



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

FOURTH SECTION

CASE OF K. AND T. v. FINLAND

(Application no. 25702/94)

JUDGMENT

STRASBOURG

27 April 2000

**THIS CASE WAS REFERRED TO THE GRAND CHAMBER
WHICH DELIVERED JUDGMENT IN THE CASE ON
12/07/2001**

*This judgment will become final in the circumstances set out in
Article 44 § 2 of the Convention. It is subject to editorial revision.*

In the case of K. and T. v. Finland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr G. RESS, *President*,

Mr M. PELLONPÄÄ,

Mr I. CABRAL BARRETO,

Mr V. BUTKEVYCH,

Mrs N. VAJIĆ,

Mr J. HEDIGAN,

Mrs S. BOTOCHAROVA, *judges*,

and of Mr V. BERGER, *Section Registrar*.

Having deliberated in private on 8 June 1999 and on 30 March 2000,

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

PROCEDURE

1. The case originated in an application (no. 25702/94) against the Republic of Finland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”).

The applicants, K. and T., are Finnish nationals, born in 1964 and 1968 respectively. They are residents of the municipality of S., Finland. They were represented before the Commission by Ms A. Suomela of the Society for Family Rights in Finland (*Perheen Suojelun Keskusliitto PESUE r.y.*). The application was introduced on 26 October 1994 and was registered on 17 November 1994 under file no. 25702/94.

2. 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 5, Article 6 § 3 (c) and (d), Articles 8, 10 and 12 taken either alone or together with Article 13 of the Convention.

3. On 27 June 1996 the Commission decided to give notice of the application to the respondent Government and invited them to submit observations on the admissibility and merits of the application.

The Government, represented by Mr A. Kosonen, Co-Agent, Ministry for Foreign Affairs, submitted their observations on 7 January 1997, to which the applicants replied on 24 April 1997.

4. On 4 March 1997 the Commission granted the applicants legal aid.

5. Following the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 2 thereof, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

In accordance with Rule 52 § 1 of the Rules of Court, the President of the Court, Mr. L. Wildhaber, assigned the case to the Fourth Section. The Chamber constituted within the Section included Mr M. Pellonpää, the judge elected in respect of Finland (Article 27 § 2 of the Convention and Rule 26 § 1 (a) of the Rules of Court) and Mr G. Ress, the Acting President of the Section and the President of the Chamber (Rules 12 and 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr I. Cabral Barreto, Mr V. Butkevych, Mrs N. Vajić, Mr J. Hedigan and Mrs S. Botoucharova (Rule 26 § 1 (b)).

6. The applicants submitted further information to the Court on 25 January 1999, to which the respondent Government replied on 9 March 1999. The Government submitted further information on 26 May 1999.

7. On 23 March 1999 the Chamber decided to hold a hearing in camera on the admissibility and merits of the application.

8. On 11 May 1999 the President of the Chamber decided, in accordance with Rule 33 §§ 3 and 4 of the Rules of Court, that all the documents in the case file should not be accessible to the public and that the identity of the applicants should not be disclosed. He also decided that the legal aid granted to the applicants shall continue in force for the purposes of their representation before the Chamber.

9. The hearing took place in camera in the Human Rights Building, Strasbourg, on 8 June 1999.

There appeared before the Court:

(a) *for the Government*

Mr H. Rotkirch, Ministry for Foreign Affairs,	<i>Agent,</i>
Mr A. Kosonen, Ministry for Foreign Affairs,	<i>Co-Agent,</i>
Ms C. Busck-Nielsen,	
Ms P.-L. Heiliö,	
Ms A. Liinamaa,	
Mr J. Piha, <i>Advisers;</i>	

(b) *for the applicants*

Mr J. Kortteinen,	
Mr S. Heikinheimo,	<i>Counsel,</i>
Ms A. Suomela,	<i>Adviser.</i>

The Court heard addresses by them, and also their replies to questions put by the Court and by several of its members individually.

