact with his mother.

11. On 14 June 1985 the County Administrative Court, in two decisions, confirmed the interim care order and upheld the prohibition of access. The Deputy Chief Doctor of the Clinic, who was heard as an expert witness, had stated inter alia that it was necessary to control Margareta Andersson's contact with Roger; it would be "too dramatic for Roger if she were allowed to visit him". Margareta Andersson could not cope with being separated from her son; she in fact needed assistance just as much as he did. It should not be for him to take care of her. Prohibition of access was therefore necessary for as long as Margareta Andersson was in such a bad condition.

Margareta Andersson unsuccessfully challenged these decisions before the Administrative Court of Appeal (kammarrätten) in Jönköping. The Supreme Administrative Court (regeringsrätten) refused leave to appeal on 26 July 1985.

12. The Social Council applied to the County Administrative Court for a care order under the first sub-paragraph to the second paragraph of section 1 of the 1980 Act. After holding a hearing, the court granted the application on 17 July 1985 on, inter alia, the following grounds:

"From the investigation in the case it does not appear that there is any reason to criticise the manner in which Margareta Andersson manages her home. In so far as can be ascertained, the material conditions [there] are satisfactory. However, the investigation shows that the situation in the home is likely to jeopardise a young person's emotional and social development. Before the County Administrative Court, Margareta Andersson has expressed the view that the information contained in the Social Council's application is essentially incorrect. In the light of the proceedings in this case, Margareta Andersson must thereby be considered to confirm the allegation that she is unable to understand Roger's situation. It has clearly appeared from Roger's behaviour that his social and emotional development is deranged. It is therefore essential for Roger to receive assistance and support to overcome his problems. In view of Margareta Andersson's attitude, it is not likely that the necessary measures can be taken by herself or with her approval. The task of rehabilitating Roger must therefore be entrusted to the social welfare authorities. The Social Council's application shall therefore be granted."

13. As decided by the Chairman of the Social Committee (see paragraph 9 above), Roger was placed at the Våxjö Clinic on 5 June 1985. But, on 15 July he ran away and joined his mother. On 26 August she reached an agreement with the Social Council by virtue of which the public care of Roger continued, after a brief period in the Clinic, in their home at Nybro.

14. As from March 1986, Roger stopped attending school. The Chairman of the Social Committee consequently had him returned to the Clinic on 29 April with a view to placing him in a foster home. However, on 13 May Roger again ran away from the Clinic and stayed with his mother, until the police took him back on 5 August 1986.

15. In the meantime, on 22 May 1986, the Social Council decided to place Roger in a foster home. Margareta Andersson appealed against the decision to the County Administrative Court, which held a hearing at which she was present and assisted by counsel and Roger was represented by official counsel (offentligt biträde). It rejected the appeal on 19 August. Her further appeal to the Administrative Court of Appeal was dismissed on 17 October. On 19 December 1986 the Supreme Administrative Court refused leave to appeal.

While these proceedings were in progress, Roger was transferred on 23 August to a foster home - with Mr Meijer and Mrs Højsholt - at Glimåkra, situated approximately 120 kilometres from Nybro. Except for two periods of hospitalisation, he stayed there until the public care order was terminated on 27 April 1988 (see paragraph 45 below). He was taken to hospital, firstly, from 3 to 25 February 1987, for treatment of diabetes; and later, from 26 February to 3 May 1988, because he had taken an overdose of insulin. Since the latter date he has been living with his mother at Nybro.

B. Limitations on access

1. Decisions relating to prohibitions of access

16. On 6 August 1986 the Assistant District Chief of the social welfare authorities at Våxjö decided:

"Since it is considered necessary in order to achieve the purposes of the care order, the undersigned officer in charge, having been duly authorised by the Social Council and pending the Social Committee's meeting, has decided that

prohibition of access (umgängesförbud) between [the applicants] under section 16 (1) of the 1980 Act shall apply as from today and until further notice.

The decision shall be reviewed as soon as personal contact between the mother and the child is no longer considered to be harmful to the child."

17. Subsequently, in his report of 15 August 1986 to the Social Council, the social welfare officer responsible for the case explained the reasons for the above-mentioned decision and recommended that the prohibition of access be continued as part of a care-plan for Roger. He relied mainly on the following considerations:

(a) Margareta Andersson had been involved with Roger's escaping twice from the Clinic. Moreover, she had expressed an intention of moving to an address unknown to the public authorities or to leave the country, in order to avoid "persecution".

(b) Margareta Andersson had exerted a negative influence on Roger during her visits at the Clinic; on some occasions her behaviour had been so inappropriate that officials of the Clinic had turned her away.

(c) While Roger stayed at the Clinic, it proved impossible to induce Margareta Andersson to adopt any form of co-operation. Whilst she had been refused contact with Roger, she had nevertheless hidden money and messages inciting him to escape in clothes and toys which she had brought for him to the Clinic.

(d) Staff members of the section at the Clinic which treated Roger had observed that he had behaved in a "very suspicious but calm" manner and that he had become more attached to the staff. He had seemed to handle the situation better than his mother and had not requested to call her by telephone.

(e) In order to achieve the purposes of the care, it was necessary to temporarily prevent Margareta Andersson from having "any form of contact with Roger".

18. According to the report, the decision of 6 August 1986 was conveyed verbally to Margareta Andersson on 8 August.

19. On 21 August 1986 the Social Committee endorsed the proposed care-plan, including the prohibition of access. As stated in its decision:

"[a] prohibition of access is to apply between ... Margareta Andersson and Roger Andersson, in accordance with section 16 (1) [of the 1980 Act], until further notice and awaiting that suitable access could be arranged without involving harm to the child."

According to the Social Council's submissions during the ensuing domestic court proceedings (see paragraphs 34-35 below), the prohibition covered not only meetings but also telephone communications and correspondence between the applicants.

2. Meetings

20. On authorisation by the social welfare authorities, Margareta Andersson and Roger met on 5 October and 30 December 1986 at the home of the Helgesson family at Sibbhult, situated near Glimåkra. A meeting planned for 3 December did not take place because Margareta Andersson would not accept the conditions for the meeting.

Mr and Mrs Helgesson had, as explained by the social welfare officer in a report to the Social Council of 30 March 1987, been appointed as support foster parents. They were entrusted with the task of arranging in their home meetings between the applicants, in order to facilitate contacts between them without causing disruption to Roger's relationship with his foster home. The meetings were attended by the Helgesson couple, the foster father - Mr Meijer - and one or two social workers. They each lasted approximately two hours. Shortly after the first meeting Roger attempted to escape from the foster home.

21. A new meeting was planned at the beginning of February 1987, but it had to be cancelled as Roger was hospitalised for treatment of diabetes (from 3 to 25 February 1987). The Government submitted that, during his hospitalisation, special efforts were made to have Margareta Andersson visit him at the hospital, but it was impossible to agree on the terms of such visits as she insisted on seeing him on her own. However, on 19 February 1987 she went to visit Roger. On this occasion she had a violent row with the foster father who, against her wishes, had come to attend the visit which ended by him forcing her to leave the hospital ward. According to the Government, the incident occurred because Margareta Andersson had not informed the hospital, the social welfare authorities or the foster father of her visit and had tried to take Roger with her. In the applicants' submission, the social welfare authorities had authorised her to visit Roger on that day. Margareta Andersson and her representative had made the hospital aware that, since his situation was far better there than in the foster home, she wished him to stay. Accordingly, there was never any danger that she would take him away from the hospital.

22. Margareta Andersson filed a complaint with the police against the foster father, alleging various acts of assault. The public prosecutor decided after a preliminary investigation not to pursue the matter. This decision was subsequently upheld on appeal to the Director of the Malmö Public Prosecution Authority.

23. Further meetings took place at the Helgesson home on 24 June, 13 July and possibly 20 August 1987. Unlike the previous meetings, these were attended by Mr and Mrs Helgesson only, as decided by the County Administrative Court in a judgment of 1 June 1987 (see paragraph 39 below). According to the Government, a meeting was also held on 5 August 1987, but the applicants contested this.

