



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

AFFAIRE PAULSEN-MEDALEN ET SVENSSON c. SUÈDE
CASE OF PAULSEN-MEDALEN AND SVENSSON v. SWEDEN
(149/1996/770/967)

ARRÊT/JUDGMENT

STRASBOURG

19 février/February 1998

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SUMMARY¹

Judgment delivered by a Chamber

Sweden – length of proceedings relating to restrictions on a mother’s access to her two sons who had been taken into public care and alleged impossibility for the father of one of them to have determined by a court his right of access to his son (sections 14 and 41 of the Act containing Special Provisions on the Care of Young Persons 1990)

I. ARTICLE 6 § 1 OF THE CONVENTION

A. Mother’s complaint (the first applicant)

Only phase of the domestic proceedings that had given rise to misgivings in the case was between 22 January 1991, when first applicant applied for leave to appeal to Supreme Administrative Court, and 28 June 1993, when that court upheld lower courts’ judgments in respect of the restrictions on access – did not transpire from evidence that delay due to her conduct or to complexity of case – the authority concerned could not be said to have acted with the exceptional diligence required by Article 6 § 1 in such cases.

Conclusion: violation (unanimously).

B. Father’s complaint (the second applicant)

While it was unclear whether a father who did not have custody or did not enjoy access rights pursuant to a court order or agreement could claim a right of access under section 14 of the 1990 Act, this was not excluded by its wording (“a parent or other person who has custody of [the child]”) – fact that the maternal grandparents of second applicant’s son, although outside category of persons referred to in section 14, were able to obtain formal decision on access, suggested that such decision could also have been taken in respect of the applicant father – in response to his request for and query about access, social authorities had denied that a person other than the custody holder enjoyed access rights – however, applicant had not pursued the matter when invited to discuss access arrangements or otherwise – he had furnished no particulars in support of his submission that he had specifically requested, and that relevant authority had been unwilling or unable to take, a formal decision on his request for access.

In these circumstances, Court not persuaded by second applicant’s claim that he, as a “parent”, could not have obtained decision of kind in issue – moreover, not established that it would have been impossible for him to institute judicial review proceedings under section 41 of the 1990 Act in respect of a decision refusing him access.

Conclusion: no violation (unanimously).

1. This summary by the registry does not bind the Court.

II. ARTICLES 8 AND 13 OF THE CONVENTION

Second applicant's complaint under Articles 8 and 13 referred to same facts as under Article 6 § 1 complaint.

Conclusion: not necessary to examine (unanimously).

III. ARTICLE 50 OF THE CONVENTION

A. Damage

Compensation awarded on equitable basis (unanimously).

B. Legal costs

Awarded in part (unanimously).

COURT'S CASE-LAW REFERRED TO

25.2.1992, Margareta and Roger Andersson v. Sweden; 7.8.1996, Johansen v. Norway;
25.2.1997, Z v. Finland

In the case of Paulsen-Medalen and Svensson v. Sweden¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court B², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr L.-E. PETTITI,

Mrs E. PALM,

Mr R. PEKKANEN,

Mr A.N. LOIZOU,

Mr M.A. LOPES ROCHA,

Mr K. JUNGWIERT,

Mr U. LÖHMUS,

Mr P. VAN DIJK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 26 November 1997 and 26 January 1998,

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

PROCEDURE

1. The case was referred to the Court by the applicants, Ms Anne-Marie Paulsen-Medalen and Mr Sven-Erik Svensson, both Swedish nationals, on 25 October 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 16817/90) against the Kingdom of Sweden lodged by the applicants with the European Commission of Human Rights (“the Commission”) under Article 25 on 7 August 1989.

The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 of the Convention.

Notes by the Registrar

1. The case is numbered 149/1996/768/969. 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.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

On 21 February 1997 the Court's Screening Panel decided not to decline consideration of the case and to submit it to the Court (Article 48 § 2 of the Convention).

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicants designated the lawyers who would represent them (Rule 31).