10. On 8 June 1999 the Chamber declared admissible the applicants' complaints under Articles 8 and 13 of the Convention concerning the taking of children into public care and related access regulations.

11 On 9 June, 29 July, 27 August, 13 and 15 September, 6 October, and 15 November 1999, the applicants and the Government variously produced a number of documents, either at the President's request or of their own accord.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

12. At the beginning of the events relevant to the application, K. had a daughter, P., and a son, M., born in 1986 and 1988 respectively. P.'s father is J. and M.'s father is V. From March to May 1989 K. was voluntarily hospitalised for about three months, having been diagnosed as suffering from schizophrenia. From August to November 1989 and from December 1989 to March 1990, she was again hospitalised for about three months on account of this illness. In 1991 she was hospitalised for less than a week, diagnosed as suffering from an atypical and undefinable psychosis. It appears that social welfare and health authorities have been in contact with the family from 1989.

13. The applicants were initially cohabiting from the summer of 1991 to July 1993. In 1991 both P. and M. were living with them. From 1991 to 1993 K. and V. were involved in a custody and access dispute concerning P. In May 1992 custody of P. was transferred to V. and she was ordered to live with him.

14. K. was again hospitalised from 22 April to 7 May 1992, from 13 May to 10 June 1992, as well as from 11 to 17 January 1993, on account of psychoses. She was in compulsory care between 15 May and 10 June 1992. According to a medical report dated 15 May 1992, K. was paranoid and psychotic.

On 19 March 1993, according to the social welfare authorities' records, there had been a discussion between a social worker and K.'s mother. K.'s mother had said that her daughter's health condition was really bad and that K. had destroyed a childhood picture of hers, a wedding photo of the mother, broken a glass and "pierced the eyes" of all appearing in the photos. K.'s mother had said that she was tired with the situation, as she did not get any support from the mental health authorities. She had added that she was

worried and afraid that “again something must happen before K. is admitted to care”.

On 24 March 1993 M. was placed under observation with a view to determining whether she should be placed in compulsory psychiatric care, having initially been diagnosed as suffering from psychosis. The conditions for compulsory care were not considered to be met but she remained in voluntary care until 5 May 1993.

15. Allegedly, J. did not allow K., P. and M. to meet. In the spring of 1993 K.’s access to P. was further limited by the courts. At the time she was pregnant.

16. According to the records of the social welfare authorities, M. showed signs of behavioural problems. On 30 March 1992, a psychologist reported how M. had played with two dolls saying - in very vulgar words - that they were performing sexual acts. On 17 February 1993 K. was said to have broken a mirror in the presence of M. who had kept repeating: “mother broke the mirror...”.

Notes of the social authorities of, *inter alia*, 24 and 30 March 1993 state that games which M. played and pictures he drew were of a destructive nature. According to the notes of the last-mentioned day, he had lately, in joint singing exercises of the day-care home, shown enormous hate, threatening “to kill everybody”. The occasions when K. fetched him were described as “an unpleasant show”, M. shouting and hitting his mother who did not react. It was noted, however, that the doll plays with sexual connotations had disappeared.

On 7 June 1993 it was reported by the social welfare authorities that when K. and T. had come to the children’s home where M. was staying, the latter had undergone a total change in his behaviour, turning into anger, hate, swearing etc. T. had told in the children’s home that he was really tired with the situation and that in his view K. was in need of hospitalisation. When a visit to the health centre had been suggested to her, she had become very angry.

17. According to the records of the social welfare authorities, there had been a discussion between K., her mother, T. and a number of social and mental health care officials, on 31 March 1993, during which it was mentioned that the authorities might have to intervene, from the child protection point of view, with M.’s upbringing in a more drastic way than had been the case so far. It appeared that in connection with K.’s recent hospitalisation T. had “forcibly” taken her from a restaurant, which had made K. furious, with the consequence that she had thrown things around, for example the micro wave oven had ended up on the floor. T. had said that K. was unable to control herself.