24. Margareta Andersson declined to accept proposals by Mrs Wintler, a social worker appointed by the social welfare authorities to assist her, on 2 and 24 April, 25 June and 26 October 1987 to take part in the planning of any future meetings with Roger but expressed her wish to be reunited with him.

25. Subsequently, on 28 November 1987 Roger and Margareta Andersson met in her own home, in the presence of Mr and Mrs Helgesson and Mrs Wintler. The Government claimed that such meetings were also held on 20 December 1987 and on 9 and 30 January 1988, which was denied by the applicants.

26. On 5 February 1988 the Social Committee decided that meetings be held on a monthly basis until May that year in Margareta Andersson's home and that, in between, additional meetings be organised in the Helgesson home (see paragraph 43 below). As later ruled by the County Administrative Court in a judgment of 17 February, the latter meetings were to be arranged at least twice a month (see paragraph 44 below).

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

where he stayed until 3 May (see paragraph 15 above). During this period his mother was permitted to visit him and, also, to stay overnight at the hospital. Altogether, she spent approximately two weeks there.

3. Telephone communications and correspondence

28. According to a memorandum by the Assistant District Chief, dated 4 March 1987, the prohibition of access between the applicants was implemented in the following way until further notice:

"The prohibition covers telephone communications and correspondence. Margareta has the possibility at certain times of the week to have telephone contacts with Roger's doctor and with Mrs Helgesson. She also has telephone contact with [the foster father]. Letters from Margareta to Roger shall first be scrutinised by [the foster father]."

29. The applicants submitted that Margareta Andersson addressed about two letters per month to Roger in the foster home but he did not receive these, apparently because they had been stopped by the foster father. Moreover, while Roger was in hospital in February 1987, she sent him several letters which he did not receive either, as they had been stopped by the hospital's personnel and transmitted to the foster father.

30. The Government, for their part, asserted that, as far as they were able to establish, only two undated letters from his mother had been stopped, both probably written in February 1987. One letter said that she had been talking about the case in a radio programme and had been refused to contact him by telephone. It also invited him to inform the doctor at the hospital that he was dissatisfied with the foster family, with a view to getting assistance from the doctor. Another letter informed him of the date of the radio programme and of her new lawyer, who would do everything she could to get him back home. It moreover asked Roger to write to her about his conditions at Glimåkra.

31. The Government handed these letters over to the applicants' representative during the hearing on 26 August 1991. They submitted that the social welfare authorities had not been able, until late April 1991, to retrieve the letters which had been stopped.

32. In addition, it appears from the case-file that the foster father had prohibited Roger to call or write to Margareta Andersson and had taken certain preventive measures to this effect. Roger had, nevertheless, sent two letters without permission to his mother during the autumn of 1986.

33. On 5 February 1988 the Social Committee decided to revoke the prohibition of correspondence between the applicants and, furthermore, to allow them to communicate by telephone on condition that it occurred on Roger's own initiative (see paragraph 43 below).

C. First set of proceedings challenging the limitations on access

34. Margareta Andersson appealed against the decision of 21 August 1986 (see paragraph 19 above) to the County Administrative Court, requesting, firstly, that the prohibition of access be revoked and, secondly, that she be granted a right to talk to Roger on the telephone. After holding a hearing on 11 September 1986 at which Margareta Andersson was present and assisted by counsel, the court, by judgment of 12 September 1986, dismissed the latter request as being inadmissible and rejected the former on the merits. It stated:

"Margareta Andersson has asserted inter alia the following: The prohibition of access decided by the Social Committee goes beyond what is necessary to implement the care order. This decision was taken before Roger was transferred to Glimåkra. The fact that Roger is now living at Glimåkra constitutes a change of circumstances. There is no indication that [Margareta Andersson] would now exert a negative influence on Roger. She has not interfered with the present care and has not tried to sabotage the measures now taken. The resentment which she has displayed is rooted in the fact that she does not understand why care measures had to be taken. It is true that the bags with clothes which she brought to Roger when he stayed at the ... Clinic contained money and a card with a message that she would help him to leave. This does not mean that she encouraged him to run away. It was her way of telling Roger that she would try to get him home by appealing against the care decision. Roger has a lot of difficulties in the foster home at Glimåkra. On contacting the foster home by telephone she has been informed that Roger sits alone in his room crying. He wants to go home. Moreover he is being used as domestic help there. He has to do washing up and cleaning.

The Social Council has alleged that, in view of what has happened in the case, it has been necessary to prohibit access. This includes a prohibition for Margareta Andersson to speak to Roger on the telephone. The Council has made great efforts to get closer contact with Margareta Andersson and to establish a relationship of effective co-operation. These have not been successful. It does not wish to risk the failure of the renewed efforts. The ... Clinic has emphasised that a failure in this respect could entail a considerable risk to Roger. Statements made by Margareta Andersson show that she is prepared to take Roger away. Roger is developing well in the foster home. The Council aims at improving its co-operation with Margareta Andersson. Its intention is that at least one month should lapse after the transfer before any contacts take place between Margareta Andersson and Roger. If a suitable agreement can be made with Margareta Andersson, the Council intends to let her see Roger at the end of September or the beginning of October.

The County Administrative Court makes the following assessment of the case. The decision to take Roger into public care under [the 1980 Act] and his transfer to Glimåkra are based on the fact that Margareta Andersson has been unable to give Roger the necessary care. On two occasions, when Roger has been staying at the ... Clinic ..., he has run away and, with the help of Margareta Andersson, managed to stay away for long periods of time. During Roger's last stay at the ... Clinic, Margareta Andersson tried to give him a message which, in his eyes, must have meant that she would take him away. In the light of the proceedings and having regard to the need of continuing, without interruption, the care that has just started and of preventing Margareta Andersson from influencing Roger, the County Administrative Court finds that the Social Committee has good reasons for its decision to prohibit access. However, the County Administrative Court considers it appropriate to underline that if a well-functioning co-operation with Margareta Andersson can be established, it is important that a meeting between Margareta Andersson and Roger take place as planned by the Social Council.

According to Section 20 (3) [presumably (4)] of [the 1980 Act] a decision of the Social Council may be appealed to the County Administrative Court when the Council has decided

under section 16 on the access to a child. The County Administrative Court finds that the Social Committee, by prohibiting telephone contact with Roger, has limited Margareta Andersson's access according to section 11 of the Act. According to section 20 of the Act such a decision cannot be appealed."

35. Margareta Andersson appealed to the Administrative Court of Appeal which, after a fresh examination of all aspects of the prohibition in question, rejected the appeal by judgment of 11 November 1986. Its reasons included the following:

"According to section 16 of [the 1980 Act], the Social Council may restrict the guardian's right of access to the child, when it is necessary in order to implement the care order. Such a restriction may cover a prohibition of correspondence or telephone communications between the parent and the child as well as keeping the place of residence of the child secret. In applying this provision the right of access should, as a starting-point, not be restricted more than is absolutely necessary.

The appealed decision to prohibit access included, according to the Social Council's statement at the hearing before the County Administrative Court, a prohibition of correspondence and telephone communications. The entire decision is based on section 16 of the Act. The County Administrative Court should therefore have examined those parts of the decision which concerned prohibition of correspondence and telephone communications. Margareta Andersson's appeal should accordingly be examined with respect to the restriction as a whole.

...

During the care period the Social Council shall in principle try to maintain contacts between Roger and Margareta Andersson, but it can be forced by the circumstances to restrict contacts under the above-mentioned section of the Act.

From the documents and from what has transpired in the proceedings in this case, ... it appears that Margareta Andersson lacks understanding for Roger's need of care and that she is opposed to Roger being placed outside her home. Margareta Andersson has prevented earlier attempts to place Roger away from home by fetching Roger and by staying with him in a place unknown to the authorities. In view of what happened during her last meeting with Roger and of her own [oral] submissions before the Administrative Court of Appeal, there is reason to believe that she will not accept that Roger remain in the foster home.

