In the case of Olsson v. Sweden (no. 2)*,

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 F. Matscher,
Mr L.-E. Pettiti,
Mr B. Walsh,
Mr C. Russo,
Mr S.K. Martens,
Mrs E. Palm,
Mr A.N. Loizou,
Mr A.B. Baka,

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

Having deliberated in private on 24 April and 30 October 1992,

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

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Notes by the Registrar

* The case is numbered 74/1991/326/398. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

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

1. The case was referred to the Court on 20 August 1991 by the Government of the Kingdom of Sweden ("the Government"), within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 13441/87) against Sweden lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) by two Swedish citizens, Mr Stig and Mrs Gun Olsson, on 23 October 1987.

The object of the application was to obtain a decision as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Article 8 (art. 8) of the Convention.

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)). On 28 September 1991 the President

drew by lot, in the presence of the Registrar, the names of the seven other members, namely Mr F. Matscher, Mr L.-E. Pettiti, Mr B. Walsh, Mr C. Russo, Mr S.K. Martens, Mr A.N. Loizou and Mr A.B. Baka (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

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 representative of the applicants on the organisation of the procedure (Rules 37 para. 1 and 38).

In accordance with the orders made in consequence the registry received, on 23 January 1992, the applicants' memorial and, on 6 February, the Government's. On 6 April the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

On 7 and 27 April the Commission filed a number of documents which the Registrar had sought from it on the President's instructions. These included some, but not all, of the documents requested by the applicants.

5. A number of documents were filed by the applicants and by the Government on various dates between 3 February and 15 April 1992.

6. As further directed by the President, the hearing took place in public in the Human Rights Building, Strasbourg, on 22 April 1992. 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,
Mrs I. Stenkula, Legal Adviser,
Ministry of Health and Social Affairs,
Mrs B. Larson, Former Chief District Officer,
Social Services in Gothenburg, Advisers;

(b) for the Commission

Mr Gaukur Jörundsson, 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 Gaukur Jörundsson for the Commission and by Mrs Westerberg for the applicants, as well as replies to questions put by the Court and by its President.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

A. Introduction

7. The applicants, Mr Stig and Mrs Gun Olsson, who are husband and wife, are Swedish citizens and live at Angered, near Gothenburg in Sweden. There were three children of the marriage, namely Stefan, Helena and Thomas, born in June 1971, December 1976 and January 1979, respectively.

8. The present proceedings, which concern mainly Helena and Thomas, are a sequel to the case which the Court decided in its judgment of 24 March 1988, Series A no. 130 (hereinafter referred to as "Olsson I"). That case concerned the period from 16 September 1980, when the applicants' three children were taken into public care, to 18 June 1987, when the public care of Helena and Thomas was terminated (see paragraph 10 below). The main issue in that case was whether the decision to take the children into care, the manner in which it had been implemented and the refusals to terminate the care had given rise to violations of Article 8 (art. 8) of the Convention. In the context of the case now under review it is of importance to note that with regard to this issue the Court held that "the implementation of the care decision, but not that decision itself or its maintenance in force, gave rise to a breach of Article 8 (art. 8)" (Olsson I, p. 38, para. 84).

For the background to this case the Court refers in the first place to Part I of Olsson I (pp. 9-19, paras. 8-32).

B. Proceedings relating to the applicants' requests for termination of the public care order

9. A first request by the applicants for termination of the public care order was dismissed by the Social District Council no. 6 in Gothenburg ("the Social Council") on 1 June 1982. The dismissal was upheld by the County Administrative Court (länsrätten) on 17 November and by the Administrative Court of Appeal (kammarrätten) in Gothenburg on 28 December 1982. The applicants applied unsuccessfully for leave to appeal to the Supreme Administrative Court (regeringsrätten).

A fresh request, submitted to the Social Council in the autumn of 1983, was, according to the Government, rejected on 6 December 1983. Apparently, no appeal was lodged against this decision.

10. A further request by the applicants for termination of the public care, apparently lodged on 16 August 1984, was rejected by the Social Council on 30 October 1984 as far as concerns Helena and Thomas and, after further investigations, on 17 September 1985 as regards Stefan. Appeals by the parents against these decisions were dismissed by the County Administrative Court on 3 October 1985 and 3 February 1986, respectively, after it had obtained expert opinions from Chief Doctors Per H. Jonsson and George Finney and from a psychologist, Mr Göran Löthman, on 22 and 30 August 1985 and held a hearing on 20 September 1985 in the former case.

The applicants thereupon appealed to the Administrative Court of Appeal in Gothenburg, which joined the two cases. On 12 February 1986 the court decided to request an opinion from the County Administrative Board (länsstyrelsen), which it received on 15 April 1986. A hearing was scheduled for 21 August 1986 but was postponed until 4 February 1987. After the hearing, at which the applicants gave evidence, the court, by judgment of 16 February 1987, directed that the public care of Stefan be terminated and dismissed the appeal in so far as it concerned Helena and Thomas.

Following an appeal by the parents, the Supreme Administrative Court, by judgment of 18 June 1987, directed that the public care of Helena and Thomas should terminate, there being no sufficiently serious circumstances to warrant its continuation.

C. Prohibition on removal and related proceedings

1. Decision to prohibit removal and refusal to suspend

its implementation

11. In the above-mentioned proceedings, the Supreme Administrative Court pointed out that the question to be determined in deciding whether care should be discontinued pursuant to section 5 of the 1980 Act (see the above-mentioned Olsson I judgment, pp. 25-26, para. 49) was whether there was still a need for care. The problems associated with the removal of a child from a foster home and its possible detrimental effects on him and with his reunion with his natural parents were matters to be considered not under section 5 but in separate proceedings, namely an examination under section 28 of the Social Services Act 1980 (socialtjänstlagen 1980: 620; see paragraph 57 below).

12. On 23 June 1987 the Social Council prohibited, pursuant to section 28 of the Social Services Act, the applicants from removing Helena and Thomas from their respective foster homes. This decision referred, inter alia, to the two reports by Chief Doctors Jonsson and Finney (see paragraph 10 above). The latter report noted that Thomas was no longer depressive but still had traits of a childhood disturbance, in the form of delayed development and anguish in unfamiliar situations.

The Social Council's decision took account of the fact that Helena and Thomas had not been under the care of the applicants for a long time, that the contacts between the parents and the children had been very sparse and that the children had become emotionally attached to their respective foster families and environment. Regard was also had to the fact that Thomas was showing signs of greater stability, that Helena had expressed a wish not to move and that increased demands had been placed upon the natural parents by reason of Stefan's return to their home. There was a risk, which was not of a minor nature, that if Helena and Thomas were to be removed from their foster homes, their physical and mental health would thereby be harmed.

13. On 25 June 1987 the County Administrative Court rejected a request by the applicants for suspension (inhibition) of the prohibition order. That decision was confirmed by the Administrative Court of Appeal on 2 July 1987 and, on 17 August, the Supreme Administrative Court refused leave to appeal.

2. First set of proceedings challenging the prohibition on removal

14. In the meantime, shortly after the decision of 23 June 1987 to prohibit removal, the applicants had appealed against it to the County Administrative Court. The court sought expert opinions from Chief Doctors Jonsson and Finney. According to these opinions, dated 14 July and 3 September 1987, the prohibition was in Helena's and Thomas's best interests because:

(a) Helena had shown signs of anxiety at the prospect of being forced to return to her biological parents. For instance, on learning about the lifting of the public care order, she had gone into hiding for two days; moreover, together with Thomas, she had worked out escape plans in the event of a return. Whilst deriving a feeling of support from her foster parents and friends, she felt extremely uncertain, critical and hesitant about her natural parents. Although the latter had demanded her return, they had not, in her view, indicated a willingness to form a relationship with her and this confused her. Removing Helena from her foster home against her own wishes would entail a substantial risk to her mental well-being and also to her physical health if, in desperation, she were to carry out her plan of escaping from the applicants' home;

(b) Thomas had suffered from certain childhood disturbances and had a retarded development. It was especially on the emotional plane that he was handicapped; he was very dependent upon his foster mother and was in a fragile phase of his development. To remove Thomas would have devastating effects on his mental development, both emotionally and intellectually.

Further, the psychologist Löthman, also considered, in an opinion supplied to the court on 3 September 1987, that remaining in the foster home was in Thomas's best interests. Mr Löthman observed that Thomas had developed in a positive manner, although he continued to be psychologically vulnerable and to have great emotional needs. His attachment to the foster family had clearly been strong and positive; he had dismissed the idea, which gave rise to fear and anxiety on his part, of returning to his natural parents. In that event he intended to escape.

Both the Social Council and the guardian ad litem, Mr Åberg, recommended that the appeal be rejected. The applicants did not ask for a hearing and the court did not hold one. By judgment of 3 November 1987, it dismissed the appeal.

15. The applicants appealed to the Administrative Court of Appeal, asking it to revoke the prohibition on removal or, in the alternative, to limit the measure in time, at the most until 6 January 1988. Again they did not ask for a hearing; the Social Council and the guardian ad litem recommended that the appeal be dismissed. The court examined the case on the basis of the case-file and, by judgment of 30 December 1987, rejected the appeal.

16. The applicants then proceeded with an appeal to the Supreme Administrative Court, reiterating their request for revocation of the prohibition on removal or, in the alternative, for limitation of the measure in time, until 15 March 1988. On this occasion they asked for an oral hearing.

Leave to appeal was granted on 4 February 1988. On the same date the court requested the National Board of Health and Welfare (socialstyrelsen - "the Board") and the Social Council to submit their opinions on the case, which they did on 22 and 23 March 1988, respectively.

Both opinions stressed the necessity of prohibiting removal of the children. The Social Council intended, should the appeal be dismissed, to ask for the custody of the children to be transferred to their respective foster parents.

The Board, for its part, pointed out that, having regard to the long duration of the placement of the children in foster homes and to the limited contacts they had had, further contacts must be arranged under such conditions as would make the children feel secure and would recognise their attachment to and feelings of security in the foster homes. Referring to the child psychiatrists' and the psychologist's reports, the Board made mainly the same observations as those mentioned above (see paragraphs 12 and 14). It further noted, with regard to Thomas, that whilst it would take time for a child of his character to build up confidence in adults, his foster mother had succeeded in creating an environment in which he could feel confident. With regard to Helena, the Board also stated that she had reached a phase of puberty and emancipation, the normal course of which might be disturbed if she were forced to leave the foster home.