18. On 3 May 1993 a social welfare official decided on behalf of the Social Welfare Board (*perusturvalautakunta, grundtrygghetsnämnden*) of S. to place M. in a children's home for a period of three months. This was to be regarded as a short-term support measure pursuant to the 1983 Child Welfare Act (*lastensuojelulaki, barnskyddslag 683/1983*; "the 1983 Act"). The applicants had been consulted, together with K.'s mother and sister, on 8 April 1993, in order to find an open care measure which would be functional. According to the records held of that meeting, no such practical measure had been proposed by any of the participants. The applicants had then been heard again on 21 April 1993 and had not objected to the placing of M. in a children's home.

19. In an opinion, requested by the Social Welfare Board, doctors M.L. and K.R., on 12 May 1993, considered that K. was not at that time able to care for M., but that her mental state could not be regarded as permanently preventing her from caring for him. Doctors M.L. and K.R. served at the hospital of H., where the applicant had been cared for since 1991 during the periods indicated above.

20. On 11 June 1993, the social welfare official who had decided on 3 May 1993 to place M. in a children's home informed in writing the University Hospital of T. and the local hospital of S. that she was very worried about the health of K. and her forthcoming baby. She requested the hospitals to contact her immediately at the time of K.'s arrival in hospital and, especially, at the time of her delivery. She also expressed a wish that the health care professionals should pay special attention to the relationship between the mother and the new-born baby from the very beginning.

21. On 18 June 1993 K. was taken into a district hospital, where she gave birth to J. on the same day. According to the hospital records, the mother stayed calm during the delivery. After the delivery a written decision concerning an emergency care order, according to which the child was not to be given to the mother, was served on the hospital. The child was accordingly transmitted to the children's ward. The mother's behaviour in the ward was later found to be somewhat restless but not clearly disordered. It was mentioned in the records that she understood the situation and wanted to leave the hospital the following day. Medication to prevent the secretion of milk was prescribed. It seems that K. left the hospital on 19 June 1993, i.e. the following morning, without a post-natal examination. She went to her mother's place where she started pushing an empty baby carriage around the rooms.

22. J. was immediately placed in provisional public care in pursuance of Section 18 of the 1983 Act. After the birth of their child, K. and T. were informed of the decision by two social workers at the hospital of H. The Social Director, who decided on behalf of the Social Welfare Board, noted that K.'s mental state had been unstable during the end of her pregnancy. He considered that the baby's health would be endangered since K. had found

out about the plans to place the baby in public care. The Social Director finally considered that the baby's father, T., could not guarantee its development and safety. In addition the Social Director referred to the family's long-lasting difficulties, i.e. K.'s serious illness and occasionally uncontrolled emotional reactions which could be traumatic for the children, T.'s inability to care for both J. and K., K.'s inability to receive guidance, the impossibility of placing the whole responsibility for J.'s development on T., and the impossibility of providing open-care support measures to the necessary extent. The applicants were not heard prior to the decision. On 24 June 1993 the applicants were also notified in writing of the decision to take the new-born baby into public care. The notification was also faxed to K.

23. On 21 June 1993 the Social Director also placed M. in provisional public care, citing principally the same reasons as in his decision of 18 June 1993 concerning J.

24. On 21 June 1993 the Social Welfare Board took note of the provisional public care orders and prohibited all unsupervised access between on the one hand, K., and, on the other hand, J. and M. respectively. The number of supervised visits, however, was not restricted. The Board decided to continue the preparation for taking M. and J. into care.

25. At the family centre a meeting was held by social welfare workers, on 21 June 1993, before the arrival of the baby from the hospital and in the absence of the applicants. It is mentioned in the report that there was a plan to prohibit the mother's visits for a month on the ground that her reactions could not be predicted as she had, for example, broken things at home. After this initial period she would be allowed without restriction to visit the baby, but have to be accompanied by her personal nurse. However, this plan was not executed. There is a note in the daily report of 24 June, according to which "the mother may come with her personal nurse if she wants. Other visitors not allowed for the time being."