It is an absolute condition for the success of the care in the foster home that Roger feels secure when staying there. The foster parents must furthermore be given the possibility to deal peacefully with Roger's problems. As soon as Margareta Andersson is able to accept the care measures taken and the transfer to the foster home and is able to participate in the implementation of the care, she should have the opportunity of seeing Roger. However, Margareta Andersson has shown that for the time being she is not prepared to take part in the care measures in this way. In these circumstances there are good reasons for the decision of the Social Council to prohibit access, including the prohibition of correspondence and telephone communications."

36. On 19 December 1986 the Supreme Administrative Court rejected Margareta Andersson's application for leave to appeal against the latter judgment.

D. Second set of proceedings challenging inter alia the limitations on access

37. On 9 April 1987 the Social Committee rejected requests by Margareta Andersson for termination of the care order and for repeal of the prohibition of access. It stated, inter alia, that:

"continued prohibition of access, under section 16 (1) of [the 1980 Act], shall apply ... until suitable access can be arranged without harm to the child".

38. On reviewing this decision on 14 May 1987, the Social Committee further decided:

(a) although the decision of 9 April 1987 could be interpreted as a total prohibition of access, it only amounted to a restriction on access;

(b) such restrictions should continue in accordance with section 16 (1) of the 1980 Act. Every instance of contact between the applicants should be planned and carried out in consultation with the social welfare authorities at Växjö, at Mr and Mrs Helgesson's home and in the foster father's presence.

39. Margareta Andersson appealed to the County Administrative Court, requesting termination of the care measure and, in the alternative, revocation of the restrictions on access. The court held a hearing at which she and her son were each represented by counsel and evidence was given by the foster father and Mr Mats Eriksson, a social worker. The latter had been assisting and supervising the foster home for a period of one month immediately after Roger's placement there. By judgment of 1 June 1987, the court amended the Social Council's decision of 9 April in such a way that future meetings between the applicants were to be attended by Mr and Mrs Helgesson only and dismissed the remainder of the appeal. With regard to the restrictions on access, it held:

"Concerning the restrictions on the right of access, the Social Council has stated that there is no restriction as to how many meetings can be arranged. The restrictions also include a prohibition of contact by telephone or letters. According to section 16 of [the 1980 Act] the Social Council may restrict the guardian's right of access, when this is necessary in order to achieve the purposes of the care order. When applying this provision the aim should be not to restrict the right of access more than is absolutely necessary.

Margareta Andersson has shown at the hearing before the County Administrative Court that she does not understand Roger's need for care. Her only aim is that Roger return home. Her conduct creates a conflict of loyalties for Roger. Margareta Andersson's previous actions in connection with Roger's escapes from the ... Clinic at Växjö, Roger's attempt to run away after her visit to the foster home, and Roger's behaviour when she visited the hospital at Kristianstad, show that restrictions on access are necessary for the successful care of Roger. The County Administrative Court finds that the Social Council has good reasons to restrict the right of access including contact by letters or telephone. Margareta Andersson has stated that she does not intend to

visit Roger if Henry Meijer [the foster father] is present during the visits. The County Administrative Court finds it important that the Social Council's decision be modified so as to encourage Margareta Andersson to visit Roger. This can initially only be done if Henry Meijer is not present during the visits. In order to facilitate the establishing of contacts no one else appointed by the Social Council should be present. During the visit, which is to take place in the Helgesson home, the presence of the Helgesson couple would be sufficient. No other change should be made in the decision to place restrictions on access."

40. On appeal, the Administrative Court of Appeal, after holding a hearing at which Margareta and Roger Andersson were represented in the same way as before the County Administrative Court and the former was herself present, upheld the above-mentioned judgment on 10 July 1987. It gave the following reasons for maintaining the restrictions on access:

"At the hearing it was said that Margareta Andersson had visited Roger on 24 June [1987] at the Helgesson home at Sibbhult. The visit - which was the first meeting ... since February - turned out well. The more precise conditions for future contacts - as well as future care - depend to a great extent on Margareta Andersson's attitude and conduct.

The Administrative Court of Appeal considers that further successful encounters, such as for example at the Helgesson home, must be established before other kinds of contact can be allowed."

41. Margareta Andersson subsequently applied for leave to appeal to the Supreme Administrative Court, but it refused such leave on 20 August 1987.

E. Third set of proceedings challenging inter alia the limitations on access

42. On 15 December 1987 the Social Committee again dismissed a request by Margareta Andersson to terminate the care or, alternatively, to lift the restrictions on access.

43. Later, on 5 February 1988, the Social Committee decided that monthly meetings be arranged in Margareta Andersson's home, in addition to meetings in the Helgesson's home. It moreover revoked the prohibition imposed on correspondence and reduced those on telephone communications (see paragraphs 26 and 33 above).

44. In a subsequent appeal to the County Administrative Court, Margareta Andersson requested that the care order be terminated, in the alternative that it be carried out in her home, in the further alternative that the restrictions on access be repealed. After holding a hearing at which each of the applicants were represented by counsel, the court, in its judgment of 17 February 1988, rejected the principal claim. As to the two alternative claims it stated:

"The Social Council has not examined Margareta Andersson's request that the care continue in her home. The County Administrative Court cannot legally decide where Roger shall stay. Margareta Andersson's request cannot be examined.

Concerning the issue of restrictions on access the Social Council has expressed that it intends to assess generously Margareta Andersson's request to meet Roger at Glimåkra. Furthermore, the Social Council has stated that the restrictions do not include a prohibition for Margareta Andersson and Roger to meet in private, but it does mean that

someone from the Helgesson family must be present in the home where they meet.

In view of Margareta Andersson's previous actions and her attitude as concerns the care issue, the County Administrative Court finds that the restrictions on access should continue. Such restrictions should be designed so as not to prevent a successful contact from being established. The County Administrative Court finds that the restrictions decided by the Social Committee have been so designed. In order to avoid any possible uncertainty, the County Administrative Court considers it appropriate to indicate that the meetings in the Helgesson home at Glimåkra should take place at least twice a month. Apart from that, the County Administrative Court confirms the Social Council's decision on the right of access. The above shall apply until the end of the school term in the spring of 1988. Thereafter a new assessment should be made."

45. Margareta Andersson appealed to the Administrative Court of Appeal which, on 27 April 1988, ordered termination of the public care of Roger. It considered that, whilst the main reason for Roger's previous situation - namely Margareta Andersson's inability to give him sufficient care and security - still existed, the purposes of the care order had to a large extent been achieved in that Roger had gained the ability to have good social relations and a certain degree of self-esteem. The court noted that Margareta Andersson's negative attitude towards the social welfare authorities had rather worsened during the implementation of the care order and that the likelihood of her continuing to refuse to co-operate with them and the school was considerable, even if Roger returns to her home. However, it found that there were reasons to believe that his return would have a positive impact on his situation, since the kind of conflicts that arose in connection with the care measures would be avoided. Moreover, it considered that Roger had become sufficiently strong and aware of his own situation for him not to be harmed by a possible lack of care from his mother.

II. RELEVANT DOMESTIC LAW

A. Care decisions

46. The basic rules on public responsibility for young persons are laid down in the Social Services Act 1980 (socialtjänstlagen 1980:620). This Act contains provisions regarding supportive and preventive measures taken with the approval of the individuals concerned. At the relevant time of the present case, when parents did not give their consent to the necessary measures, compulsory care could be ordered under the 1980 Act containing Special Provisions on the Care of Young Persons (lagen 1980:621 med särskilda bestämmelser om vård av unga - "the 1980 Act"). The 1980 Act was replaced by new legislation in 1990 (see paragraphs 65-66 below).

47. Section 1 of the 1980 Act read:

"Care is to be provided pursuant to this Act for persons under eighteen years of age if it may be presumed that the necessary care cannot be given to the young person with the consent of the person or persons having custody of him and, in the case of a young person aged fifteen or more, with the consent of the young person.

Care is to be provided for a young person if

1. lack of care for him or any other condition in the home entails a danger to his health or development, or

2. the young person is seriously endangering his health or development by abuse of addictive substances, criminal activity or any other comparable behaviour.

..."