The Board further stressed that the relationship between the natural parents and the children was of decisive importance for the

question of removal where, as in this case, the children had been placed in foster homes for long periods of time. In order to bring about a good relationship, co-operation between - on the one hand - the applicants and - on the other hand - the social welfare authorities and the foster parents was essential. It appeared from the case-file that the applicants' lawyer had not sought to achieve such co-operation, which was unfortunate for the children. It had had the consequence that no such relationship had been established between the children and their parents as would make it possible for the children to move to their parents without there being a serious risk of harm to the children. The Board recommended that the Social Council examine the possibility of having the custody of the children transferred to the foster parents.

17. The Supreme Administrative Court rejected the applicants' request for a hearing. With regard to the merits, in a judgment of 30 May 1988 it dismissed their claim for revocation of the prohibition on removal; it accepted, on the other hand, that the measure should be limited in time and modified the decision under appeal in such a way that the prohibition was to run until 30 June 1989. The judgment contained the following reasons:

> "When section 28 ... is applied to this case a balance must be struck between, on the one hand, respect for the [applicants'] and their children's private and family life, including the [applicants'] rights as guardians according to the Parental Code, and, on the other hand, the need to safeguard the children's health (see the third paragraph of section 2 of Chapter 1 of the Instrument of Government [regeringsformen] and sections 1 and 12 of the Social Services Act; through these provisions the protection of private and family life referred to in Article 8 (art. 8) of the Convention ... can be ensured) ...
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> ... When [public] care is terminated according to section 5 of the 1980 Act reunion should normally take place as soon as possible [and] ... needs to be prepared in an active and competent manner. Appropriate preparations should be made immediately after the care has been terminated. This should be done even if a prohibition under section 28 ... has been issued ... . The character and the extent of the preparations, as well as the time required for them, depend on the circumstances in each case; one or more suitably arranged and successful visits by the children to their parents' home must always be required. The need for a prohibition on removal of a more permanent nature can normally only be assessed after appropriate preparations have been made. It is the Social Council's responsibility to arrange the ... preparations for reuniting parents and children after the care has been terminated ... [This] responsibility includes an obligation to try persistently to make the parents and their lawyer participate, actively and in the children's best interests, in the preparations. The Social Council is not discharged from its responsibility by the mere fact that [they], by appealing against the Council's decisions or in other ways, show that they dislike measures taken by the Council or its staff. According to section 68 of the Social Services Act, the County Administrative Board should assist the Council with advice and ensure that the Council performs its tasks properly.
>
> Pending the beginning and completion of appropriate preparations for reunion of parents and children the question of a more temporary prohibition on removal under section 28 ... may also arise. Such a prohibition should be seen as a temporary measure until the child can be separated from the foster home without any risk of harm as mentioned

in that provision.

...

It appears from the examination of the present case that no appropriate preparations have been made to reunite the parents and the children. Instead, the time which has elapsed since the Supreme Administrative Court decided to terminate the public care seems to have been spent on litigation.

The issue whether a prohibition on removal under section 28 ... is needed in this case must therefore be examined without taking account of the effect of preparations that have been made. The Supreme Administrative Court's decision should thus concern the kind of temporary prohibition on removal that, according to what has been stated above, can be issued pending more appropriate preparatory measures.

From the examination - above all the opinion given by the Board and the medical certificates it quotes - it appears clearly that for the time being, before any preparations have been made, there is a risk which is not of a minor nature that Helena's and Thomas's physical and mental health would be harmed were they to be separated from their foster homes. Accordingly, there are sufficient reasons for a prohibition on removal under section 28 ...

As regards the duration of a prohibition on removal, the Supreme Administrative Court has in a previous decision (see Regeringsrättens Årsbok, RÅ 1984 2:78) stated inter alia the following: if, when the prohibition is issued, it is already possible to assess with sufficient certainty that there will be no such risk after a specific date - when some measures will have been taken or they will have had time to produce effects -, the prohibition must run only until that date. If, on the other hand, it is uncertain when the child could be transferred to the parents without this involving a risk which is not of a minor nature, the prohibition ought to remain in force until further notice and the question of a removal ought to be raised again at a later stage, when the risk of harming the child's health can be better assessed.

An application of this rule to the present case would mean that a prohibition on removal should remain in force until further notice. However, the circumstances of this case are different from those of the previous case, as no appropriate preparations have been made to reunite the parents and the children, owing to the serious conflict between the Social Council, on the one hand, and the parents and their lawyer, on the other. Furthermore it must be presumed in this case that only a fixed time-limit might induce the parties - without any further litigation - to co-operate in taking appropriate preparatory steps in the children's interest. If, within a certain time-limit, no such preparations have been made or their result is unacceptable, the Social Council may raise the question of a prolonged prohibition based on the circumstances pertaining at that time.

Having regard to the foregoing, the Supreme Administrative Court finds that the prohibition on removal should remain in force until 30 June 1989.

The European Court of Human Rights has, in its judgment of 24 March 1988, found that Sweden violated Article 8 (art. 8) of the Convention in one respect ... . This violation concerned the implementation of the care decision and, inter

alia, the fact that the children were placed in foster homes situated so far away from their parents. The issue in this case is another, namely when and on what conditions the children can be reunited with their parents in view of the termination of the care by the Supreme Administrative Court on 18 June 1987. A prohibition on removal ... is therefore not in conflict with the judgment of 24 March 1988."

3. Request to return the children in accordance with Chapter 21 of the Parental Code

18. A request made by the applicants on 10 August 1987 that Helena and Thomas be returned to them in accordance with section 7 of Chapter 21 of the Parental Code (föräldrabalken; see paragraph 71 below) had been rejected by the County Administrative Court of Gävleborg, after a hearing on 1 March 1988, by two separate judgments of 15 March 1988. The court had found that there was a not insignificant risk of harming the children's mental health by separating them from the foster homes.

In a judgment of 11 July 1988 the Administrative Court of Appeal dismissed the applicants' appeal. On 23 September 1988 the Supreme Administrative Court refused them leave to appeal.

4. Appointments of a guardian ad litem

19. In connection with the above proceedings concerning the prohibition on removal, the District Court (tingsrätten) of Gothenburg, at the Social Council's request, had appointed Mr Claes Åberg on 17 July 1987 as guardian ad litem for Helena and Thomas (section 2 of Chapter 18 of the Parental Code). The appointment had not been notified to the applicants, who had not been heard on the matter; when their representative had learned about it, on 4 August, the time-limit for appealing against it had expired.

The applicants had asked the District Court to dismiss the guardian ad litem. It had done so on 26 October, on the ground that Mr Åberg, by having applied for legal aid on the children's behalf to the County Administrative Court on 31 July, had accomplished the task for which he had been appointed.

20. On 27 October 1987 the Social Council had again asked the District Court to appoint Mr Åberg as guardian ad litem. On this occasion the court had invited the applicants to state their views before it took a decision. It had granted the request on 12 February 1988.

The applicants appealed to the Court of Appeal (hovrätten) for Western Sweden, which dismissed the appeal on 23 August 1988. On 8 November 1988 the Supreme Court (högsta domstolen) refused them leave to appeal.

5. Second set of proceedings challenging the prohibition on removal

21. On 28 September 1988 the applicants made a fresh request to the Social Council to lift the prohibition on removal, invoking - as a new circumstance - the Commission's opinion in the Eriksson v. Sweden case (annexed to the Court's judgment of 22 June 1989, Series A no. 156, pp. 38-55). The request was rejected.

22. In a judgment of 12 December 1988 the County Administrative Court dismissed an appeal by the applicants against the Social Council's decision. The court, referring to the reasoning in the Supreme Administrative Court's judgment of 30 May 1988 (see paragraph 17 above), pointed out that no appropriate preparatory

measures for reunion as mentioned therein had been taken. It considered that there would still be a risk of harm to the children if the prohibition on removal were lifted.

23. A further appeal by the applicants to the Administrative Court of Appeal was rejected on 22 December 1988. It noted that Mr Olsson had met the children on 11 and 12 October 1988 at their respective foster homes and schools and that the children had visited the applicants' home on 16 and 17 December, accompanied by the foster parents. The court found, nevertheless, for the reasons expressed in the County Administrative Court's judgment, that the prohibition should be maintained.

Leave to appeal was refused by the Supreme Administrative Court on 14 February 1989.

6. Renewal of prohibition on removal and related proceedings

24. On 27 June 1989, a few days before the expiry of the prohibition on removal, the Social Council decided to renew it until further notice. Moreover, it refused a request by the applicants that the children spend their summer holidays with them in Alingsås and visit them every weekend, unaccompanied by the foster parents (see paragraph 50 below).

25. On appeal, the County Administrative Court, by judgment of 4 September 1989, confirmed the prohibition on removal but decided that it was to run only until 31 March 1990. The court again relied on the reasoning in the Supreme Administrative Court's judgment of 30 May 1988 and noted, moreover, that few measures had been taken in preparation for removal. It was highly unsatisfactory that, as long as two years after the termination of the public care, the conditions for executing that decision had not been fulfilled. The court considered that reasons still existed for maintaining the prohibition on removal and that, accordingly, the Swedish judiciary and public authorities had failed in this respect. Even though the applicants and their lawyer had not contributed to a desirable extent to facilitating the children's reunion with their parents, the main responsibility for doing this lay with the Social Council, which, as stressed by the court, also had a duty to implement judgments.

26. Both the applicants and the Social Council appealed to the Administrative Court of Appeal; the applicants sought to have the prohibition lifted, whereas the Social Council asked for it to be maintained until further notice. By judgment of 23 January 1990 the court confirmed the lower court's decision, but extended the time-limit for the prohibition until 1 August 1990.

The applicants were refused leave to appeal by the Supreme Administrative Court on 8 March 1990.

7. Further renewal of the prohibition on removal and related proceedings

27. The Social Council asked the County Administrative Court, on 12 July 1990, to issue a new prohibition on removal, to be effective until further notice. By judgment of 27 July 1990, the court renewed the prohibition until 28 February 1991. It noted that no preparatory measures with a view to reuniting the children and the parents had been taken; such measures were necessary in view of the atmosphere of hostility that existed between the parties to the proceedings, which was detrimental to Helena and Thomas. There were therefore good reasons to maintain the prohibition on removal. The need for this measure was also shown by the fact that the question of a transfer of the custody of the children to the foster parents

was scheduled for examination by the District Court in the autumn (see paragraphs 53-54 below).