26. K. was asked to appear with T. at the social welfare office on 22 June 1993 at 11.30 a.m. in order to be informed of the decision of 21 June 1993 on M. by the Social Director. On 24 June 1993, K. and V. (M.'s biological father) were notified in writing of the decision of 21 June 1993. The notification was also faxed to K.

27. On 22 June 1993 K. was hospitalised voluntarily at the hospital of H. on account of psychosis, having obtained a referral from a doctor at a health care centre. She was treated there until 30 June 1993.

28. On 23 June 1993 J. was placed in the family centre. T. visited her the same day.

29. In the beginning of July 1993, T. moved away from the applicants' home, having been told by the social welfare officials that he had to break off his relationship with K. "if he wanted to keep" J. The applicants nevertheless continued their relationship.

30. On 15 July 1993 the Social Welfare Board upheld the provisional care orders concerning J. and M., invoking reasons similar to those mentioned in the emergency care orders (see § 22 above), and prolonged the access restriction until 15 September 1993. K. was allowed to see the children only in the company of her personal nurse. The Board essentially considered that K.'s state of health remained unstable; that she was suffering from aggressive and uncontrolled emotional moods; and that the public care proceedings were a mentally strenuous ordeal for a patient. As regards J., the Board therefore believed that her personal security could be jeopardised if access were to take place without supervision. As regards M., the Board feared that K.'s visits to the children's home "could no longer be controlled by its staff, which would not be in his interest". Before the decisions of 15 July 1993 the applicants had been heard and expressed their objection to the care decisions envisaged.

31. On 15 July 1993, K. visited both her children, accompanied by her personal nurse. The diary notes mentioned that it was "a difficult situation".

32. On 19 July 1993, T. moved to the family unit of the family centre with J.

33. From 20 to 21 July 1993 K. was again hospitalised in voluntary care at the open ward of the hospital of H. on account of a psychosis. She, however, left the hospital the following day. On 26 July 1993 she was placed under observation with a view to determining whether she should be placed in compulsory psychiatric care. On 30 July 1993 she was committed to compulsory psychiatric care. According to the patient's documents her relatives had earlier been worried about her and contacted the hospital in order to get her into hospital care. They reported that K. had disappeared from her home, where she had behaved in an unsettled and aggressive manner. Her hospitalisation lasted until 27 October 1993, i.e. three months.

34. During the period of 18 June to 31 August 1993 K. visited her children at their respective children's homes. During the visits she was accompanied by her personal nurse from the hospital, who was in contact with the social welfare authorities and arranged the visits according to K.'s state of mental health. On the basis of the centre's diary, she had visited J. twice during this period.

35. According to a statement made by a social welfare worker on 4 August 1993, T. had taken good care of J., first at the hospital until 23 June 1993 and later on at a family centre. It was agreed that J. would stay at the family centre and that T. would visit her every other day. J. would visit her father for the first time from 13 to 15 August 1993, during which time T. would organise her christening. The intention was that the baby could move in with her father in the future.

36. T's travel expenses to the centre were paid for by the social welfare authorities. From the centre's records it can be deduced that T. succeeded in creating a relationship with the baby and learned to take good care of her. The home leaves were spent with T. first at his mother's house and later in his new home.

37. On 12 August 1993, the Social Welfare Board referred both public care orders to the County Administrative Court (*lääninoikeus, länsrätten*) of Turku and Pori for confirmation, as the applicants had opposed them. In support of its referrals the Board submitted a statement by a social welfare official dated 25 August 1993. According to the statement, T. would not be able to care both for M. and the new-born J. alone, since K. was at the same home and had been psychotic for the last four years. T. had been in contact with J. at the children's home three to four times a week. While staying in a flat attached to a municipal children's home, he had cared for J. for two whole weeks and had subsequently cared for her three days out of the week in his new home. The Board had therefore begun investigating whether it would be possible to entrust him with the responsibility for J. with the help of support measures taken by the Board.