48. It is primarily the responsibility of municipalities to promote a positive development for the young. For this purpose each municipality has a Social Council, composed of lay members assisted by a staff of professional social workers, which operates under the supervision and control of the County Administrative Board (länsstyrelsen) and the National Board of Health and Welfare (socialstyrelsen).

49. The 1980 Act specified that if the Social Council deemed it necessary to take a child into care, it had to apply to the County Administrative Court for a decision to this effect (section 2).

B. Implementation of care decisions

1. General

50. Once a decision on public care had been taken, the Social Council was to execute the decision, take care of the practical details regarding where to place the child and decide what education and other treatment he should be given, etc. (sections 11-16).

51. Pursuant to section 11 of the 1980 Act:

"... the Social Council shall decide how care is to be arranged for the young person concerned and where he is to reside during the period of care.

The Social Council may consent to the young person residing in his own home if this may be presumed the most appropriate way of arranging care, but care pursuant to this Act is always to commence away from the young person's home.

The Social Council or the person charged with care of the young person by the Council shall keep the young person under surveillance and make such decisions concerning his personal circumstances as are necessary for the discharge of care."

52. With regard to the nature of the functions entrusted to the Social Council under the 1980 Act, the following is stated in the preparatory work to this Act, as reproduced in the Government Bill (1979/80:1, Part A, pp. 596-597):

"After a decision on public care has been taken, the Social Council exercises parental responsibility alongside with the parents or in their place. It should assume such parental authority and responsibility as is necessary to implement the care measures. Thus, like the parents, the Council may take the necessary measures to prevent the young person from harming himself or others ... [or] from running away [and] ... may also take decisions ... concerning [his] private affairs. This may include matters relating to medical care or treatment, permission for the young person to travel or to take a job. According to the principles which govern the co-operation between the social welfare authorities and the individuals [concerned] on the implementation of public care measures, the Council should consult the parents in such matters, if the circumstances so allow. Therefore, the fact that the Council has taken over the responsibility for the care of the young person must not result in the parents being deprived of all influence. The parents and the young person

himself should as far as possible take part in making the care arrangements. Thus, it is only in so far as it is necessary for the implementation of public care measures that the Council, through the decision of the County Administrative Court, takes over the parental responsibility over the young person."

2. Regulation of the right of access

53. Section 15 of the 1980 Act provided for placing restrictions on the right to correspondence of persons taken into care pursuant to the second sub-paragraph to the second paragraph of section 1 of this Act, for such reasons as drug abuse or criminal activities (see paragraph 47 above). Section 15 read:

"Letters and other mail sent to or received by a person to whom the provisions of section 13 apply may be subjected to scrutiny if this is justified by considerations of order in the home or by the particular circumstances of the young person concerned. To this end the person in charge of the care at the home may open and examine mail arriving for or sent by the young person. If incoming mail contains any material which the young person is not allowed to possess, it shall be sequestered.

Correspondence between the young person and a Swedish authority or advokat or his official counsel shall be transmitted without prior scrutiny."

54. Section 16 of the 1980 Act provided:

"If it is necessary in order to achieve the purposes of care measures taken under this Act, the Social Council may

1. decide how the right of access to the young person shall be exercised by a parent or other person who has custody of him, or
2. decide that the young person's place of residence may not be disclosed to the parent or custodian."

55. The preparatory work to this provision, as reproduced in Government Bill (1979/80:1, Part A, p. 601), contains the following statement:

"The Social Council should, when carrying out the care, as far as possible co-operate with the parents and assist in maintaining contacts between the parents and the child ... a care decision should not give rise to other restrictions of the parents' right of access to the child than those which are necessary in order to carry out the care. The circumstances might, however, be such that the parents during the care period should not meet the child. There might for example be a risk that the parents interfere with the care without authorisation. The parents' personal circumstances might also, for instance by reason of severe abuse [of alcohol or drugs] or mental illness, be such that they should not meet the child at all The proposed provisions concerning restrictions on the right of access should be applied restrictively. [The Social Council] should, only in exceptional cases, refuse to disclose the child's place of residence to the parents."

56. The Standing Social Committee of the Parliament stated in its report (Statens offentliga utredningar - "SOU" 1979/80:44, p. 116) that the Social Council had in principle responsibility for all

decisions concerning visits to the child. This was inherent in its general powers to decide on the child's conditions during care. It stated however that parents enjoyed a special right of access to the child and that it was important that they maintain regular contact. The Committee added that:

"the circumstances may, however, be such that the parents during a certain time or until further notice should not meet the child."

57. According to a guide on the 1980 Act (1981:2, p. 112) issued by the National Board of Health and Social Welfare, the Social Council was empowered under section 16 to restrict and terminate completely the parents' access to the child.

58. There exists to date no judgment by the Supreme Administrative Court concerning the application of section 16 of the 1980 Act on telephone conversations and correspondence. It has, however, delivered one judgment in 1971, reported in its yearbook (Regeringsrättens Årsbok, RÅ 1971, p. 283), relating to the corresponding provision in the 1960 Child Welfare Act (barnavårdslagen 1960:97, which was replaced by the 1980 Act). In this case the Supreme Administrative Court unanimously rejected an appeal against a prohibition of access for one year covering both visits and telephone conversations. Appeals to the Supreme Administrative Court were at the time not subject to leave to appeal (see paragraph 64 below) and thus the appeal in question was rejected on the merits. The judgment did not specify the reasons for this rejection. As explained by the Government, this is in keeping with the Supreme Administrative Court's practice and means that the court accepted the reasons and conclusions of the lower court.

The above-mentioned judgment was briefly reported in the said yearbook as a so-called notisfall - which designates a category of decisions which, according to the Government, do not have the standing of clear precedents but may still have relevance in the determination of legal issues.

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

In the first case, the Administrative Court of Appeal in Sundsvall, by judgment of 5 July 1982, amended a prohibition of telephone contacts so as to allow a mother to call her daughter directly once every second week, rather than once a week through a social welfare officer. The prohibition was applied together with restrictions on meetings. Neither this judgment nor that of the lower court specified which provision in the 1980 Act had been applied.

In the second case, the said Administrative Court of Appeal, by judgment of 15 June 1987, confirmed, referring to section 16 of the 1980 Act, a prohibition of a mother to meet her son, for a period of two years, and to contact him by telephone. There is no indication that the lawfulness of the prohibition was disputed by the mother or questioned by the court.

In the third case, the Administrative Court of Appeal in Stockholm, by judgment of 20 March 1991, upheld measures limiting a father's contact with his daughter to one telephone conversation every Sunday between 5 and 6 p.m. On 24 May 1991 the Supreme Administrative Court dismissed the father's application for leave to appeal. This case was decided on the basis of section 14 of the 1990 Act, which had replaced section 16 of the 1980 Act (see paragraphs 65-66 below).

In the fourth case, the County Administrative Court at

Gothenburg, by a judgment of 3 October 1990, rejected, with reference to section 14 of the 1990 Act, an appeal against restrictions on a mother's access to and telephone contact with her son. She was permitted to call him twice a week, not later than 5 p.m. The lawfulness of the restrictions was disputed. However, the court held that "according to applicable case-law, telephone contact was considered on an equality with access ('umgänge') under section 14". This judgment was upheld by the Administrative Court of Appeal in Gothenburg on 11 January 1991. The Supreme Administrative Court granted leave to appeal on 23 July 1991 and is expected to deliver a judgment in the case in the spring of 1992.

60. Since 1972 there has existed in Sweden a computerised data register, which is accessible to the public, containing information on judgments of the Supreme Administrative Court and the four Administrative Courts of Appeal. It includes, inter alia, an indication of the nature of the case and a brief description of the issues raised, as well as the names of the court and of the parties and the date of the judgment. The rules governing the register have, from time to time, undergone amendments, none of which is relevant for the present case. Their current version is to be found in the 1990 Regulations on Registration and Statistics of Cases before the Supreme Administrative Court, the Supreme Social Insurance Court and the Administrative Courts of Appeal (Föreskrifter om dagbokföring och statistikregistrering i mål i regeringsrätten, försäkringsöverdomstolen och kammarrätterna, DVFS 1990:25, B1), adopted by the National Courts Administration (domstolsverket) on 11 December 1990, with effect from 1 January 1991.