The applicants lodged an appeal against this judgment with the Administrative Court of Appeal. They have apparently asked the court to stay the proceedings pending the final outcome of those concerning the transfer of custody.

D. The applicants' access to the children subsequent to the entry into force of the prohibition on removal

28. Prior to the termination of the public care of Helena and Thomas on 18 June 1987, the applicants' contacts with the children had been sparse. Access had, since February 1983, been restricted to one visit every third month in the foster homes. However, no such visits occurred during the period from June 1984 until April 1987, when Mr Olsson and the elder son Stefan visited them (for further details, see the above-mentioned Olsson I judgment, pp. 15-16, paras. 21, 24-26). It does not appear that any formal decision with regard to access was taken in connection with the decision of 23 June 1987 to prohibit the applicants from removing Helena and Thomas from the foster homes.

1. Particulars concerning the applicants' access to Helena and Thomas

29. Since the prohibition on removal was imposed on 23 June 1987, the following meetings have taken place between the applicants and Helena and Thomas:

(a) 22 July 1988: a meeting of a few hours in a park in Gothenburg, the children being accompanied by one of the foster parents;

(b) 11 and 12 October 1988: visits by Mr Olsson in the foster homes;

(c) 16 and 17 December 1988: visits by the children, accompanied by the foster mothers, in the applicants' home, the night being spent in a hotel;

(d) 8 and 9 April 1989: visits by the applicants in the foster homes;

(e) 16 and 17 June 1989: visits by the children, accompanied by the foster mothers, in the applicants' home, the night being spent in a hotel.

2. Access claims and related proceedings

30. Shortly after the decision of 23 June 1987 to prohibit removal, the applicants, through their lawyer, asked the social welfare authorities to arrange for Helena and Thomas to visit them in their home in Gothenburg. By letter of 27 October 1987 from the social welfare officer, they were advised that they should first visit the children so that they could get to know them better and prepare for a visit by the children in Gothenburg together with the foster parents. Subject to prior consultation with the foster parents, the applicants were free to decide on the further arrangements for visits in the foster homes. Finally, the letter indicated a possibility of refunding travel and subsistence expenses incurred by the applicants in connection with their visits.

Throughout the autumn of 1987, there was an exchange of letters between the applicants' lawyer and the social welfare authorities - mainly the Chief District Officer - on the question of access. Whilst the applicants insisted that the children visit them

without the foster parents, the Chief District Officer, referring to the justifications for the prohibition on removal, maintained that since Mrs Olsson had not met the children since 1984, both applicants should first visit them in their respective foster home environment. Moreover, in the event of a visit by the children in the applicants' home, at least one of the foster parents should be present.

31. On 18 December 1987 the Chairman of the Social Council refused a request by the applicants to visit Helena and Thomas without the foster parents being present. She found no reason to amend the Chief District Officer's decision on the matter. On 21 December the Social Council was informed of the refusal; it decided to take note of it but did not take any specific measures.

32. The applicants appealed against the Chairman's decision to the County Administrative Court, asking it to confer on them a right of access as requested. In a decision of 8 March 1988, the court found that it was not possible to appeal, under section 73 of the Social Services Act (see paragraph 60 below), against measures prescribed by the Social Council as to the manner, time and place of access and refused the appeal.

On 29 April 1988 the Administrative Court of Appeal upheld that judgment, noting that the Chairman's decision had not been taken under section 28 of that Act and did not fall into any other category of measures which could be appealed against pursuant to section 73.

33. The applicants then proceeded with an appeal to the Supreme Administrative Court, alleging that the Chairman's decision of 18 December 1987 was unlawful and that the absence of a right of appeal against it constituted a violation of Article 13 (art. 13) of the Convention. The court granted leave to appeal and, in a decision (beslut) of 18 July 1988, refused the appeal. It stated:

> "Under section 16 of the [1980 Act] ..., a Social Council may restrict the right of access in respect of children taken into public care under this Act. As regards the right of access to children while a prohibition on removal is in force, no similar power has been vested in the Social Council in the relevant legislation. As there is no legal provision empowering the Social Council to restrict the right of access while the prohibition on removal is in force ..., the instructions given by the Chairman of the Social Council in order to limit the right of access have no legal effect. Nor can any right of appeal be inferred from general principles of administrative law or from the European Convention on Human Rights."

34. On 15 August 1988 the applicants lodged a municipal appeal (kommunalbesvär; see paragraph 63 below) with the Administrative Court of Appeal against the Chairman's decision of 18 December 1987. The court found that that decision could not form the object of a municipal appeal and that, in so far as the appeal might be considered as directed against the Social Council's failure to take any specific measures when informed of the decision (see paragraph 31 above), it was out of time. The appeal was thus dismissed on 10 October 1988.

35. In the meantime, on 21 March and 11 April 1988, the social welfare authorities had rejected requests by the applicants' lawyer that Helena and Thomas be allowed to attend their grandmother's funeral and a special burial ceremony and, in this connection, stay for one night at the applicants' home. The social welfare authorities had pointed, inter alia, to the fact that the children hardly knew their grandmother and to the need to arrange contacts in

an environment in which the children could feel safe and confident.

36. In June and July 1988 the social welfare officer contacted the applicants and arranged for talks involving Mr Olsson and the foster parents, to plan the meeting which took place in Gothenburg on 22 July 1988 (see paragraph 29 above). Mrs Olsson did not participate in these preparations, as she insisted on having access on her own terms. However, as suggested by the social welfare officer, Helena's foster mother was invited to the applicants' home after a preparatory meeting. On one occasion the officer asked Mr Olsson for his and his wife's telephone number in order to facilitate contacts, but he declined to give it.

After the meeting on 22 July 1988, Mr Olsson told the social welfare authorities that he had been disappointed; he had felt that he was being watched and controlled and Helena had called her foster mother "mummy".

37. On 8 August 1988 the social welfare authorities dismissed a request made by the applicants on 2 August that Helena and Thomas be allowed to join them - on 5 August or at the latest on 8 August - for the rest of the summer holidays, on the ground that meetings should be arranged in such a way as not to jeopardise the children's health and development.

38. On 11 August 1988 the applicants' lawyer demanded that the children be permitted to visit them every weekend and school holiday until 30 June 1989. At a meeting with two social welfare officers on 17 August 1988, Mr Olsson showed understanding of the view that such visits were not appropriate and stated that he would recommend a "soft line" in the efforts to bring about suitable access. On his suggestion, the next meetings were planned to take place in the foster homes in October. On 18 August the Social Council rejected the request of 11 August.

39. On 19 August 1988 the applicants' lawyer reiterated the request for access at weekends. In reply, the social welfare officer informed her of the discussion with Mr Olsson on 17 August (see paragraph 38 above). A few days later, Mr Olsson told social welfare officers that he was dissatisfied, on account of their attempts to delay access as much as possible. They reminded him that he had himself proposed that the next meeting with the children should be in October. The meetings were held on 11 and 12 October 1988 (see paragraph 29 above). On this occasion the social welfare authorities booked and paid for air tickets and hotel rooms for two persons, but Mrs Olsson declined to go.

3. Access plan

40. On 7 December 1988 the Chief District Officer recommended an access plan to the Social Council. The recommendation referred, inter alia, to two expert opinions, one by Chief Doctor Jonsson and another by Chief Doctor Finney and the psychologist, Mr Löthman, dated 10 and 12 October 1988, dealing specifically with the question of access. The former noted, with respect to Helena, that it was important to place emphasis on her own wishes, to improve her possibilities of knowing about her natural parents and to arrange the access in a manner which would make it an everyday event; she should meet the applicants together with the foster parents. The latter opinion stressed, with regard to Thomas, that access should be resumed only if he so wished to which end certain preparatory measures aimed at motivating him should be made - and only if meetings were attended by the foster parents. It was essential that the natural parents and the foster parents co-operate in the child's best interests.

The plan envisaged access as follows:

(a) on 16 and 17 December 1988: visit by the children, accompanied by the foster mothers, in the applicants' home; if this was successful:

(b) visit by the applicants in the foster homes over two days in February 1989; if this went well:

(c) visit by the applicants to Thomas in his foster home and to Helena, if she so wishes, in April 1989; again, if this went well:

(d) visit similar to that mentioned at (a), to be organised over a few days in June 1989 with a possibility of letting the children choose to spend the night at the applicants' home rather than at a hotel, provided that the foster mother accompany them;

(e) in addition to the above, the applicants should be able to arrange visits by agreement with the foster parents.

41. The applicants met Helena and Thomas as envisaged at (a) and, on 20 December 1988, the Social Council adopted the plan. It was communicated to the applicants and their lawyer for comments, but they objected to it.

4. Further access claims

42. During 1989 and 1990 the applicants, through their lawyer, continued to make a large number of requests for access; in particular, they demanded that the children visit them during weekends at their own home and without the foster parents being present.

Several of these requests were refused by the social welfare authorities for such reasons as the children being opposed to visiting the parents and wishing to be visited by them instead (letters of 27 September 1989 and 7 February 1990) or too short notice having been given to organise the visits (letters of 28 March and 13 September 1989) or indications by Mr Olsson that he would give the children a certain period to reflect on the matter during which he would not claim access (letter of 11 October 1989).

Moreover, the social welfare authorities dismissed on 21 April and 26 May 1989 requests that Helena and Thomas attend the birthday celebrations of their grandfather and their brother Stefan. In the former case, regard was had to the fact that Helena did not wish to go and, in the latter case, to the fact that the date in question was inconvenient, being the last day of the school year.

Furthermore, on 21 March 1989 the Social Council refused access for the purposes of a medical examination, which the applicants had requested in order to obtain a medical certificate to be used in the proceedings before the Commission. The decision was based on an opinion by the Board that further examination of the children might be harmful to them and would be of no assistance in those proceedings.

43. In a report of 30 May 1989 to the social welfare authorities, Chief Doctor Finney recommended that access should continue to some extent between the applicants and Thomas and should be arranged in his foster home, not in the applicants' home. A similar view was expressed by the psychologist, Mr Löthman, in his report of the same date. According to a report of 13 June supplied by Chief Doctor Jonsson to the social authorities, Helena found that travelling to the applicants' home was a trying experience and preferred being visited by them. In his view, contacts served to fulfil her need to be kept informed about the applicants.