38. On 15 August 1993, J. was christened in the presence of K., T. and M.

39. A consultation was held at the children's home, on 18 August 1993, in the presence of T. According to the statement, K.'s mental health was very unstable and her psychiatric treatment was expected to have to be continued for four to five years. T., however, had expressed his hopes that K. and he could, together, take care of J. in the future. It was agreed that J. would stay at the children's home and would visit T. from Thursdays until Saturdays, beginning from 28 August 1993. T. would visit J. on other days according to an agreement to be made with the children's home in this respect.

40. In the course of the custody and access dispute concerning P., a social worker had, on 8 May 1992, testified before the District Court (*kihlakunnanoikeus, häradsrätten*) of S. that she had noticed nothing alarming in the applicants' family situation, nor that the family conditions would have differed from those of "normal families" in any significant way. The social worker therefore considered K. suitable to bring up children, regardless of the fact that she had received treatment for mental illness. The social worker stated that K. had always kept her children "clean and

healthy". At least with the help of her mother and with some support measures it would be possible for K. to act as her children's custodian.

According to P.'s father, who also testified before the District Court, K. had shown paranoid features in her behaviour, alleging that "unknown people visited her home during her absence". He also said that K. had dyed her hair as she had thought that her "double" had been seen in the neighbourhood and she wanted to be distinguishable from her double. Several witnesses testified that K. had recently been voluntarily placed at a mental hospital and was receiving medication for her mental illness. It was also said that P. was *de facto* living with her grandmother, who had the daily responsibility for her care.

41. On 9 September 1993, the County Administrative Court confirmed the care order concerning J., considering that K. had been mentally ill; that the applicants had had conflicts "as a result of which T. had moved away from their home in the beginning of July 1993"; that because of K.'s illness and the family's other problems the applicants had been unable to provide adequate care to J.; that the care support provided to the family had not sufficiently improved the family's situation and that the measures could not be expected to satisfy J.'s care needs. No hearing was held. K. appealed against the decision.

42. On 14 September 1993, the Social Welfare Board prolonged the access restriction until 15 December 1993.

43. The following notes of a social welfare official appear among those in the case records of the Social Welfare Board:

(translation from Finnish)

"14 September 1993:

2 ... In addition, the importance of future access between J. and T. has now been questioned, since J.'s placement in [public foster care] is under preparation. It will be difficult for T. to give J. up, ...

13 October 1993:

K. ... states that she is considering moving [back] together [with T.] when she is discharged from the hospital on 29 October. ...[Her] wish is that M. and J. would be placed in the same [foster] family. ...

18 October 1993:

... T. agrees to J.'s placement in a [foster] family. ...

25 October 1993:

... T. is slightly opposed to J.'s placement in a [foster] family. ... It is again explained [to him] why J. cannot live with him as long as [the applicants] continue their relationship. ...

26 October 1993:

... The essential issue from J.'s point of view is [the applicants'] internal relationship; if [it] continues, J. cannot stay at home with T. ... The alternatives are: J. comes back home to T. or is placed in [foster care]. ... [He] can provide the basic care and upbringing alone provided he receives certain support. ...

27 October 1993:

... The access between M. and K. have been successful now that T. has been attending [the visits]. ...”

29 October 1993

... The father has been responsible for the care of the institutionalised child. He has been active and acted on his own initiative. He has fed, clothed and bathed the child. He has also taken care of the child's outings and of the rocking the baby to sleep. The father has treated the child naturally and with consideration; he has talked a lot to the child and showed her tender emotions. He has enjoyed his time with the child and within the terms of the child. The father has treated the child patiently and with warmth, taking into consideration the needs of the child.

The mother has visited the child five times and stayed only for a moment each time.

... J. has had a possibility to a regular interrelation with one person taking care of her, i.e., with her father. A safe relationship with the father has created to the child a feeling of basic safety, which acts as basis for positive development of her emotional life. J. has the necessary resources to grow up and to develop in order to be a healthy and well-balanced child. Taking into consideration the circumstances, the foundation for the family placement is good.”