C. Appeals

61. Decisions of the County Administrative Court that a child be taken into care under the 1980 Act could have been the subject of an appeal to the Administrative Court of Appeal and, with leave, to the Supreme Administrative Court.

62. An appeal lay to the County Administrative Court (and then to the Administrative Court of Appeal and, with leave, to the Supreme Administrative Court) against:

(a) refusals by a Social Council to terminate care ordered under the 1980 Act;

(b) decisions taken by a Social Council under the 1980 Act as to where the care should commence; to move a child from a home where he lives; regulating the right of access under section 16; and not to disclose the child's whereabouts to the parent or the custodian (section 20 of the 1980 Act).

63. The child was in principle a party to such proceedings, but had to have attained the age of 15 in order to have the capacity to conduct proceedings before the courts himself (processbehörighet). Otherwise this capacity was vested with the child's legal guardian (SOU 1987:7, pp. 66-70). Pursuant to section 19 of the 1980 Act, a child below the age of 15 should have been heard if it could have been useful for the investigation and it was not presumed to be harmful to him or her.

64. An appeal to the Supreme Administrative Court is subject to leave to appeal. Such leave is, pursuant to section 36 of the Administrative Procedure Act 1971 (förvaltningsprocesslagen 1971:291), granted in the following circumstances:

"1. if review by the Supreme Administrative Court is of importance in providing guidance on the interpretation of the law; or

2. if there are special reasons which militate for such review, such as the existence of a ground for reopening of the proceedings or of a gross oversight or error which has clearly affected the outcome of the case in the administrative court of appeal."

D. New legislation

65. As of 1 July 1990 - and therefore after the facts of the present case - the 1980 Act was replaced by a new Act containing Special Provisions on the Care of Young Persons 1990 (lagen 1990:52 med särskilda bestämmelser om vård av unga - "the 1990 Act") which entail certain amendments and additions to the 1980 Act.

66. The provisions of the 1990 Act corresponding to those of the 1980 Act mentioned above are essentially the same. However, section 14 of the 1990 Act, which replaces section 16 (see paragraph 54 above) of the 1980 Act, is worded as follows:

"The Social Council is responsible for accommodating as far as possible the young person's needs of contact with his parents or any person who has custody of him.

If it is necessary in order to achieve the purposes of care measures taken under this Act, the Social Council may

1. decide how the right of access to the young person shall be exercised by a parent or other person who has custody of him, or
2. decide that the young person's place of residence may not be disclosed to the parent or custodian.

The Social Council shall reconsider at least once every three months whether such decision as referred to in the second paragraph continues to be needed."

PROCEEDINGS BEFORE THE COMMISSION

67. In their application of 13 February 1987 to the Commission (no. 12963/87), Margareta and Roger Andersson raised a number of complaints relating to the taking of Roger into public care, the maintenance in force of the care order, his placement in a foster home and the restrictions imposed on their access to each other, including communications by correspondence and telephone. They alleged breaches of Article 8 (art. 8) of the Convention. They also complained about the absence of an effective remedy within the meaning of Article 13 (art. 13) with regard to the restrictions on access. Roger, in addition, invoked Articles 2, 3, 4, 9 and 10 (art. 2, art. 3, art. 4, art. 9, art. 10) and claimed that, contrary to Article 25 (art. 25) of the Convention, the exercise of his right to petition to the Commission had been hindered.

68. On 10 October 1989 the Commission declared admissible the complaints relating to the prohibition of access, including communications by correspondence and telephone (Article 8) (art. 8) and the absence of an effective remedy (Article 13) (art. 13), but decided to take no action with respect to the complaints under Article 25 (art. 25) and to declare all other complaints inadmissible.

In its report adopted on 3 October 1990 (Article 31) (art. 31), the Commission expressed the opinion that there had been a violation of Article 8 (art. 8) (unanimously), but no violation of Article 13 (art. 13) with regard to Margareta Andersson (unanimously), or with regard to Roger Andersson (by ten votes to

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

* Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 226-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

69. At the hearing on 26 August 1991, the Government confirmed the final submission in their memorial inviting the Court to find "that there has been no violation of the Convention in the present case".

AS TO THE LAW

I. SCOPE OF THE CASE

70. At the Court's hearing, the applicants raised a variety of matters regarding inter alia the Swedish educational system, Roger's school problems and the situation in the foster home. However, the case, as delimited by the Commission's decision on admissibility, concerns only their complaints against the restrictions on access to each other, including communication by correspondence and telephone, during the period from 6 August 1986 to 27 April 1988, and the absence of an effective remedy in respect of those restrictions.

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

A. Introduction

71. Margareta and Roger Andersson alleged that the restrictions on access, including restrictions on communication by correspondence and telephone, had given rise to violations of Article 8 (art. 8) of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

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

72. The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and the natural family relationship is not terminated by reason of the fact that the child is taken into public care (see, as the most recent authority, the Eriksson v. Sweden judgment of 22 June 1989, Series A no. 156, p. 24, para. 58). Moreover, telephone conversations between family members are covered by the notions of "family life" and "correspondence" within the meaning of Article 8 (art. 8) (see the Klass and Others v. the Federal Republic of Germany judgment of 6 September 1978, Series A no. 28, p. 21, para. 41, and the Kruslin v. France judgment of 24 April 1990, Series A no. 176-A, p. 20, para. 26). It follows - and this was not contested by the Government - that the measures at issue amounted to interferences with the applicants'

right to respect for their family life and correspondence.

73. Such interferences constitute a violation of Article 8 (art. 8) unless they were "in accordance with the law", had an aim or aims that is or are legitimate under Article 8 para. 2 (art. 8-2) and were "necessary in a democratic society" for the aforesaid aim or aims (see the above-mentioned Eriksson judgment, Series A no. 156, p. 24, para. 58).

B. "In accordance with the law"

74. The applicants contended that the limitations placed on access were not "in accordance with the law". The Government contested this claim, whereas the Commission agreed in so far as it concerned the restrictions imposed on telephone communications and correspondence.

75. The Court recalls that the expression "in accordance with the law", within the meaning of Article 8 para. 2 (art. 8-2), requires firstly that the impugned measures should have a basis in domestic law. It also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and formulated with sufficient precision to enable them - if need be, with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. A law which confers a discretion is not in itself inconsistent with this requirement, provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim in question, to give the individual adequate protection against arbitrary interference (see, amongst many other authorities, the above-mentioned Kruslin judgment, Series A no. 176-A, pp. 20-23, paras. 27, 29 and 30).

76. The dispute in the present case concerns the question whether the limitations on access, including communication by telephone and correspondence, had a basis in Swedish law and were foreseeable.

1. Limitations on meetings

77. The applicants pointed out that they had been authorised to meet only a few times during the period between August 1986 and May 1987 and that the social welfare authorities had been given too wide a discretion in this respect which they had exercised arbitrarily. Even after the Social Committee's decision of 14 May 1987 (see paragraph 38 above), it had been unclear when and how meetings were to be arranged. They claimed that this amounted to a total prohibition of access, which lasted for almost one year and which was both contrary to Swedish law and unforeseeable.

78. The Court observes that, as stated in the social welfare authorities' decisions of 6 and 21 August 1986, a prohibition of access was to apply until further notice and until "suitable access could be arranged without involving harm to the child" (see paragraphs 16 and 19 above). The applicants were allowed to meet on 5 October 1986. Subsequent to this, several meetings were held throughout the care period. Admittedly the meetings took place with a certain irregularity and often after lengthy intervals. However, this is at least partly attributable to Margareta Andersson's unwillingness to accept the terms for meetings or to take part in their planning as proposed by the social welfare authorities (see paragraphs 20, 21 and 24 above). The Court therefore shares the view of the Government and the Commission that a total prohibition of access was only in force for a period of approximately two months, from 6 August 1986, when the Assistant District Chief decided to prohibit access, until 5 October 1986, when the first meeting was held between the applicants (see paragraphs 16 and 20

above).