The Chief District Officer, in a report of 15 June 1989, made the following assessment of the question of access. Having regard to the fact that visits by the children in the applicants' home would not only conflict with expert opinions but were also not welcomed by the children, access arrangements should primarily consist of the parents visiting the children in the foster homes. However, should the children express an interest in visiting the applicants, the social welfare authorities would assist in arranging such contacts. In the light of these considerations, the Chief District Officer adopted a plan for visits by the parents in August and October 1989 and then by the children in December 1989. The applicants were invited to contact the social welfare authorities on the matter, but did not do so. The reason for this, as later explained by Mr Olsson, was that on a previous occasion he had not been received properly by the social welfare officer responsible for their case.

44. By letter of 16 November 1989, the applicants again asked for the children to be allowed to visit them every weekend; they also sought permission, firstly, for themselves and their son Stefan to visit the children in one of the foster homes without the foster parents being present and, secondly, for their lawyer to meet Helena and Thomas to inform them of the applicants' and Stefan's situation and to explain to them why they had been taken into public care and why the applicants did not wish to visit them in the foster homes in the foster parents' presence.

The Head of the Social Service (socialförvaltningen) in Gothenburg replied by letter of 20 November 1989 that the social welfare officer would contact them as soon as possible with a view to making a suitable arrangement for their next meeting with the children.

45. On 21 November 1989 the social welfare authorities received a letter from the applicants' lawyer reiterating the claims of 16 November. A further letter was received on 22 December, requesting access to the children in one of the foster homes in the absence of the foster parents. In reply to the latter, the social welfare authorities informed the lawyer on 27 December that they would contact the foster parents directly on the matter.

46. On 21 December 1989 the applicants had reported the officer in charge of their case to the Public Prosecution Authority (åklagarmyndigheten) of Gothenburg for misuse of power and asked for her immediate arrest. The reason for this action was her failure to comply with their request of 16 November 1989. On 30 January 1990 the Public Prosecution Authority discontinued the criminal investigation, finding no indication that a criminal offence had been committed.

47. In a letter dated 25 January 1990, the social welfare authorities invited the applicants to talks in order to find a solution to the problem of access but, by letter received on 1 February from the applicants' lawyer, they were advised that such talks would serve no purpose.

48. In response to letters from the applicants' lawyer, dated 13 February and 2 March 1990 and mainly reiterating their requests made in November and December 1989, the social welfare authorities, by letter of 8 March, pointed out that they were not opposed to meetings; they invited the applicants to contact the foster parents to make arrangements, failing which the applicants would be contacted by the latter.

49. On 14 May 1990 the applicants' lawyer demanded that the children be left to be met by the parents at Gothenburg airport on certain specified dates and, on 5 June, she requested that this be

arranged every weekend. In the meantime, on 17 May, the social welfare authorities had replied that Thomas's foster mother would write to them and had also asked the applicants to contact the foster parents by telephone, as the former had a secret telephone number. On 6 June the lawyer asked the Social Council to grant - immediately after 1 July (the date of the entry into force of the 1990 Act; see paragraphs 64 and 67 below) - access every weekend at the applicants' own home and in the absence of the foster parents.

In this connection, the Chief District Officer submitted to the Social Council a report, dated 2 July 1990, making observations similar to those in her report of 15 June 1989 (see paragraph 43 above) and recommending that the request be dismissed. The report noted, inter alia, that since the meeting in June 1989, the children had become strongly opposed to visiting their parents but were open to being visited by them. The applicants' demands as to the forms of access had had the effect of increasing the gap between them and the children.

On 4 September 1990 the Social Council dismissed the applicants' request for access every weekend at their own home, finding that access should instead take place in the foster homes in conformity with the children's wishes.

5. Further proceedings concerning access

50. The applicants' lawyer, in her capacity as a member of the municipality of Gothenburg, filed two municipal appeals (see paragraph 63 below) with the Administrative Court of Appeal: one was against the Social Council's decision of 27 June 1989 (see paragraph 24 above) in so far as it concerned access and the other against its decision of 20 December 1988 adopting an access plan (see paragraphs 40-41 above).

With regard to the first appeal, the court found, by judgment of 8 January 1990, that the contested part of the Social Council's decision of 27 June 1989 was unlawful and annulled it.

As to the second appeal, the court held, in another judgment of the same date, that the adoption of the plan formed part of the measures considered necessary by the Social Council in order to permit removal of the children without there being any risk of harm to them. The plan was not a formal decision on the applicants' right of access, especially since it provided that they could visit the children in accordance with the latter's wishes.

On 8 March and 27 December 1990, respectively, the Supreme Administrative Court refused the applicants' lawyer leave to appeal against the second judgment and the Social Council leave to appeal against the first.

51. Moreover, on 28 July 1989 the applicants complained to the Parliamentary Ombudsman (justitieombudsmannen) who, in an opinion of 2 May 1990, stated, inter alia, that it appeared from the examination of the case that the Social Council had acted solely out of consideration for the children. In view of this fact and of the lacunae in the Social Services Act 1980 on the question of regulation of access (see paragraph 62 below) - which had led to legislative amendments in 1990 (see paragraphs 64 and 67 below) -, she declared the matter closed.

52. The applicants also lodged an appeal with the County Administrative Court against the Social Council's decision of 4 September 1990 (see paragraph 49 above). It was dismissed by judgment of 12 December 1990. The court found that the applicants' allegation that the foster parents had influenced the children against their natural parents was not borne out by the

investigations in the case; on the contrary, they showed that the children wished to meet their parents, albeit on their terms. Moreover, the sort of access requested did not take the children's interests into account and would not benefit them. There was therefore no ground for allowing access during weekends, as requested by the applicants. The court did not examine their claim for access during school holidays as this had not been dealt with by the Social Council.

The applicants further appealed to the Administrative Court of Appeal. They appear to have asked the court to keep their appeal in abeyance pending the outcome of the transfer of custody proceedings (see paragraphs 53-54 below).

E. Transfer of custody

53. Although the present judgment is not concerned with the question of transfer of custody, the decisions by the Swedish authorities on the matter are described below in so far as they may shed light on the case.

The Social Council decided on 31 October 1989 to institute proceedings in the District Court of Alingsås for a transfer of the custody of Helena and Thomas to their respective foster parents. After holding a preliminary hearing on 27 February 1990, the court, by judgment of 24 January 1991, transferred the custody. It ordered that the applicants should each year receive three day-time visits from the children at their home and be able to visit them at the foster homes for three weekends.

54. The applicants appealed against the District Court's judgment to the Court of Appeal for Western Sweden. The latter held a hearing at which it took evidence from two welfare officers who had been responsible for the case, the children's respective foster parents, Chief Doctors Jonsson and Finney, as well as Helena and a contact person (kontaktman) of hers within the social services. The applicants maintained, inter alia, that the foster parents were unsuited as custodians. In particular, they contended that they had learned after the District Court judgment that Helena's foster father, Mr Larsson, had been charged in 1986-87 with assault, including sexual assault, and sexual exploitation of a minor, namely another foster girl called "Birgitta". Mr Larsson had been acquitted by Hudiksvall District Court due to lack of evidence. However, he had stated during the police investigations that he had acted in a manner which, according to the applicants, constituted sexual assault, although it had not been covered by the charges. The public prosecutor had appealed against the acquittal but had subsequently withdrawn the appeal.

By judgment of 24 January 1992, the Court of Appeal upheld the Alingsås District Court's judgment. It stated, inter alia, that, having regard to Helena's and Thomas's age and degree of maturity, great importance should be attached to their views about the questions of custody and access. It was clear that they both wanted to remain in their foster homes. Moreover, contacts between the applicants and the children had been very infrequent, especially in recent years. According to the applicants, they had been prevented from exercising their right of access partly because they had previously felt unwelcome and been badly treated by the foster parents, and partly because the social welfare authorities had been opposed to providing financial assistance for journeys to meet the children. However, these allegations were refuted by the social welfare officers and the foster parents. In the view of the Court of Appeal, the absence of contacts was due rather to lack of desire and initiative on the part of the applicants to visit the children. In addition, the applicants had kept their telephone number secret.

The claim that the foster parents were unsuited as custodians was mainly directed against Helena's foster father, Mr Larsson. The court found that when giving evidence before it, he had left an impression of reliability and honesty, despite the fact that he must have been under pressure due to his wife's illness and the manner in which he was questioned by the applicants' lawyer. Further, the court observed that the conditions in the Larssons' home had been examined carefully on a number of occasions during the relevant period; Helena had good contacts with people in her environment and had since recently had a contact person who had been heard by the court; moreover, she had visited the applicants on her own in March 1991: on no occasion had she said that she had been assaulted by Mr Larsson or shown any sign to this effect. At the hearing before the court, she had emphatically denied that he had behaved improperly towards her. The court found that there was no evidence to support the allegation that Helena had been, or ran a risk of being, a victim of improper conduct on the part of Mr Larsson. As regards Mrs Larsson's illness, the Court of Appeal noted that she spent most of her time at home and that both Mr Larsson's and Helena's statements indicated that the emotional ties between Helena and Mrs Larsson had been strengthened, rather than weakened, since she became ill. The illness could thus not constitute an obstacle to the transfer of custody. Finally, the investigations provided no evidence to suggest that Thomas's foster parents, Mr and Mrs Bäckius, were unsuited. On the contrary, what emerged in the proceedings was that both children were well cared for in the foster homes, in a secure and stimulating environment.

A further appeal by the applicants to the Supreme Court is currently pending.

II. RELEVANT DOMESTIC LAW

A. The Child Welfare Act 1960 and the 1980 legislation replacing it

55. Decisions concerning the applicants' children were based on the Child Welfare Act 1960 (barnavårdslagen 1960:97 - "the 1960 Act"), the Social Services Act 1980 (socialtjänstlagen 1980:620) and 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 Social Services Act 1980 contains provisions regarding supportive and preventive measures effected with the approval of the individuals concerned. The 1980 Act (1980:621), which provided for compulsory care measures, complemented the Social Services Act 1980; when they entered into force on 1 January 1982, they replaced the 1960 Act. In general, decisions taken under the 1960 Act, which were still in force on 31 December 1981, were considered to have been taken under the 1980 Act. As from 1 July 1990 the relevant legislation has been amended (see paragraphs 64-67 below).