3. The Chamber to be constituted included *ex officio* Mrs E. Palm, the elected judge of Swedish nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 19 March 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr L.-E. Pettiti, Mr R. Pekkanen, Mr A.N. Loizou, Mr M.A. Lopes Rocha, Mr K. Jungwiert, Mr U. Löhmus and Mr P. van Dijk (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently, on 18 November 1997, Mr R. Bernhardt, the Vice-President of the Court, replaced Mr Ryssdal, who was unable to take part in the further consideration of the case (Rules 21 § 3 (b) and 24 § 1).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Deputy Registrar, consulted the Agent of the Government of Sweden ("the Government"), the applicants' lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence on 9 July 1997, the Registrar received the Government's memorial on 22 October 1997 and the applicant's memorial on 29 October 1997. In a letter of 6 November 1997 the Secretary to the Commission informed the Registrar that the Delegate did not wish to reply in writing.

5. On 6 November 1997 the Commission produced extracts from a document on its file, as requested by the Registrar on the President's instructions. On 17 November 1997 the applicants sought to file a document. On 24 November the President, in consultation with the Chamber, decided not to accept the document for filing (Rule 39 § 1, third sub-paragraph).

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 24 November 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr C.H. EHRENKRONA, Director for Legal Affairs,	
Ministry for Foreign Affairs,	<i>Agent,</i>
Mrs I. STENKULA, Legal Adviser, Ministry of Social Affairs,	
Mrs A. WICKSTRÖM, Legal Adviser, Ministry of Justice,	
Mr T. ZANDER, Legal Adviser, Ministry for Foreign Affairs,	<i>Advisers;</i>

(b) *for the Commission*

Mr L. LOUCAIDES,

Delegate;

(c) *for the applicants*

Mrs S. WESTERBERG, Lawyer,

Counsel,

Mrs R. HARROLD-CLAESSON, Lawyer,

Ms N. NICOLET, Lawyer,

Advisers,

Mrs B. HELLWIG,

Assistant.

The Court heard addresses by Mr Loucaides, Mrs Westerberg and Mr Ehrenkrona.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the present case

7. The first applicant, Ms Anne-Marie Paulsen-Medalen, born in 1958 and unmarried, lives at Västra Frölunda, a suburb of Gothenburg. The second applicant, Mr Sven-Erik Svensson, born in 1957, lives at Partille, another suburb of Gothenburg. The first applicant is the mother of two children, P. and J.; the second applicant is J.'s father.

8. The first applicant came into contact with the social authorities in 1984 while expecting her first child P. Following his birth, he and his mother stayed with her parents, then with the second applicant and, as from May 1985, with P.'s father. After the birth of her second son J. in 1986 the first applicant and her sons returned to her parents. In the summer of 1986 she moved to Högsbohöjd. Since 1989 she has been living at Västra Frölunda in order to be closer to her parents. During this period the social authorities provided on a regular basis the first applicant with financial support and assistance in the upbringing of her children.

9. On 8 February 1989, in the light of an investigation by the social authorities, the Chairperson of the Social District Council (*sociale distriktsnämnden*) in Frölunda-Styrsö decided to take the children immediately into care on a provisional basis. The children were placed at the Bö Children's Home in Gothenburg.

10. The first applicant appealed against the decision to take the children provisionally into care. However, the County Administrative Court (*länsrätten*) and the Administrative Court of Appeal (*kammarrätten*) of Gothenburg upheld the decision and the Supreme Administrative Court (*regeringsrätten*) refused the applicant leave to appeal.

11. By judgment of 17 March 1989 the County Administrative Court ordered that the children P. and J. be taken into care pursuant to section 1 of the Act containing Special Provisions on the Care of Young Persons 1980 (*lag 1980:621 med särskilda bestämmelser om vård av unga* – hereinafter “the 1980 Act”) on the ground that there were such deficiencies in the children’s care as to endanger their health and development.

12. The first applicant appealed against the judgment, initially in respect of both P. and J. She later withdrew the appeal in so far as it concerned P.

By judgment of 13 February 1990 the Administrative Court of Appeal upheld the care order with respect to J.