79. Although the wording of section 16(1) may suggest that the Social Council was empowered to regulate, but not to prohibit, access, it was clearly stated in the preparatory work to this provision that a prohibition of access could, if required by the circumstances, be imposed for a certain period or until further notice (see paragraph 56 above). Moreover, it follows from decisions of Swedish administrative courts that a temporary prohibition of access could be based on section 16 (see paragraphs 34, 58 and 59 above). Such a prohibition could, according to this provision, be imposed only to the extent that it was necessary in order to fulfil the object of the care measures. Furthermore, as expressed in the relevant preparatory work, limitations on access under section 16 should be applied restrictively and the Social Council should as far as possible co-operate with the parents and assist in maintaining contact between them and the child (see paragraph 55 above).

2. Limitations on communication by telephone and correspondence

80. According to both the applicants and the Commission, it was not clear that the social welfare authorities were permitted under Swedish law to extend a restriction on access to cover communications by correspondence and telephone. They pointed out that the rationale for regulating meetings was different from that for limiting contacts by telephone or mail. Limitations of this kind were not expressly provided for by section 16 of the 1980 Act nor mentioned in the preparatory work to this section. There was no support in the corresponding rules of the Parental Code for the view that the expression *rätt till umgänge*, as understood in Swedish, referred to contact by mail or telephone. Moreover, whilst section 15 of the 1980 Act, which was not applicable in the present case, expressly authorised scrutiny of correspondence, section 16 did not.

81. The Delegate of the Commission did not accept that any specific conclusion could be drawn from the case-law cited to the Court by the Government as to whether the limitations on correspondence and telephone communication had a basis in Swedish law. First, he recalled that the Supreme Administrative Court's 1971 judgment contained no reasons for its rejection of the appeal in question; the issue of the legality of the restrictions was not raised and the court did not even indicate upon which provision the restrictions were based (see paragraph 58 above). Moreover, the Supreme Administrative Court's refusals to grant leave to appeal in the present case did not constitute a legal precedent and did not contain any reasons (see paragraphs 36 and 41 above). With regard to the two decisions of the Sundsvall Administrative Court of Appeal (see paragraph 59 above) the Delegate considered that these were of little importance as they had not been decided by the highest court and had not been published. In addition, he referred to a third decision in which the Sundsvall court in 1983 had relied on section 11, as opposed to section 16, thereby indicating an inconsistency in its practice. The limitations, therefore, did not have a clear basis in Swedish law and were not foreseeable.

82. In the present case, the contested limitations on communications by correspondence and telephone had on two separate occasions been upheld by the Administrative Court of Appeal under section 16 of the 1980 Act. On each occasion, the Supreme Administrative Court had subsequently refused leave to appeal (see paragraphs 36, 41 and 64 above).

Furthermore, as appears from its public files, in doing so it had taken into account its above-mentioned 1971 judgment. By that

judgment, the court rejected an appeal concerning a one-year prohibition of access and telephone communications between a parent and a child, after having examined the case on the merits. It cannot be assumed that in the present case the Supreme Administrative Court failed to consider whether the prohibition was lawful. Clearly, that court accepted the lower court's reasoning and conclusions (see paragraph 58 above).

The cases referred to by the Government, other than the present instance, all concerned restrictions on access including telephone communications (see paragraphs 58-59 above). None of these decisions had set aside such restrictions as being unlawful. It is true that only some of them pre-dated the judgments in the instant case but those which followed are in principle capable of illustrating the previous understanding of the law. All appellate administrative courts' judgments are computerised in Sweden since 1972 (see paragraph 60 above).

In this regard, it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, amongst many authorities, the above-mentioned Kruslin judgment, Series A no. 176-A, pp. 21-22, para. 29).

83. In its report, the Commission further considered that the "uncertainty" as to the contents of the law was combined with a lack of clarity as to the scope of the social welfare authorities' decisions of 6 and 21 August 1986 to prohibit access under section 16, as these did not specify that the prohibition covered telephone communications and correspondence (see paragraphs 16 and 19 above). In their view, this lack of clarity persisted during the subsequent court proceedings, firstly because the County Administrative Court's judgment had referred to telephone conversations but had not mentioned correspondence and, secondly, because this court and the Administrative Court of Appeal had interpreted the legal situation differently, the former having relied on section 11, the latter on section 16 (see paragraphs 34-35 above). In the submission of the Delegate, a decision restricting fundamental rights should, as a minimum requirement, indicate clearly the extent of the restriction.

84. The Court observes that, in this respect, it should not be overlooked that the Social Committee's decision of 21 August 1986 was based on the social welfare officer's report of 15 August 1986 (see paragraph 17 above). This report recommended that Margareta Andersson should be temporarily prevented from having "any form of contact with Roger". There is little doubt, therefore, that the prohibition imposed under section 16 was meant to cover not only visits, but also communications by telephone and correspondence. This is confirmed by the Social Council's submissions before the County Administrative Court at its hearing on 11 September 1986 and by the very words of the Administrative Court of Appeal's judgment of 11 November 1986 (see paragraphs 34-35 above).

85. In sum, the contested limitations on access, including communication by telephone and correspondence, were "in accordance with the law" within the meaning of Article 8 para. 2 (art. 8-2).

C. Legitimate aim

86. The applicants claimed that the restrictions were not aimed at finding a solution to Roger's school problems or at protecting his health, but rather at preventing him from telling others about the "terrible" living conditions in the foster home.

87. In the Court's view, the relevant Swedish law was clearly aimed at protecting "health or morals" and "the rights and freedoms" of children. There is nothing to suggest that it was applied for

any other purpose in the present case.

D. "Necessary in a democratic society"

88. The applicants alleged that the measures at issue could not be regarded as "necessary in a democratic society". They argued that they had not been allowed to meet often enough and that the few meetings which were held had been supervised in a manner which prevented them from enjoying any form of "family life". For the same reason they criticised the limitations imposed on their right to communicate with each other by way of telephone and correspondence. A number of letters addressed to Roger by his mother had been stopped by hospital personnel and the foster father. The latter had moreover prevented him from sending letters to his mother and from using the telephone. These measures, the applicants contended, had not only been unnecessary for the purposes of Roger's care but had, in fact, endangered his health. They had resulted in his having to wait for two months before receiving medical treatment for his diabetes. Further, as concluded by Dr Åberg in a medical opinion submitted by the applicants, it was likely that the emotional stress which Roger had suffered as a result of being totally separated from his mother had contributed in a tangible and even decisive way to his falling ill with diabetes.

89. In the Government's submission, the measures were "necessary in a democratic society".

They relied on the reasons expounded in the above-mentioned report of 15 August 1986 - which was the basis for the decision of 21 August 1986 to prohibit access - and on the relevant administrative courts' judgments upholding the measures (see paragraphs 17, 34-36, 39-41 and 44 above). They also referred to the reasons for the prohibition of access of June 1985 (see paragraphs 10-11 above). In addition, the measures fell to be examined in the light of the justifications for the care order and its maintenance in force throughout the period in question, since the Commission had accepted the compatibility of that order with the Convention and all the subsequent administrative and judicial decisions concerning the prohibition of access were based essentially on the same facts (see paragraphs 12, 15, 65 and 66 above).

As a justification for the stopping of letters, they argued in particular that Margareta Andersson's attitude to the public care of Roger and the foster home could obstruct the objective of the care measures, including the efforts to create a trustful relationship between him and the foster family, since her way of explaining the situation to Roger worried and upset him. As a 12 year-old, he had no possibility of understanding on whom he could rely in such a situation.

With regard to the applicants' contention that the measures in issue had played a role in Roger's falling ill with diabetes, the Government invoked a medical opinion by the National Board of Health and Welfare. This concluded that emotional stress may be one out of many contributing factors to the development of insulin-dependent diabetes; however the quantitative significance of such stress had been greatly exaggerated in the medical opinion submitted by the applicants.

90. The Commission did not express any opinion on the "necessity" issue, in view of its conclusion that the restrictions on communication by correspondence and telephone were not "in accordance with the law".