56. It is primarily the responsibility of the 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.

1. Prohibition on removal

57. The Social Council could, after the termination of public care (for details of the Swedish law on compulsory care, see the Olsson I judgment, pp. 20-27, paras. 35-50), issue a prohibition on removal under section 28 of the Social Services Act, which read as follows:

"The Social Council may for a certain period of time or

> until further notice prohibit the guardian of a minor from taking the minor from a home referred to in section 25 [i.e. a foster home], if there is a risk, which is not of a minor nature, of harming the child's physical or mental health if separated from that home.
>
> If there are reasonable grounds to assume that there is such a risk, although the necessary investigations have not been completed, a temporary prohibition may be issued for a maximum period of four weeks, pending the final decision in the matter.
>
> A prohibition issued under this section does not prevent a removal of the child from the home on the basis of a decision under Chapter 21 of the Parental Code."

The preparatory work (Prop. 1979/80:1, p. 541) relevant to this provision mentioned that a purely passing disturbance or other occasional disadvantage to the child was not sufficient ground for issuing a prohibition on removal. It stated that the factors to be considered when deciding whether or not to issue such a prohibition included the child's age, degree of development, character, emotional ties and present and prospective living conditions, as well as the time he had been cared for away from the parents and his contacts with them while separated. If the child had reached the age of 15, his own preference should not be opposed without good reasons; if he was younger, it was still an important factor to be taken into account.

The Standing Social Committee of the Parliament stated in its report (Socialutskottets betänkande 1979/80:44, p. 78), inter alia, that a prohibition might be issued if removal could involve a risk of harm to the child's physical or mental health, thus even where no serious objections existed in regard to the guardian. The Committee also stressed that the provision was aimed at safeguarding the best interests of the child and that those interests must prevail whenever they conflicted with the guardian's interest in deciding the domicile of the child. It also took as its point of departure the assumption that a separation generally involved a risk of harm to the child. Repeated transfers and transfers which took place after a long time, when the child had developed strong links with the foster home, should thus not be accepted without good reasons: the child's need for secure relations and living conditions should be decisive.

58. According to the case-law of the Supreme Administrative Court (RÅ 1984 2:78), while a prohibition on removal is in force, the Social Council is under a duty to ensure that appropriate measures aimed at reuniting parents and child are taken without delay.

59. Section 28 of the Social Services Act did not apply to children who were being cared for in foster homes under section 1 of the 1980 Act. As long as such care continued, the right of the guardian to determine the domicile of the child was suspended. Whilst that right in principle revived on the termination of such care, it could be further suspended by an application of section 28 by the social welfare authorities.

60. Under section 73 of the Social Services Act, a decision taken under section 28 could be appealed to the administrative courts. In practice, besides the natural parents both the child concerned and the foster parents have been allowed to lodge such appeals. In the proceedings before the administrative courts, a special guardian may be appointed to protect the interests of the child, should these come into conflict with those of the child's legal guardian.

2. Regulation of access

61. While a child was in public care under the 1980 Act, the Social Council was empowered to impose restrictions on the parents' right of access to him, in so far as necessary for the purposes of the care decision (section 16). Such restrictions could be appealed against to the administrative courts by both the parents and the child.

62. The legal position concerning restrictions on access during a prohibition on removal was different. As held by the Supreme Administrative Court on 18 July 1988, a decision by the Social Council to restrict the access rights of Mr and Mrs Olsson - who were the appellants in that case - while a prohibition on removal under section 28 of the Social Services Act was in force had no legal effect and no appeal to the administrative courts would lie against such a decision (see paragraph 33 above).

3. Municipal appeal

63. Pursuant to sections 1 and 2 of Chapter 7 of the 1977 Municipal Act (kommunallagen 1977:179), a member (medlem, e.g. a resident) of a municipality may lodge a municipal appeal (kommunalbesvär) with the Administrative Court of Appeal against decisions by municipalities on the following grounds: failure to observe the statutory procedures, infringement of the law, ultra vires conduct, violation of the complainant's own rights, or other unfairness. The appeal has to be filed within three weeks from the date on which approval of the minutes of the decision has been announced on the municipal notice-board. If the court upholds the appeal, it may quash the decision, but not give a new decision.

B. New legislation

64. The provisions of the Social Services Act which related to a prohibition on removal are now contained, in amended form, in the 1990 Act with Special Provisions on the Care of Young Persons (lagen 1990:52 med särskilda bestämmelser om vård av unga - "the 1990 Act"). This entered into force on 1 July 1990.

65. Section 24 of the 1990 Act, which corresponds to the previous section 28 of the Social Services Act (see paragraph 57 above), provides that the County Administrative Court may, on application by the Social Council, impose a prohibition on removal for a certain time or until further notice. The condition for such a prohibition is that there must be

> "an apparent risk (påtaglig risk) that the young person's health and development will be harmed if he is separated from the home".

Although this wording differs from that of section 28 of the 1980 Act, it was not intended, according to the preparatory work (Prop. 1989/90:28, p. 83), to introduce a new standard.

66. According to section 26 of the 1990 Act, the Social Council shall, at least once every three months, consider whether a prohibition on removal is still necessary. If it is not, it shall lift the prohibition.

67. Pursuant to section 31, the Social Council may decide to regulate the parents' access to the child if it is necessary in view of the purposes of the prohibition on removal. Such decisions may, under section 41, be appealed against to the administrative courts.

C. The Parental Code

68. Chapter 21 of the Parental Code deals with the enforcement of judgments or decisions regarding custody and other related matters.

69. Section 1 specifies that actions for the enforcement of judgments or decisions by the ordinary courts concerning the custody or surrender of children or access to them are to be instituted before the County Administrative Court.

70. According to section 5, enforcement may not take place against the will of a child who has reached the age of 12 unless the County Administrative Court finds enforcement to be necessary in the child's best interests.

71. Under section 7, if the child is staying with someone other than the person entitled to custody, the child's custodian may, even when no judgment or decision as described in section 1 exists, seek from the County Administrative Court an order for the transfer of the child to him. Such an order may be refused if the best interests of the child require that the question of custody be examined by the ordinary courts.

When taking decisions under this section, the County Administrative Court shall also observe the requirements laid down in section 5 (see paragraph 70 above).

PROCEEDINGS BEFORE THE COMMISSION

72. In their application of 23 October 1987 to the Commission (no. 13441/87), Mr and Mrs Olsson alleged a series of violations of Article 8 (art. 8) of the Convention on the ground, inter alia, that the Swedish social welfare authorities had hindered their reunion with Helena and Thomas and had prevented the applicants from having access to them. They also complained of a number of breaches of Article 6 (art. 6) and, in addition, invoked Articles 13 and 53 (art. 13, art. 53).

73. On 7 May 1990 the Commission declared the application admissible.

In its report dated 17 April 1991 (Article 31) (art. 31), the Commission expressed the opinion:

(a) unanimously, that there had been a violation of Article 8 (art. 8) on the ground that the restrictions on access were not "in accordance with the law";

(b) by seventeen votes to three, that there had been a violation of Article 8 (art. 8) with regard to the prohibition on removal;

(c) unanimously, that there had been a violation of Article 6 para. 1 (art. 6-1) on the ground that the applicants did not have access to court to challenge the restrictions on access to the children;

(d) by fourteen votes to six, that there had been no violation of Article 6 para. 1 (art. 6-1) as a result of the duration of the proceedings concerning the termination of the public care of Stefan, Helena and Thomas;

(e) by nineteen votes to one, that there had been no violation of Article 6 para. 1 (art. 6-1) with regard to the duration of the proceedings under Chapter 21 of the Parental Code;

(f) by nineteen votes to one, that there had been no violation of Article 6 para. 1 (art. 6-1) on the ground that the Supreme Administrative Court did not hold a hearing on the applicants' appeal concerning the prohibition on removal;

(g) unanimously, that there had been no violation of Article 6 para. 1 (art. 6-1) in relation to the first appointment of a guardian ad litem;

(h) unanimously, that there had been no violation of Article 6 para. 1 (art. 6-1) as a result of the duration of the proceedings relating to the second appointment of a guardian ad litem;

(i) unanimously, that it was not necessary to examine whether there had been a violation of Article 13 (art. 13) in respect of the restrictions on access;

(j) unanimously, that there had been no violation of Article 13 (art. 13) in respect of the first appointment of a guardian ad litem.

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

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* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 250 of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

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FINAL SUBMISSIONS MADE TO THE COURT BY THE GOVERNMENT

74. At the hearing on 22 April 1992, the Government confirmed the final submission in their memorial admitting violations of the Convention in that, for a certain period, the restrictions on access decided by the Social Council were not "in accordance with the law" and that the applicants had not had a court remedy in respect of those restrictions. On the other hand, they invited the Court to hold that there had been no violation of the Convention in the present case other than those admitted by them.

AS TO THE LAW

I. SCOPE OF THE CASE BEFORE THE COURT

75. The present application of 23 October 1987, as declared admissible by the Commission, raised a series of complaints as to (1) the prohibition on removal, its maintenance in force and the restrictions on the applicants' access to the children while the prohibition was in force; (2) the length of certain specific domestic proceedings and the lack of a hearing on appeal; and (3) alleged violations of the right of access to a court or to an effective remedy with respect to certain decisions (see the Commission's decision on admissibility, under the heading "Complaints", and paragraphs 95 and 176-185 of its report).

In their subsequent pleadings, the applicants appeared to raise a number of further complaints relating to (a) the decision to transfer custody of Helena and Thomas to their respective foster parents (see paragraphs 53-54 above); (b) the independence and impartiality of the courts which made or upheld this decision; and (c) the total length of the national proceedings (which had started in 1980 and were not yet terminated).

These new complaints were, however, not covered by the Commission's decision on admissibility. It is true that, on certain conditions, the rule that the scope of the Court's jurisdiction is determined by the Commission's admissibility decision may be subject to qualifications (see, inter alia, the Olsson I judgment, p. 28, para. 56), but the complaints in question do not meet those conditions. The Court therefore has no jurisdiction to entertain them.

Accordingly, it will not go into the applicants' circumstantial allegations before the Court to the effect that the foster parents of Helena and Thomas were for various reasons unsuited as carers. The Court presumes, as the Government evidently did, that these allegations were made solely in support of the complaints made by the applicants in respect of the transfer of custody proceedings. The Court notes, however, that the allegations were rejected after careful examination by the Court of Appeal for Western Sweden in those proceedings (see paragraph 54 above).

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

A. Introduction

76. The applicants' complaints under Article 8 (art. 8) of the Convention concerned the period from 18 June 1987, when the public care of Helena and Thomas was terminated (see paragraph 10 above), to 24 January 1991, when the custody of these children was transferred to their respective foster parents (see paragraphs 53-54 above). The applicants contended that the prohibition on removal, its maintenance in force and the restrictions on access had given rise to breaches of Article 8 (art. 8) of the Convention, which provides 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."