13. The first applicant sought to appeal against the above judgment but, on 22 March 1990, the Administrative Court of Appeal refused the appeal as being lodged out of time, which decision was upheld by the Supreme Administrative Court on 3 July 1990.

B. Restrictions on access and related proceedings

1. The first applicant’s access to her sons

14. J. and P. were placed with foster parents on 7 March and 18 April 1989 in separate homes. Initially no decision regarding the first applicant’s access to her children was taken but it appears that from March 1989 until March 1990 she was in fact able to visit her children in the foster homes once every second week for 2½ hours. Furthermore, she could see them in her own home twice per year for 2½ hours. The second applicant normally accompanied the first applicant during her visits in the foster homes.

15. On 19 March 1990, after the first applicant had contacted her present representative, Mrs Siv Westerberg, she requested the social authorities to confirm that no decision had been taken to restrict her right of access to her children.

16. On 20 March 1990 the Chairperson of the Social Council (*stadsdelsnämnden*) of Högsbo decided, pursuant to section 16 of the 1980 Act (see paragraph 29 below), to restrict the first applicant’s access to her children to a 2½ hours’ visit in the foster homes every second week.

On 27 March 1990, acting in her own capacity and on behalf of her children, the first applicant appealed against the above decision to the

County Administrative Court. She maintained primarily that the decision had been unlawful in that the Chairperson of the Social Council had not been empowered to restrict access.

17. The County Administrative Court quashed the Chairperson's decision in a judgment of 20 June 1990. On appeal by the Social Council that judgment was overturned on 6 July 1990 by the Administrative Court of Appeal. It considered that the Chairperson had been empowered to restrict access and referred the case back to the County Administrative Court for determination of the merits of the access restrictions.

The first applicant appealed against the Administrative Court of Appeal's judgment to the Supreme Administrative Court which, on 5 November 1990, refused leave to appeal.

18. In the meantime, on 19 June 1990, the social authorities had decided to restrict the first applicant's right to speak to J. on the telephone to two phone calls per week. Furthermore, on 3 July 1990, it had decided to maintain the restrictions on the first applicant's access to her two sons to a 2½ hours' visit every other week in the foster homes.

19. The above decisions were challenged before the County Administrative Court which, after holding a hearing on 28 September 1990, upheld them in a judgment of 3 October 1990.

20. On 8 October 1990 the first applicant appealed on her own and her sons' behalf to the Administrative Court of Appeal which, following an oral hearing, rejected the appeal on 11 January 1991.

21. On 22 January 1991 the first applicant and the children, represented by their mother, applied for leave to appeal to the Supreme Administrative Court, which was granted on 23 July 1991.

22. On 28 June 1993 the Supreme Administrative Court upheld the lower courts' judgments as regards the restrictions on access.

According to the Government, the Supreme Administrative Court's delay in giving judgment appeared to have been due to the fact that it was awaiting the Strasbourg Court's ruling in the case of *Margareta and Roger Andersson v. Sweden* (judgment of 25 February 1992, Series A no. 226-A) which raised similar issues in relation to restrictions on telephone communications between mother and child.

2. The second applicant's access to his son J.

23. On 5 February 1991 Mrs Westerberg submitted the following request to the relevant authority on behalf of the second applicant:

“[The second applicant] requests access [to J.] every weekend from Friday 5 p.m. until Sunday 5 p.m. as from 15 February 1991. Access shall take place at [the second applicant's] home at Partille without the presence of any other persons being required. [The second applicant] will bring and fetch [J.] in the foster home.

You are requested to notify me immediately, not later than within a week, of your acceptance of this access arrangement and to inform the foster parents thereof. If you consider that you cannot decide in this matter in your capacity as a civil servant I request that you refer it to the Social Council, to confirm that such a referral has taken place and to inform me when I may expect a decision from the Social Council.”