91. The Court recalls that in cases like the present a parent's and child's right to respect for family life under Article 8

(art. 8) includes a right to the taking of measures with a view to their being reunited (see the Olsson v. Sweden judgment of 24 March 1988, Series A no. 130, pp. 36-37, para. 81, and the above-mentioned Eriksson judgment, Series A no. 156, pp. 26-27, para. 71).

92. Prior to their decisions of 6 and 21 August 1986 to prohibit access, the social welfare authorities had failed in their efforts to implement the care measures both within and outside Margareta Andersson's home. Shortly after being placed in the Clinic in June 1985, Roger had escaped with the assistance of his mother. The social welfare authorities had then consented to implement the care measures in her home. However, since this had proved unsuccessful, Roger had been returned to the Clinic with a view to placement in a foster home. Again with his mother's involvement, he escaped to join her. The police had brought him back to the Clinic where he spent a brief period before being transferred to the foster home. Moreover, it should be noted that Margareta Andersson had indicated to the social welfare authorities her intention of moving to an unknown address or of leaving the country in order to avoid being "persecuted". She had also exerted a negative influence on Roger during her visits to the Clinic (see paragraphs 13, 14 and 17 above).

93. The prohibition of access was, as stated in the decisions of 6 and 21 August 1986, to be effected temporarily until access could be arranged without harm to Roger. Relatively soon, at the latest on 11 September 1986 (see paragraph 34 above), the Social Council announced its intention to hold a meeting between the applicants at the end of September or the beginning of October. In fact it took place on 5 October. After this meeting Roger attempted to run away from the foster home.

It is true that subsequent meetings were held with some irregularity and often at rather long intervals, but this was partly due to Margareta Andersson's own attitude. It is also true that the meetings were closely supervised. However, as from June 1987, the conditions for meetings were somewhat relaxed in this respect and, in November that year, Roger was permitted to visit Margareta Andersson in her own home. The Social Committee decided in February 1988 to arrange such visits on a monthly basis and to organise other meetings in between at the Helgesson home - at least twice a month, according to a court ruling of 17 February. Since Roger was hospitalised, they met instead at the hospital where Margareta Andersson was permitted to stay overnight. She stayed there for approximately two weeks altogether during the period between 26 February and 3 May 1988 (see paragraphs 20-27 above).

94. Admittedly, the deterioration of Roger's health must, at least to some extent, have been related to emotional stress. However, it has not been established that the deterioration was caused by the various limitations on access.

95. In the circumstances of the case the restrictions on meetings between the applicants should however be considered in the broader context of the restrictions on access as a whole. Indeed, besides the fact that the applicants' right to visits was severely restricted, they were also prohibited from having any contact by mail or telephone during the period from 6 August 1986 to 5 February 1988. As of the latter date, the prohibition was revoked, except that it was for Roger to take the initiative of telephone communications. In the Court's view the measures relating to this period were particularly far-reaching. They had to be supported by strong reasons and to be consistent with the ultimate aim of reuniting the Andersson family, in order to be justified under Article 8 para. 2 (art. 8-2).

96. The reasons adduced by the Government are of a general nature and do not specifically address the necessity of prohibiting contact by correspondence and telephone. The Court does not doubt that these reasons were relevant. However, they do not sufficiently show that it was necessary to deprive the applicants of almost every means of maintaining contact with each other for a period of approximately one and a half years. Indeed, it is questionable whether the measures were compatible with the aim of reuniting the applicants.

97. Having regard to all the circumstances of the case, the Court considers that the aggregate of the restrictions imposed by the social welfare authorities on meetings and communications by correspondence and telephone between the applicants was disproportionate to the legitimate aims pursued and, therefore, not "necessary in a democratic society". There has accordingly been a breach of Article 8 (art. 8).

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

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

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

Before the Commission, both Margareta and Roger Andersson submitted that, in breach of this provision, they had no effective remedy in respect of their claims under Article 8 (art. 8). The Government contested this view, which the Commission rejected.

99. At the hearing before the Court on 26 August 1991, counsel for the applicants did not pursue the claim under Article 13 (art. 13) in respect of Margareta Andersson. The Court finds that it is not necessary to examine this part of the complaint.

100. The lawyer of the applicants submitted that she subscribed to the opinion of the minority of the Commission concluding that there was a breach in respect of Roger Andersson.

101. The dispute before the Court thus concerns whether Roger's legal guardian, Margareta Andersson, had been prevented from appealing to the Swedish courts on his behalf. It was common ground that Article 13 (art. 13) did not require that a 12 year-old child be able to institute and conduct such proceedings on his own; it was sufficient for the purposes of this provision that a legal representative was able to do so on the child's behalf. It is not in dispute that this was possible under Swedish law and that the official counsel appointed to assist Roger in proceedings concerning the care measures (see paragraphs 39, 40 and 44 above) had no power to initiate court proceedings on his behalf.

102. The applicants considered that since Margareta Andersson had no means of communicating with Roger, she was not in a position to learn of any possible infringement of his human rights and was therefore prevented from representing him properly.

103. The Court is not convinced by this argument. It should be recalled that during the relevant period Roger and his mother met on a number of occasions (see paragraphs 20-27 above) and were on good terms. Consequently, it cannot be said that Margareta Andersson was prevented from appealing on Roger's behalf against the restrictions on access.

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

IV. APPLICATION OF ARTICLE 50 (art. 50)

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

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

106. Under this provision Margareta and Roger Andersson sought first 1,000,000 and 2,000,000 Swedish kronor, respectively. At the hearing their representative explained that Margareta Andersson's claim was based on the distress which she had experienced as a result of her separation from Roger and the restrictions on contacting him; the main ground for Roger's claim was that he had contracted diabetes as a consequence of stress caused by the measures in issue (see paragraph 88 above).

Both the Government and the Delegate of the Commission found the claims excessive.

107. In the Court's view, as mentioned above, the evidence submitted does not warrant the conclusion that Roger's illness resulted from the various restrictions on access (see paragraph 94 above). However, there can be no doubt that the measures found to be in breach of Article 8 (art. 8) caused the applicants considerable anxiety and distress.

This being so, the Court awards, on an equitable basis, as required by Article 50 (art. 50), each applicant the sum of 50,000 kronor.

B. Legal fees and expenses

108. The applicants' original claim for legal fees and expenses, totalling 325,000 Swedish kronor, included the following items:

- (a) 319,800 kronor for 206 hours' work by their lawyer (at 1,300 kronor per hour) in the proceedings before the Commission and the Court and for 40 hours' travel - "loss of working time" - (at the same rate) to appear at two hearings in Strasbourg;
- (b) 5,200 kronor to cover the work of a translator checking the English of their lawyer's oral pleadings before the Court.

However, the applicants' lawyer stated at the hearing that she had underestimated the time spent on preparing her pleadings before the Court; the effective working time had in fact been 250 hours. She maintained, nevertheless, that her fees would be 325,000 Swedish kronor.

109. The Government accepted item (b) but made several objections concerning item (a). They questioned whether the amount of working time spent was necessary. The hourly rate charged was too high and should be lower for travelling time than working time. Regard should also be had to the fact that substantial parts of the applicants' claims had been declared inadmissible by the Commission.

110. Taking account of the Court's case-law in this field as well as the relevant legal aid payments made by the Council of Europe, and making an assessment on an equitable basis, the Court considers

that the applicants are jointly entitled to be reimbursed, for legal fees and expenses, the sum of 125,000 Swedish kronor.

FOR THESE REASONS, THE COURT

1. Holds by eight votes to one that there has been a violation of Article 8 (art. 8);
2. Holds unanimously that it is not necessary to examine the complaints under Article 13 (art. 13) with regard to Margareta Andersson;
3. Holds by five votes to four that there has been no violation of Article 13 (art. 13) with regard to Roger Andersson;
4. Holds unanimously that Sweden is to pay, within three months:
 - to each of the applicants 50,000 (fifty thousand) Swedish kronor for non-pecuniary damage;
 - to the applicants jointly 125,000 (one hundred and twenty-five thousand) Swedish kronor for legal fees and expenses;
5. Rejects unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 February 1992.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) partly dissenting opinion of Mr Lagergren;
- (b) partly dissenting opinion of Mr De Meyer, joined by Mr Pinheiro Farinha, Mr Pettiti and Mr Spielmann.