The Government admitted that there had been a violation of Article 8 (art. 8) in that until 1 July 1990 the restrictions on access had no basis in domestic law, but otherwise contested the applicants' allegations. The Commission reached a corresponding conclusion with respect to the restrictions on access, but also expressed the opinion that the maintenance in force of the prohibition on removal, without any meaningful contact between the applicants and their children being established and without any other effective measure to resolve the existing problems, constituted a violation of Article 8 (art. 8).

B. Was there an interference with the applicants' right to respect for family life?

77. The prohibition on removal and its maintenance in force, as well as the restrictions on access, clearly constituted, and this was not disputed, interferences with the applicants' right to respect for family life (see, amongst other authorities, the above-mentioned Eriksson judgment, Series A no. 156, p. 24, para. 58).

Such interference entails a violation of Article 8 (art. 8)

unless it is "in accordance with the law", has an aim or aims that is or are legitimate under Article 8 para. 2 (art. 8-2) and is "necessary in a democratic society" for the aforesaid aim or aims (ibid.).

C. Were the interferences justified?

1. "In accordance with the law"

78. In the applicants' submission, the measures taken by the Swedish authorities had, contrary to Swedish law, been intended to prevent them from being reunited with Helena and Thomas and from having appropriate access to them. On the other hand, the applicants did not seem to question the lawfulness of access restrictions imposed after the entry into force of the 1990 Act on 1 July 1990 (see paragraph 67 above).

(a) Prohibition on removal

79. The Court observes that the prohibition on removal and its maintenance in force were based until July 1990 on section 28 of the Social Services Act 1980 and then on section 24 of the 1990 Act, which replaced section 28. Furthermore, it does not appear from the material before the Court that these measures were motivated by any considerations other than those mentioned in the relevant provisions, namely the protection of the children's health. There is no evidence for the contention that they were taken in order to prevent the reunion of Helena and Thomas with their parents.

Moreover, the measures had been upheld on appeals to, or been renewed by, the administrative courts, albeit in some instances subject to certain time-limits (see paragraphs 14-17, 22-23 and 25-27 above). In this connection, it is to be recalled that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, inter alia, the Margareta and Roger Andersson v. Sweden judgment of 25 February 1992, Series A no. 226-A, pp. 27-28, para. 82).

80. Having regard to the foregoing, the Court, like the Commission and the Government, considers that the prohibition on removal and its maintenance in force were "in accordance with the law".

(b) Restrictions on access

81. On the other hand, according to an authoritative interpretation of Swedish law by the Supreme Administrative Court in the present case, the imposition of restrictions on access while a prohibition on removal under the Social Services Act 1980 was in force lacked any legal effect, as there was then no legal provision on which such restrictions could be based (see paragraph 33 above and the above-mentioned Eriksson judgment, Series A no. 156, p. 25, para. 65). This situation lasted from 23 June 1987 to 1 July 1990, when the 1990 Act entered into force. During this period, the impugned restrictions - as conceded by the Government - were not "in accordance with the law" for the purposes of Article 8 (art. 8).

82. There has accordingly been a violation of Article 8 (art. 8) of the Convention in so far as concerns the restrictions on access between 23 June 1987 and 1 July 1990.

2. Legitimate aim

83. According to the applicants, the aim of the contested measures was to prevent their reunion with Helena and Thomas. Moreover, they claimed that they had not been allowed to meet them on their own because the social welfare authorities and the foster

parents had been afraid that the children might disclose information about unsatisfactory living conditions in the foster homes.

84. However, as already stated above (see paragraph 79), there is no evidence that the purpose of the prohibition on removal and its maintenance in force was to hinder reunion; the Court shares the view of the Commission and the Government that this measure was aimed at protecting the children's "health" and "rights and freedoms".

85. The Court considers that on this occasion it should examine the aims of all the restrictions on access, irrespective of their periods of application. It does not find it established that any of them was aimed at preventing the family's reunion or the disclosure of information of the kind indicated by the applicants. On the contrary, it is convinced that they pursued the same legitimate aims as the measures referred to in paragraph 84 above.

3. "Necessary in a democratic society"

86. According to the applicants, the interferences were not "necessary in a democratic society". The Government contested this allegation but the Commission accepted it.

87. In exercising its supervisory jurisdiction the Court must determine whether the reasons given for the prohibition on removal, its maintenance in force until the transfer of custody and the restrictions on access which were in operation throughout this period were "relevant and sufficient" in the light of the case as a whole (see the Olsson I judgment, p. 32, para. 68). This determination must start with the Social Council's decision of 23 June 1987 - immediately after the Supreme Administrative Court's judgment of 18 June 1987 terminating the public care - to prohibit removal of Helena and Thomas from their respective foster homes.

That decision - which was unanimously upheld, at three levels, by administrative courts which had the benefit of reports from child psychiatrists and a psychologist as well as from specialised agencies was essentially based on the consideration that separating the children from their foster homes would, in the circumstances obtaining at the time, involve a serious risk of harm to the children's physical and mental health (see paragraphs 12-17 above).

The prohibition on removal order must be evaluated against the following background which appears from the file.

Helena and Thomas had been cared for in the foster homes for a long period that had begun at the end of 1980, in fact for most of their lives. Their contacts with their natural parents had been very sparse indeed: they had not met their mother since 1984, they had since seen their father only once and there had been no other contacts with their parents. They had become strongly attached to their respective foster families and environment, in which they had developed in a positive and harmonious manner. Both children had expressed a strong wish to remain in the foster homes, had shown anxiety about the possibility of being forced to return to their natural parents and had indicated that they would run away were they to be so returned. Helena was in an important phase of her personal development, which might be impaired if she were to be returned against her own wishes. Thomas had suffered from certain childhood disturbances and was still psychologically very vulnerable as well as emotionally dependent upon his foster parents. Separating him from the latter was likely to cause him considerable and long-lasting psychological harm.

Against this background the reasons for ordering the

prohibition on removal were, in the Court's opinion, both relevant and sufficient.

88. The prohibition on removal lasted until the transfer of custody, that is, for a total of three and a half years (June 1987 - January 1991). The original order was upheld in three sets of proceedings and was twice renewed, in 1989 by the Social Council and in 1990, under the 1990 Act, by the County Administrative Court. The applicants appealed each time, but these appeals were unanimously dismissed (see paragraphs 14-17 and 21-27 above).

In all of these decisions the national courts found that there remained a serious risk that separating the children from their foster homes would harm them; they pointed out in particular that there had been insufficient preparatory contacts between them and the applicants.

Given that the factors indicated in paragraph 87 above did not essentially change during the period under review, the Court finds that the reasons for the maintenance in force of the prohibition on removal were in any case "relevant". Whether they were also "sufficient" cannot be ascertained without inquiring why, despite the fact that as early as the first set of proceedings relating to the prohibition on removal the Swedish courts had time and again stressed the crucial importance of adequate preparatory contacts, these contacts remained insufficient during the whole period. It is in this context that the restrictions on access have to be assessed.

89. The restrictions on access which applied throughout this period amounted to the following: while the applicants were free to visit the children in their foster homes as often as they wished, meetings outside those homes would be organised or allowed only under such conditions as would dispel the children's apprehensions.

These restrictions - which were supported by opinions of two psychiatrists and a psychologist (see paragraphs 40, 43 and 49 above) and, above all, were in accordance with the repeated wishes of the children - were based on reasons similar to those underlying the prohibition on removal. The authorities took the view that not only the children's interests but also their rights under Article 8 (art. 8) of the Convention prevented the authorities from allowing requests for access under conditions which were unacceptable to the children.

In view of the situation which obtained, the Court finds that the restrictions on access were based on reasons which were "relevant" when it comes to ascertaining whether these restrictions were "necessary in a democratic society". It remains to be seen whether they also were "sufficient": for this purpose they must be assessed in the context indicated at the end of paragraph 88 above.

90. In doing so, the Court notes firstly that, both under Swedish law and under Article 8 (art. 8) of the Convention, the lifting of the care order implied that the children should, in principle, be reunited with their natural parents. In cases like the present, Article 8 (art. 8) includes a right for the natural parents to have measures taken with a view to their being reunited with their children (see, as the most recent authority, the Rieme v. Sweden judgment of 22 April 1992, Series A no. 226-B, p. 71, para. 69) and an obligation for the national authorities to take such measures.

However, neither the right of the parents nor its counterpart, the obligation of the national authorities, is absolute, since the reunion of natural parents with children who have lived for some time in a foster family needs preparation. The

nature and extent of such preparation may depend on the circumstances of each case, but it always requires the active and understanding co-operation of all concerned. Whilst national authorities must do their utmost to bring about such co-operation, their possibilities of applying coercion in this respect are limited since the interests as well as the rights and freedoms of all concerned must be taken into account, notably the children's interests and their rights under Article 8 (art. 8) of the Convention. Where contacts with the natural parents would harm those interests or interfere with those rights, it is for the national authorities to strike a fair balance (see, mutatis mutandis, the Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A no. 172, p. 18, para. 41).

In sum, what will be decisive is whether the national authorities have made such efforts to arrange the necessary preparations for reunion as can reasonably be demanded under the special circumstances of each case.

It is for the Court to review whether the national authorities have fulfilled this obligation. In doing so, it will leave room for a margin of appreciation, if only because it has to base itself on the case-file, whereas the domestic authorities had the benefit of direct contact with all those concerned.

91. In this connection the Court notes in the first place that the judgments rendered by the Swedish courts during the period under consideration contain some passages which might be understood as criticising the social welfare authorities for deficiencies in the making of appropriate preparations for reunion, but equally as urging them not to let themselves be influenced by the antagonistic course taken by the applicants and their counsel. However, the judgments which were given afterwards, in the transfer of custody proceedings, clearly take the view that the main responsibility for the necessary preparations not having been made lay with the applicants.

Indeed, the Swedish courts repeatedly stressed that in order to arrange adequate preparatory contacts, good co-operation between the social welfare authorities and the foster parents on the one hand and the applicants on the other hand was essential. Nevertheless, the applicants, although they knew that the access restrictions corresponded to the children's wishes, refused to accept them. They visited the children at the foster homes only twice (see paragraph 29 above) and also neglected other possible forms of contact, such as contact by telephone. Rather than follow the course of co-operation recommended by the courts, the applicants instead chose that of continuous hostility: again and again they demanded access at their home without the foster parents' presence, which, as they were well aware, was unacceptable not only to the social welfare authorities but also to the children. In addition, they responded to the failure to comply with their demands by lodging complaints with the police and numerous appeals (see paragraphs 32-34, 46 and 50-52 above).