24. On 11 February 1991 the Chief of the Social Services of District 10, Högsbo, Gothenburg (*stadsdelsförvaltningen 10, Högsbo, Göteborgs Stad*) informed the second applicant as follows:

“... I must point out that the Act containing Special Provisions on the Care of Young Persons applies in respect of children taken into public care. As you are aware, its provisions regarding access apply only in respect of the custody holder or in respect of those who have taken care of the child. Accordingly, it is only the mother [the first applicant] who is covered by these provisions. Of course, a natural father is important for the child who, having regard to what is in his or her best interests, has a right of access to his or her parent. According to section 11 of [the 1990 Act], it is the social authorities, in this case the foster home department at Tynnered District [*familjehemsverksamheten i stadsdels-förvaltningen Tynnered*], which must decide on [J.’s] personal circumstances in the foster home. [The second applicant] is welcome to discuss the question of access with [the secretary responsible for foster home care].

... I should like to recall that it concerns a child who, because of his need of care, has been placed in a foster home by court order. It cannot be considered to be in the interest of a child to be removed from his or her home every weekend, especially not in a situation such as that of [J.]. Not even in divorce cases is it normal that access be granted with such short intervals; such cases often do not even concern children with any special need for care being provided in their home.

In effect, what you suggest is that a non-custody holder should be granted access going beyond what the custody holder has been granted.”

25. The second applicant did not pursue the matter but appears to have contacted the social authorities at Frölunda to enquire about his access to J. On 6 October 1995 the authorities replied:

“A right of access to a child for a person other than the custody holder does not exist under domestic law. It is however appropriate that a child also meets his or her relatives.

...

The County Administrative Court has decided that [J.’s] access to his mother should be limited to two visits a year, which may be increased to the extent agreed by [J.]. His access to other relatives should be considered in light of this. As regards [the second applicant’s] request to meet [J.] it could be said that [the second applicant] participates in the regular access arranged every other week. Admittedly, [J.] has not appeared

more than a few times during the last year but the aim is that [J.] attend more frequently in the future. This means that [the second applicant] will meet [J.] on the same conditions as the mother [the first applicant].”

26. It does not appear that the second applicant has taken any further initiative to establish access to his son J.

3. *Grandparents’ access to P. and J.*

27. On 12 November 1990 Mrs Westerberg had submitted a request by the maternal grandparents to the Högsbo Social District Council for the children P. and J. to stay with them every weekend.

On 14 November 1990 the Council informed Mrs Westerberg that the question regarding the grandparents’ access to their grandchildren was not regulated in the law. The request could, nevertheless, be examined in the context of the social authorities’ general powers to decide on the personal conditions of the children. Decisions made under these general powers were not subject to any review. The grandparents were advised to contact the social authority responsible for the foster home to discuss the possibilities of access although the access requested did not appear to be consistent with the children’s needs.

By letter of 22 November 1992 the grandparents insisted on having a formal decision on the subject. On 4 December 1992 the Social District Council decided that the request did not call for any further action.

II. RELEVANT DOMESTIC LAW AND PRACTICE

28. During the proceedings in the present case the Act containing Special Provisions on the Care of Young Persons 1980 (the 1980 Act) was replaced by a new Act containing Special Provisions on the Care of Young Persons 1990 (*lagen 1990:52 med särskilda bestämmelser om vård av unga* – “the 1990 Act”) which entailed certain amendments and additions to the 1980 Act. The 1990 Act entered into force on 1 July 1990. According to the transitional provisions a care order issued under the 1980 Act should be regarded as a care order under the corresponding provision in the 1990 Act. The same applied with respect to decisions on access.

29. Section 16 of the 1980 Act provided:

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

1. decide how the right of access to the young person shall be exercised by a parent or other person who has custody of him, or

2. decide that the young person’s place of residence may not be disclosed to the parent or custodian.”

30. Section 14 of the 1990 Act, which replaced section 16 of the 1980 Act, is worded as follows:

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

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

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

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

31. As at present there is no authoritative ruling by the Supreme Administrative Court as to whether a parent who is not custodian or does not enjoy access rights by a court order or agreement can request a decision of the Social Council in respect of access.