Initialled: R.R.

Initialled: M.A.E.

PARTLY DISSENTING OPINION OF JUDGE LAGERGREN

Whilst otherwise agreeing with the majority of the Court, I am unable to share its opinion that the temporary restrictions on access, including telephone communication and correspondence, were in violation of Article 8 (art. 8).

The difference of opinion separating me from my colleagues concerns the necessity of the interferences in question and the margin of appreciation which in this context is to be allowed to the national authorities.

Judge Macdonald has stated: "The margin of appreciation is at the heart of virtually all major cases that come before the Court, whether the judgments refer to it expressly or not." (Ronald St. John Macdonald: "The margin of appreciation in the jurisprudence of the European Court of Human Rights", Essays in Honour of Roberto

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

A decade ago Sir Humphrey Waldock similarly stressed the significance of the doctrine of the margin of appreciation in his often cited sentence, that this doctrine "is one of the more important safeguards developed by the Commission and the Court to reconcile the effective operation of the Convention with the sovereign powers and responsibilities of governments in a democracy." (Human Rights Law Journal 1980, at p. 9). This endorsement by one of the great jurists of our time of judicial self-restraint is certainly still valid in the present European situation.

It is nowadays a well-established view within the Commission and the Court that the primary responsibility for securing the rights and freedoms enshrined in the Convention lies with the individual Contracting States and "that it is in no way the Court's task to take the place of the competent national courts but rather to review under [the Convention] the decisions they [deliver] in the exercise of their power of appreciation" (*Handyside v. the United Kingdom* judgment of 7 December 1976, Series A no. 24, pp. 23-24, para. 50). The Strasbourg institutions have also recognised that, in principle, the domestic authorities are, by reason of their "direct and continuous contact with the vital forces of their countries", in a better position than the international judge to determine whether the Convention rights or equivalent domestic legal norms have been overstepped (see, *ibid.*, para. 48).

The full implications of the available margin will be difficult to draw until a larger and more coherent body of law emerges. However, a basic formulation is to be found in the case of *Rasmussen v. Denmark*: "The scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background" (judgment of 28 November 1984, Series A no. 87, p. 15, para. 40; cf. *Macdonald, op. cit.*, at p. 206).

One crucial difficulty in the present case is the necessity to make a delicate assessment related to a given moment and in a national context of complex psychological factors and to arrive at valid impressions of personalities and human relations. Another difficulty is to balance conflicting private interests and public obligations.

Since the rationale for the doctrine of margin of appreciation is that national authorities are deemed to be in a better position than the international judge to determine whether interferences with defined human rights are "strictly required", it is useful in this case to compare the proceedings before the Swedish courts and the proceedings before the Strasbourg Court - in the manner in which they actually occurred.

From the decision of the Chairman of the Social Committee no. 1 of the Social Council at Växjö on 5 June 1985 until the last decision maintaining the care order (the County Administrative Court's judgment of 17 February 1988), the case of *Margareta and Roger Andersson*, in a unique sequence of proceedings, came six times before the County Administrative Court, three times before the Administrative Court of Appeal and three times before the Supreme Administrative Court. The representative of the Government stated at the hearing before the Strasbourg Court that the decisions of the Swedish courts were unanimous. Oral proceedings were regularly held before the two instances of first and second degree. On most occasions, *Margareta Andersson* was present and examined by the County Administrative Court and the Administrative Court of Appeal. She was assisted by counsel under the Legal Aid Act (*rättshjälpslagen*), while *Roger* was represented by official counsel (*offentligt biträde*). Social welfare officers represented the

Social Council. Two witnesses testified before the County Administrative Court, which also heard as expert witness, in two different proceedings, the Deputy Chief Doctor of the Children's and Juveniles' Psychiatric Clinic at Växjö.

Margareta Andersson attended the short hearing before the Strasbourg Court, but she remained silent. Thus, the Court did not have the benefit of listening directly, as the "principle of immediacy" requires, to statements by Margareta Andersson herself, nor did the Court hear statements of social welfare officers or testimony of witnesses.

In this respect, the representative of the Government stated before the Court that if the facts upon which the judgments of the national courts and the decisions of the social authorities were based and the necessity of the interference were questioned, it was the Government's view that witnesses should also testify before the Strasbourg Court. Testimony by the social welfare officers and the foster parents might be necessary in such a case. It would be a very serious thing to disregard the decisions in question without having access to such direct information.

In view of the procedural situation and with regard to the nature and complexity of the factual issues to be decided in the present case, the national authorities are, in my opinion, entitled to a wide margin of appreciation. In this context, reference should be made to the *Brandstetter v. Austria* judgment in which the Court held: "According to [the Court's] case-law, it is, as a rule, for the national courts to assess the evidence before them" (judgment of 28 August 1991, Series A no. 211, p. 23, para. 52). A similar approach is to be found in the *Markt intern Verlag GmbH and Klaus Beermann* judgment: "... the European Court of Human Rights should not substitute its own evaluation for that of the national courts in the instant case, where those courts, on reasonable grounds, had considered the restrictions to be necessary" (judgment of 20 November 1989, Series A no. 165, p. 21, para. 37).

The situation was different in the *Olsson* case, concerning, inter alia, the implementation of care decisions in respect of the three *Olsson* children. There the crucial point of fact was not disputed, i.e. that Helena and Thomas were placed at a great distance from their parents and from Stefan. From these facts the Court concluded that the very placement of the children adversely affected the possibility of contacts, in a manner inconsistent with the ultimate aim of reuniting the *Olsson* family (*Olsson v. Sweden* judgment of 24 March 1988, Series A no. 130, pp. 36-37, para. 81).

The representative of the Government stressed throughout the Strasbourg proceedings that although the Swedish decisions imposed prohibitions on access, including contact by telephone and correspondence, such prohibitions were not as categorical as it may appear. The social welfare authorities could always "allow visits or other forms of contacts to the extent it [was] deemed possible without risking the purpose of the care or without risking harm to the child's welfare". (See, also, paragraph 44 of the judgment).

Specifically, as to the restrictions on communication by correspondence and telephone, the following statements by the representative of the Government before the Commission are of a certain relevance: "Mrs Andersson always had the possibility of talking to the foster parents and to the extra foster home and also to Roger's teacher so as to keep herself informed about Roger's health and development. She also made use of the possibility and often talked to the foster parents, as well as the extra foster parents ... To what extent it has been possible for Roger to contact his mother by phone is not known for certain to the Government" (verbatim record of hearing on 10 October 1989, p. 8;

see, also, paragraph 28 of the judgment). Indeed, the effect of the restrictions on communications in this particular case are difficult to measure, since there must have been several easy ways of avoiding such restrictions.

Since the reasons for the care decisions and those for the restrictions on access, including telephone communication and correspondence, are to a great extent similar, it should not be overlooked that the Commission declared the complaints related to the care decisions inadmissible as being manifestly ill-founded (see paragraph 90 of the judgment). On the merits of the case, the Commission never reached any decision on the necessity of the restrictions on access and on telephone communication and correspondence.

In the light of the considerations set out above, and since there is no reason to doubt that the Swedish courts exercised their discretion carefully and in good faith and on the basis of an adequate knowledge of the facts, I am not prepared to find that the temporary restrictions on access, including telephone communication and correspondence, imposed by the national authorities in their privileged position, overstepped the limits of what might be deemed necessary in a democratic society within the meaning of Article 8 para. 2 (art. 8-2).

I therefore consider that no violation of the requirements of Article 8 (art. 8) has been established.

PARTLY DISSENTING OPINION OF JUDGE DE MEYER, JOINED BY
JUDGES PINHEIRO FARINHA, PETITTI AND SPIELMANN

(Translation)

In our opinion, the present case gave rise to a breach of Article 13 (art. 13) of the Convention in respect of Roger Andersson.

As a result of the prohibition on the applicants from having access to each other, the child's entitlement to be represented by his mother could not be effectively used with a view to exercising the right to a remedy guaranteed by this provision.