The social welfare authorities, for their part, tried to persuade the applicants to visit the children in their foster homes, offering to make the necessary arrangements and reimburse their travel costs and subsistence expenses. Furthermore, they organised a meeting in Gothenburg and, after consultation with two experts, drew up an access plan which cannot be said to have been unduly restrictive and seems to have satisfied the exigencies of the situation. Although this plan was rejected by the applicants, the social welfare authorities tried, with partial success, to put it into effect (see paragraphs 29 and 41 above).

In the light of the foregoing, the Court, having regard to

the margin of appreciation to be left to the national authorities, has come to the conclusion that it has not been established that the social welfare authorities failed to fulfil their obligation to take measures with a view to the applicants being reunited with Helena and Thomas.

Accordingly, the maintenance in force of the prohibition on removal and the restrictions on access were based on reasons that were not only "relevant" but also, in the circumstances, "sufficient" (see paragraph 88 above).

92. The question whether the interferences with the applicants' right to respect for family life were "necessary" must therefore be answered in the affirmative. Consequently, their complaint under Article 8 (art. 8) fails on this point.

III. ALLEGED VIOLATION OF ARTICLE 53 (art. 53) OF THE CONVENTION

93. The applicants complained that, despite the Court's Olsson I judgment, the Swedish authorities had continued to prevent their reunion with Helena and Thomas; the applicants had still not been allowed to meet the children under circumstances which would have enabled them to re-establish parent-child relationships. In their view, Sweden had continued to act in breach of Article 8 (art. 8) and had thereby failed to comply with its obligations under Article 53 (art. 53) of the Convention, which reads as follows:

> "The High Contracting Parties undertake to abide by the decision of the Court in any case to which they are parties."

This allegation was disputed by the Government, whereas the Commission did not express an opinion on the matter.

By Resolution DH (88)18, adopted on 26 October 1988, concerning the execution of the Olsson I judgment, the Committee of Ministers, "having satisfied itself that the Government of Sweden has paid to the applicants the sums provided for in the judgment", declared that it had "exercised its functions under Article 54 (art. 54) of the Convention".

94. The Court further notes that the facts and circumstances underlying the applicants' complaint under Article 53 (art. 53) raised a new issue which was not determined by the Olsson I judgment (p. 29, para. 57) and are essentially the same as those which were considered above under Article 8 (art. 8), in respect of which no violation was found (see paragraphs 87-92 above).

In these circumstances, no separate issue arises under Article 53 (art. 53).

IV. ALLEGED VIOLATIONS OF ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION

95. Mr and Mrs Olsson also complained of several violations of Article 6 para. 1 (art. 6-1), which provides:

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

A. Judicial review of restrictions on access

96. The Government, like the Commission, accepted the applicants' contention that there had been a violation of Article 6 para. 1 (art. 6-1) on the ground that it was not possible for them, until the entry into force of the 1990 Act on 1 July 1990,

to have the restrictions on their access to Helena and Thomas reviewed by a court (see paragraphs 33, 34, 51, 62, 73 and 74 above).

97. For the reasons set out in the above-mentioned Eriksson judgment (Series A no. 156, p. 29, paras. 80-81), the Court agrees. Accordingly, there has been a violation of Article 6 para. 1 (art. 6-1) on this point.

B. Length of certain proceedings

98. The applicants alleged that the duration of several of the domestic proceedings in their case had, contrary to Article 6 para. 1 (art. 6-1), exceeded a reasonable time.

The Government contested this allegation, which was rejected by the Commission.

99. The reasonableness of the length of proceedings is to be assessed in the light of the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and that of the relevant authorities. On the latter point, what is at stake for the applicant in the litigation has to be taken into account in certain cases (see, for instance, the X v. France judgment of 31 March 1992, Series A no. 236, pp. 89-90, para. 32).

1. The proceedings relating to one of the requests made by the applicants for termination of the public care

100. The applicants maintained that the examination of one of their requests for termination of the public care of Helena, Thomas and Stefan (see paragraph 10 above) had not been concluded within a "reasonable time".

101. The Court considers - and this was not in dispute before it - that the starting-point for the relevant periods was 16 August 1984, when the applicants submitted their request to the Social Council. The periods in question ran until 16 February 1987, when the public care of Stefan was revoked by the Administrative Court of Appeal, and 18 June 1987, when that of Helena and Thomas was terminated by the Supreme Administrative Court, thus lasting approximately two years and six months and two years and ten months, respectively.

102. The proceedings concerning Stefan lasted approximately thirteen months before the Social Council, four and a half months before the County Administrative Court and twelve months before the Administrative Court of Appeal; those in respect of Helena and Thomas took approximately two and a half months before the Social Council, eleven months before the County Administrative Court, sixteen and a half months before the Administrative Court of Appeal and four months before the Supreme Administrative Court.

The proceedings were of a complex nature, involving difficult assessments and requiring extensive investigations. Hearings were held before the County Administrative Court in the case of Helena and Thomas and before the Administrative Court of Appeal in the case of all three children.

103. There are only two instances in which it is questionable whether the competent authorities proceeded with proper diligence.

Firstly, it took the Social Council thirteen months to decide on the request concerning Stefan. However, the Government explained that this had been due to certain investigations deemed to be necessary and the Court accepts this argument.

Secondly, the Administrative Court of Appeal had initially scheduled a hearing for 21 August 1986, but postponed it until 4 February 1987. Whilst indicating that they could not state with any certainty the reasons for this delay, the Government drew attention to the fact that, between 17 July and 20 November 1986, the case-file had not been with the Administrative Court of Appeal, but with the Supreme Administrative Court, which had had before it another appeal by the applicants. However, this does not sufficiently explain why the hearing was postponed for six months. In view of the nature of the interests at stake, it was of great importance, as the Commission also noted, that such matters be dealt with swiftly.

Nevertheless, having regard to the complexity of the case, the delay was not so long as to warrant the conclusion that the total duration of the proceedings was excessive.

2. The proceedings relating to the applicants' request under Chapter 21 of the Parental Code

104. Mr and Mrs Olsson further claimed that the proceedings concerning their request to have Helena and Thomas returned to them, in accordance with section 7 of Chapter 21 of the Parental Code (see paragraph 18 above), had exceeded a reasonable time.

Both the Government and the Commission disagreed.

In their main submission the Government disputed the applicability of Article 6 para. 1 (art. 6-1), on the ground that the proceedings in issue had been concerned only with the enforcement of existing rights and not with the determination of the existence or the content of such rights.

The Court has come to a different conclusion. There is no doubt that the outcome of the proceedings in issue affected, in a decisive manner, the exercise by the applicants of an essential aspect of their rights in respect of the custody of the children (see, amongst many authorities, the Skärby v. Sweden judgment of 28 June 1990, Series A no. 180-B, p. 36, para. 27). Their application to the County Administrative Court for the transfer of the children thus gave rise to a "contestation" (dispute) over one of their "civil rights" for the purposes of Article 6 para. 1 (art. 6-1). Consequently, this provision is applicable to the proceedings in question.

105. As to whether the proceedings complied with the requirement of reasonable time, the Court observes that they lasted for a period of thirteen and a half months and comprised three levels of jurisdiction. Like the Commission, it does not find this to be excessive for the purposes of Article 6 para. 1 (art. 6-1).

3. The proceedings relating to the second appointment of a guardian ad litem

106. The applicants further contended that the proceedings concerning the second appointment of a guardian ad litem (see paragraph 20 above) had exceeded a "reasonable time".

These proceedings lasted a little more than a year and included three levels of jurisdiction. The Court agrees with the Commission that they were concluded within a reasonable time.

4. Conclusion

107. There has accordingly been no breach of Article 6 para. 1 (art. 6-1) on the three above-mentioned points.

V. MISCELLANEOUS ALLEGATIONS OF VIOLATIONS OF ARTICLES 6 PARA.1 AND 13 (art. 6-1, art. 13)

108. Before the Commission the applicants submitted that, in the first set of proceedings challenging the prohibition on removal, there had been a breach of Article 6 para. 1 (art. 6-1), in that the Supreme Administrative Court had refused to hold a hearing (see paragraph 17 above). They also alleged that, contrary to this provision, they had not been able to challenge the District Court's first appointment, on 17 July 1987, of a guardian ad litem for Helena and Thomas, since they had not been informed of this decision (see paragraph 19 above). In addition, they complained that they did not have an effective remedy within the meaning of Article 13 (art. 13) in respect of the restrictions on access and the decision of 17 July 1987 to appoint a guardian ad litem.

These complaints, which in the Commission's opinion were unfounded or did not need examination, were not mentioned by the applicants before the Court, which does not consider it necessary to examine them of its own motion.

VI. APPLICATION OF ARTICLE 50 (art. 50)

109. Mr and Mrs Olsson sought just satisfaction under Article 50 (art. 50), according to which:

> "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

110. Under this provision the applicants sought 5,000,000 Swedish kronor for damage. In support of their claim they maintained, inter alia, that, despite the Olsson I judgment, the Swedish authorities had continued to deal with them in the same way. The compensation awarded by the Court in that judgment had had no impact; a significantly higher sum was therefore called for in the present case.

The Government considered the claim to be "out of proportion". They submitted that, should the Court uphold their contentions on the merits, only a symbolic amount should be granted.

111. The present judgment has found only violations of Article 8 (art. 8), on account of the restrictions on the applicants' access to Helena and Thomas imposed, for a certain period, without a proper basis in Swedish law, and of Article 6 para. 1 (art. 6-1), owing to the absence of a court remedy against the restrictions (see paragraphs 81-82 and 97 above). The Court considers that the applicants must, as a result, have suffered some non-pecuniary damage which has not been compensated solely by the findings of violation. Deciding on an equitable basis, it awards 50,000 Swedish kronor to the applicants jointly under this head.