32. According to section 41 of the 1990 Act an appeal may be lodged with the County Administrative Court against a decision of the Social Council with respect to access. The County Administrative Court may review a decision by the Social Council in so far as its subject matter is covered by section 14 of the 1990 Act (or section 16 of the 1980 Act; see Yearbook of the Supreme Administrative Court, *Regeringsrättens Årsbok* 1984, 2/38).

PROCEEDINGS BEFORE THE COMMISSION

33. Ms Anne-Marie Paulsen-Medalen and Mr Sven-Erik Svensson, together with P. and J. and their maternal grandparents, lodged their application (no. 16817/90) to the Commission on 7 August 1989. They variously complained about violations of their right to respect for family life as guaranteed by Article 8 of the Convention, on account of the taking into care of the children, the maintenance in force of the care order and the implementation of the care. On the latter point the first applicant and her children complained about the conditions in the foster homes and the restrictions on contact. In their view, the restrictions on telephone communications also violated Article 10 of the Convention. The first

applicant further complained under Article 6 § 1 of the Convention about the fairness and the length of the proceedings relating to the restrictions on her access to the children and about the length of the proceedings concerning the lifting of the care order. The other applicants alleged that the refusals of the Social Council to take any decision with regard to their rights of access had, in breach of Article 6 § 1, deprived them of any possibility of judicial review of the access restrictions imposed *de facto*. Finally, the first applicant and her sons complained that, contrary to Article 25 of the Convention, their lawyer Mrs Westerberg had not been allowed to meet the sons in order to complete the form for their application to the Commission and that they had been refused to use her as their legal representative under the national legal aid scheme.

34. On 7 September 1995 the Commission (Second Chamber) declared the application admissible in respect of Ms Paulsen-Medalen's complaint about the length of the access proceedings and Mr Svensson's complaint about the lack of a court remedy to have a determination of his right of access to his son J. It declared the remainder of the application inadmissible and decided to take no further action in respect of the alleged interference with the effective exercise of the right to individual petition.

In its report of 4 September 1996 (Article 31), the Commission expressed the unanimous opinion that there had been a violation of Article 6 § 1 with regard to the first applicant but not with respect to the second applicant. The full text of the Commission's opinion is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

35. At the hearing on 24 November 1997, the Government, as they had done in their memorial, invited the Court to find that no violation of the Convention had occurred with respect to the second applicant's complaint and left it to the Court's discretion whether there had been a violation with regard to that of the first applicant.

36. On the same occasion the applicants reaffirmed the requests made in their memorial, asking the Court to find violations of Articles 6, 8 and 13 of the Convention and to award them just satisfaction under Article 50.

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

37. The applicants alleged that they had both been victims of violations of Article 6 § 1 of the Convention, which, in so far as is relevant, reads:

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

A. The first applicant’s complaint

38. The first applicant complained that, in breach of the above-mentioned provision, the proceedings relating to her right of access to her sons (see paragraphs 14–22 above) had exceeded a reasonable time.

39. According to the Court’s case-law, the reasonableness of the length of proceedings is to be assessed, in particular, in the light of the complexity of the case and the conduct of the applicant and that of the relevant authorities. In cases concerning restrictions on access between a parent and a child taken into public care, the nature of the interests at stake for the applicant and the serious and irreversible consequences which the taking into care may have on his or her enjoyment of the right to respect for family life require the authorities to act with exceptional diligence in ensuring progress of the proceedings (see the *Johansen v. Norway* judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-III, pp. 1010–11, § 88).

40. The Commission, sharing the first applicant’s view that the length of the proceedings had been excessive, did not consider that this was due to the complexity of the case or her conduct. In the absence of any convincing explanation by the Government for the fact that the case had been pending before the Supreme Administrative Court for two years and five months (see paragraphs 21–22 above), the Commission concluded that Article 6 § 1 had been violated in the applicant’s case.

41. While the Government did not seek to argue that the duration of the proceedings had been reasonable, they invited the Court to bear in mind the workload of the Supreme Administrative Court and its particular role under the Swedish judicial system in providing guidance on the interpretation of national law. In addition, the first applicant had not taken any steps to urge the court to accelerate the proceedings.