B. Legal fees and expenses

112. The applicants claimed reimbursement of fees and expenses, totalling 1,286,000 Swedish kronor, in respect of the following items:

(a) 1,269,000 kronor for 625 hours' work by their lawyer in respect of the domestic and the Strasbourg proceedings and for 80 hours for the preparation of her oral pleadings and her appearance before the Court as well as for her journey to Strasbourg (in each case at 1,800 kronor per hour);

(b) expenses relating to journeys by the lawyer to meet a former foster daughter of the Larsson family in Northern Sweden (7,000 kronor) and to attend a court hearing in Gävle (2,000 kronor);

(c) 3,000 kronor in respect of a further journey to see the applicants and an appearance before the District Court in Alingsås as well as photocopying and telephone calls;

(d) 5,000 kronor to cover work by a translator checking the manuscript of the lawyer's oral pleadings before the Court.

With regard to item (a), the Government submitted that costs referable to the domestic proceedings did not warrant compensation under Article 50 (art. 50); such costs could have been paid under the Swedish legal aid scheme had the applicants applied for legal aid. Furthermore, in their view, the way in which the lawyer for the applicants conducted the proceedings before the Commission should be taken into consideration. The Government questioned whether the time which she claimed to have spent on the case was necessary and considered the hourly rate charged too high.

Items (b) and (c), the Government pointed out, seemed to be related, at least partly, to the domestic proceedings. They were prepared to pay reasonable compensation for item (d).

113. As regards item (a), the Court notes that the applicants' lawyer agreed to act on the basis that she would not ask for fees under the Swedish legal aid scheme. Her clients have therefore incurred liability to pay fees to her. Legal fees referable to steps taken, in both the domestic and the Strasbourg proceedings, with a view to preventing or obtaining redress for the matters found by the Court to constitute violations of Articles 6 para. 1 and 8 (art. 6-1, art. 8) of the Convention, were necessarily incurred and should be reimbursed in so far as they were reasonable (see, for instance, the Olsson I judgment, Series A no. 130, p. 43, para. 104).

Bearing in mind that the applicants have succeeded only on the points mentioned in paragraph 111 above and making an assessment on an equitable basis, the Court considers that the applicants should be awarded under this head 50,000 kronor, from which must be deducted the 6,900 French francs already received from the Council of Europe in respect of legal costs.

114. Items (b) and (c) must be rejected as there is no evidence that they were necessarily incurred. On the other hand, the Court is satisfied that item (d) - translation costs - was necessarily incurred and was reasonable as to quantum.

FOR THESE REASONS, THE COURT

1. Holds by six votes to three that there has been no violation of Article 8 (art. 8) of the Convention in respect of the prohibition on removal;

2. Holds unanimously that there has been a violation of Article 8 (art. 8) on account of the restrictions on access imposed between 23 June 1987 and 1 July 1990;

3. Holds by six votes to three that there has been no violation

of Article 8 (art. 8) on account of the restrictions on access imposed after 1 July 1990;

4. Holds unanimously that there has been a violation of Article 6 para. 1 (art. 6-1) in that no court remedy was available to challenge the restrictions on access imposed between 23 June 1987 and 1 July 1990;

5. Holds unanimously that there has been no violation of Article 6 para. 1 (art. 6-1) as regards any of the other points raised by the applicants before the Commission and the Court;

6. Holds by seven votes to two that no separate issue arises under Article 53 (art. 53);

7. Holds unanimously that it is not necessary to examine the other complaints, under Articles 6 para. 1 and 13 (art. 6-1, art. 13), which the applicants made before the Commission but did not reiterate before the Court;

8. Holds unanimously that Sweden is to pay to the applicants jointly, within three months, 50,000 (fifty thousand) Swedish kronor for non-pecuniary damage, and, for legal fees and expenses, 55,000 (fifty-five thousand) Swedish kronor less 6,900 (six thousand nine hundred) French francs to be converted into Swedish kronor at the rate applicable on the date of delivery of the present judgment;

9. Dismisses 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 27 November 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 partly dissenting opinion of Mr Pettiti, joined by Mr Matscher and Mr Russo, is annexed to this judgment.

Initialled: R.R.

Initialled: M.-A.E

PARTLY DISSENTING OPINION OF JUDGE PETTITI, JOINED BY JUDGES MATSCHER* AND RUSSO

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* Except as regards the penultimate paragraph on page 46.

(Translation)

I did not vote with the majority of the Chamber for the non-violation of Article 8 (art. 8) of the European Convention on Human Rights as regards the prohibition on removal and restrictions on access (points 1 and 3 of the operative provisions). I consider, on the contrary, that there has been a serious violation of that Article (art. 8) in respect both of the prohibition on removal and of the restrictions on access after 1 July 1990, on the same lines

as the findings in the Olsson I judgment (see particularly paragraph 81 which set out the reasons for concluding that Sweden had failed to comply with Article 8 in that case) (art. 8).

It appears clear that the social welfare officials did not take all the steps that they should have done in the light of that judgment with a view to promoting the exercise of the right of access and the right to have the children to stay which would have prepared the way for returning custody of the children to their parents.

Where the child has been separated from his parents over a long period (as was the case here and this was a situation for which the social welfare authorities bore some responsibility in respect of the period covered by the Olsson I judgment), flexible and sensitive measures must be taken.

In order to put reflection on the Olsson II judgment more clearly in context, it is helpful to recall the principal reasoning of the Olsson I judgment (in which a violation was found by twelve votes to three):

> "82. There is nothing to suggest that the Swedish authorities did not act in good faith in implementing the care decision. However, this does not suffice to render a measure 'necessary' in Convention terms ...: an objective standard has to be applied in this connection. Examination of the Government's arguments suggests that it was partly administrative difficulties that prompted the authorities' decisions; yet, in so fundamental an area as respect for family life, such considerations cannot be allowed to play more than a secondary role.
>
> 83. In conclusion, in the respects indicated above and despite the applicants' unco-operative attitude ..., the measures taken in implementation of the care decision were not supported by 'sufficient' reasons justifying them as proportionate to the legitimate aim pursued. They were therefore, notwithstanding the domestic authorities' margin of appreciation, not 'necessary in a domestic society'."

The Committee of Ministers confined itself to declaring that the pecuniary awards made under Article 50 (art. 50) of the Convention had been duly paid by the Government.

For all the periods considered, the authorities should have taken steps to ensure: the psychological preparation of the children and the progressive organisation repeated at least each month of meetings, at first short ones, if necessary even in the presence of a psychologist; these meetings could subsequently have been extended to a day, a weekend, a part of the holidays, under different conditions to those obtaining for the five series of meetings referred to in the judgment. The aim would be to avoid a situation in which the child, being conditioned by the foster family, adopted a deliberately obstructive attitude to these visits, which evidently posed a problem. It would also have been helpful to make a greater effort to prepare the parents for the progressive stages, making allowance for their frustration, for a degree of maladroit resistance on their part as well as for the difficulties arising from the need to travel because of the unfortunate choice of the foster families in terms of the geographical location of their home. The most important thing was to take account of the parents' persistent efforts to secure the return of their children, despite all the obstacles, which confirmed their parental attachment and their legitimate and consistent claim. In my view, neither the social welfare authorities nor the majority of the European Court sitting as a Chamber gave sufficient weight to the strength and

extent of this attachment. From 23 June 1987 to 16 June 1989, there were only five actual meetings (see paragraph 29 of the judgment), and then no more during the relevant period.

It is true that since the Olsson I judgment these five attempts at meetings have taken place; the results were unsatisfactory but that could have been a temporary situation.

However, in view of the large number of misunderstandings which had built up over the years, these attempts had no chance of succeeding without an adequate psychological preparation of the parties concerned. It is the duty of the social welfare authorities, and this is one of the most elementary principles of the methods of educative assistance practised in Europe, where this type of conflict is frequent, to make specific arrangements.

It is impossible to overcome in a matter of a few hours years of mutual incomprehension. Thousands of learned works by judges, lawyers, doctors, psychiatrists or psychologists, have been written on this subject. The technique of using neutral ground for meetings and progressive contacts is common, under judicial supervision. In any event it is always counterproductive for the parents to have to meet their children on the home ground of the foster family or in the latter's presence, because that often leads to the failure of the attempt.

The social welfare authorities displayed what was almost contempt both for the national courts and the European Court. It is somewhat surprising that neither the courts nor the governmental authorities managed to force the "imperialism" of the social services to give ground.

At no time did the social welfare authorities take the least account of the love for their children that the parents sought to express, a love that was demonstrated by the years of struggle in proceedings to seek to obtain the return of the children and the respect of their most sacred rights.

Clearly, the Olsson parents' attitude was not always helpful, particularly after 1989, and they must therefore bear a part of the responsibility. Yet one must not forget their despair after the repeated failures with which they met even after the favourable decisions of the European Court and the national courts (see paragraph 53 et seq. of the present judgment).

Adopting the tactics employed by their lawyers, which were perhaps too extreme, they hardened their position, but legally they had a number of valid reasons for doing so. In any case, the authorities were under a duty to exert a positive influence, by showing understanding and making repeated interventions, instead of reinforcing the differences.

In this type of situation it is necessary to seek to organise more and more meetings, to educate the children and the parents, to defuse conflicts. It is unfair to give priority to the obstinacy of the children and the foster families.

In the same connection, the long delays between each proceedings or intervention made the situation worse, whereas in other States and in other jurisdictions, hearings would have been held at shorter intervals by means of an urgent procedure before a children's judge. One is left with the impression that the authorities were content to allow the intransigence of the parents to strengthen the position of the social welfare authorities, despite the fact that the latter had never disguised their preference for the foster families, as if they sought to accord greater weight to material comfort than to paternal and maternal

ties.

Viewed from the outside this attitude towards the parents may seem somewhat "inhuman".

It is to be regretted that reference was not made to the United Nations Convention on the Rights of the Child so as to permit the intervention of the children assisted by their lawyers, who could have played a useful role as mediators.

Whatever the case may be, the general and overall conduct of the authorities was such that the parents are permanently separated from their children, and this situation is now irreparable as a result of the refusal to allow access, a right which is not even refused to criminal parents in other countries. The Olsson parents have been definitively cut off from any family relationship. It is difficult to think of a more serious case of a violation of the fundamental rights protected by Article 8 (art. 8).

As I voted for the violation of the prohibition on removal and the restriction on access before and after 1990, I also consider that the Court should have examined the case under Article 53 (art. 53) and analysed the decision of the Committee of Ministers in the light of the European Court's judgment in the first Olsson case.

It is paradoxical that in the year of the implementation of the United Nations Convention on the Rights of the Child, which stresses the importance of parent-child relations, there should have been such a failure in the application of Article 8 (art. 8) of the European Convention.