42. In the Court's view, the period to be taken into consideration started on 19 March 1990, when the first applicant submitted her request to the social authorities concerning access rights, and ended on 28 June 1993, when the Supreme Administrative Court gave its judgment (see paragraphs 15–22 above). During this period the first applicant had obtained from the authorities and the administrative courts a number of decisions on her right of access to her sons.

The only phase of the proceedings that gives rise to misgivings in the present circumstances is that between 22 January 1991, when the first applicant applied for leave to appeal to the Supreme Administrative Court, and 28 June 1993, when that court decided to uphold the lower courts' judgments in respect of the restrictions on access (see paragraphs 21–22 above). It does not transpire from the evidence that the delay had been due to the applicant's conduct or the complexity of the case. Against this background, the authority concerned could not be said to have acted with the exceptional diligence required by Article 6 § 1 of the Convention in such cases. Accordingly, there has been a violation of this provision in respect of the first applicant.

B. The second applicant's complaint

43. The second applicant alleged that, in breach of Article 6 § 1 of the Convention, he had been denied the possibility of a determination by a court of his right of access in respect of his son J. (see paragraphs 23–26 above). In his submission, he could not have obtained a decision on access from the social authorities enabling him to have the matter subsequently reviewed by a court. He had asked for such a decision but the Social Council had expressly refused to take a decision, being unable to do so under Swedish law.

44. The Government and the Commission disagreed with the applicant. In their view, as was illustrated by the example of the grandparents (see paragraph 27 above), nothing would have prevented the second applicant from obtaining a formal decision under section 14 of the 1990 Act on access to his son, which could have been challenged before the County Administrative Court pursuant to section 41 of the said Act (see paragraphs 30–32 above). How that court would have determined the issue could not be considered in the abstract for the purposes of establishing whether Article 6 § 1 had been violated.

The Government further pointed out that the legal position on the access of a parent who had no custody rights in respect of the child was, in the absence of a court order under the Parental Code or agreement regarding access, unclear (see paragraph 30–32 above). To date, there was no

authoritative ruling by the Supreme Administrative Court on the matter. However, since the first applicant had apparently agreed that the second applicant should have access to J. (see paragraphs 14 and 25 above), it was unlikely that the Social Council would have refused to take a formal decision which could have been subject to appeal.

45. The Court notes that, while it was unclear whether a father who did not have custody or did not enjoy access rights pursuant to a court order or agreement could claim a right of access under section 14 of the 1990 Act, this was not excluded by the wording of this provision. That section applied to “a parent or other person who has custody of [the child]” (see paragraphs 30–32 above). Furthermore, the fact that the maternal grandparents of J., although they fell outside the category of persons referred to in section 14, were able to obtain a formal decision on access, suggests that such a decision could also have been taken in respect of the applicant father (see paragraph 27 above).

It is true that, in response to the second applicant’s request for access, the Head of the Social Services had replied on 11 February 1991 that only the first applicant, as the child’s mother, was covered by the provisions on access in the 1990 Act. However, as was also pointed out, the second applicant was invited to discuss access arrangements with the relevant social officer but did not pursue the matter. Nor did he take any initiative to follow up the reply to his query by the social authorities on 6 October 1995, in which they stated that a right of access for a person other than the custody holder did not exist under domestic law (see paragraphs 24–26 above). He has furnished no particulars in support of his submission that he specifically requested, and that the relevant authority was unwilling or unable to take, a formal decision on his request for access.

46. In these circumstances, the Court is not persuaded by the second applicant’s claim that he, as a “parent”, could not have obtained a decision of the kind in issue. Moreover, it has not been established that it would have been impossible for him to institute judicial review proceedings under section 41 of the 1990 Act before the County Administrative Court in respect of a decision refusing him access (see paragraph 32 above).

47. Having regard to the above, the Court concludes that the facts of the case do not disclose a breach of Article 6 § 1 of the Convention with regard to the second applicant.

II. ALLEGED VIOLATIONS OF ARTICLES 8 AND 13 OF THE CONVENTION

48. Referring to the same facts as with respect to his complaint under Article 6 § 1, the second applicant also invoked Articles 8 and 13 of the Convention.

Article 8 reads:

“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.”

Article 13 provides:

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

49. The Commission and the Government did not make any observations beyond those made in relation to Article 6 § 1.

50. The Court, having regard to its findings with respect to Article 6 § 1 (see paragraphs 45–47 above) does not find it necessary to consider the same matter under Article 8 and Article 13.

III. APPLICATION OF ARTICLE 50 OF THE CONVENTION

51. The applicants claimed just satisfaction under Article 50 of the Convention, which reads:

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

A. Damage

52. The applicants sought respectively 800,000 Swedish kronor (SEK) and SEK 500,000 in compensation for the suffering they had endured as a result of the violations of the Convention.

53. The Government considered that if, and to the extent that the Court were to find a violation of the Convention, nothing more than a symbolic amount should be awarded. As to the first applicant's complaint, they stressed that she did not seem to have done anything to speed up the proceedings.

54. The Delegate of the Commission invited the Court to take into account the fact that most of the applicants' complaints had been declared inadmissible by the Commission.

55. As regards the first applicant's complaint, the Court observes that its finding of a violation of the Convention was limited to a procedural matter, namely the length of the proceedings before the Supreme Administrative Court (see paragraph 42 above). It considers that, due to uncertainty caused by the delay of the proceedings, this applicant has suffered non-pecuniary damage that cannot be compensated solely by the finding of a violation. Deciding on an equitable basis, the Court awards the first applicant SEK 10,000 under this head.

On the other hand, as to the second applicant, the Court has found no violation of the Convention and must therefore reject his claim.

B. Legal costs

56. The applicants further requested the reimbursement of SEK 756,000 for the work (420 hours at SEK 1,800 per hour, inclusive of value-added tax (VAT)) carried out by their legal representative in the proceedings before the Commission and the Court.

57. The Government stressed that the number of working hours claimed was excessive and invited the Court to consider whether the service of counsel for the applicants had been adequate. In this connection, they pointed out that the submissions made and the evidence adduced had in part been irrelevant. In their opinion, SEK 40,000 would constitute an appropriate figure in respect of legal costs.

58. The Delegate recalled that a number of complaints had been declared inadmissible by the Commission.

59. The Court notes that the observations and evidence advanced by the applicants were to a large extent immaterial to the two complaints submitted to it and that, in any event, it has found a violation only with respect to that of the first applicant (see paragraphs 42 and 48 above). According to its case-law, the Court may order the reimbursement of legal costs only in so far as they have been actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the

Convention and were reasonable as to quantum (see, for instance, the *Z v. Finland* judgment of 25 February 1997, *Reports* 1997-I, p. 355, § 126). Deciding on an equitable basis, the Court awards the first applicant SEK 40,000 for legal costs (VAT included), less the amount received in respect of legal fees by way of legal aid from the Council of Europe.

C. Default interest

60. According to the information available to the Court, the statutory rate of interest applicable in Sweden at the date of adoption of the present judgment is 10.5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention with respect to the first applicant;
2. *Holds* that there has been no violation of Article 6 § 1 with respect to the second applicant;
3. *Holds* that it is not necessary to examine the second applicant's complaint under Articles 8 and 13 of the Convention;
4. *Holds*:
 - (a) that the respondent State is to pay the first applicant, within three months, 10,000 (ten thousand) Swedish kronor in respect of non-pecuniary damage, and, for legal costs, 40,000 (forty thousand) kronor, less 3,900 (three thousand nine hundred) French francs to be converted into Swedish kronor at the rate applicable on the date of delivery of the present judgment;
 - (b) that simple interest at an annual rate of 10.5% shall be payable from the expiry of the above-mentioned three months until settlement;
5. *Dismisses* 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 19 February 1998.

Signed: RUDOLF BERNHARDT
President

Signed: HERBERT PETZOLD
Registrar