44. On 27 October 1993, K. was discharged from the hospital of H.

45. On 11 November 1993, the County Administrative Court confirmed the care order concerning M., repeating the reasons put forward in its decision of 9 September concerning J. No hearing was held.

46. In their appeal to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) against the confirmation of the public care order concerning M., the applicants were represented by the Public Legal Adviser (*yleinen oikeusavustaja, allmänna rättsbiträdet*) of S.

47. By decision of 21 January 1994 the Social Welfare Board placed J. in a foster home at the City of K., some 120 kilometres away from the applicants' home. M. joined her on 7 February 1994. The foster parents had no children of their own. Social welfare officials told both the applicants and the foster parents that J.'s and M.'s placement would last "for years". The applicants had proposed that the children's public care be implemented in the homes of relatives.

48. On 2 February 1994, the Social Welfare Board drew up a care plan concerning the implementation of the public care. The applicants' alternative care plan was allegedly ignored. For instance, the children could not meet their maternal grandmother in her home.

49. After the adoption of the care plan on 2 February 1994 the applicants requested that the access restriction be alleviated. For instance, T. had been permitted to see J. only once a month.

50. On 21 March 1994, the applicants requested, *inter alia*, that the Social Welfare Board should draw up a public care plan aiming at the reunification of the family.

51. On 3 May 1994, the social welfare authorities organised a meeting in order to revise the care plan of 2 February 1994. The applicants and their representative did not attend the meeting.

52. On 17 May 1994, the Social Director restricted both applicants' access to the children to one monthly visit at the foster home, where access was to take place under supervision during three hours. The Director considered that the grounds for public care still existed. He considered that, although the applicants were dissatisfied with the visits set out in the care plan, affording the children an unlimited right to see their parents would create an obstacle to their successful placement. The applicants appealed.

53. On 26 May 1994, the applicants requested that the Social Welfare Board proceed to the revocation of the public care of M. and J.

54. On 18 September 1994, the Social Director allegedly told the applicants that any further children born to them would also be placed in public care. According to the Government, the Social Director had only told them, when expressly asked, that it was possible that any further children born would be taken into public care.

55. In an opinion of 22 September 1994 submitted at the Social Welfare Board's request Dr K.P., a specialist in psychiatry, commented on the possibility of revoking the public care orders. She concluded that K.'s mental state would not prevent her from acting as the children's custodian. According to Dr K.P., the struggle introduced by K. to have the care terminated and access restrictions loosened gave evidence of psychological resources. She noted, *inter alia*, that T. was K.'s closest support in the care and upbringing of the children. Also K.'s mother, at the time her guardian *ad litem*, was ready to help in caring for them. Dr K.P., however, added that she could not, as an adult psychiatrist, take any stand as regards the interests

of the children. Dr K.P.'s opinion was also based on a report submitted by Dr K.Po., a psychologist, who had come to the same conclusion as regarded K.'s ability to act as her children's custodian.

56. On 23 September 1994, the Supreme Administrative Court extended the time for K.'s appeal against the confirmation of the care order made in respect of J. On the same day the Court rejected the appeal against the confirmation of the care order of 11 November 1993 concerning M.

57. The Public Legal Adviser advised against lodging a request with a view to having the care orders revoked.

58. On 28 September 1994, the County Administrative Court held an oral hearing concerning the access restriction imposed on 17 May 1994. It took evidence from two psychiatrists, who had interviewed K. One of them, Dr T.I.-E., did not know K. personally but commented on a diagnosis concerning her mental state by indicating that K. had a tendency to react in a psychotic manner to conflict situations. Dr K.P. stated that K.'s state of health did not prevent her from caring for her children. Consequently, if her illness had been the reason for the access restriction, that reason no longer existed.

59. In a written expert opinion, requested by the Social Welfare Board and submitted to the County Administrative Court, Dr E.V., a child psychiatrist, was of the opinion that the children should be permanently cared for by the foster home and that the applicants' visits should, for the time being, be prohibited so as to protect the children and the foster home. According to the applicants, Dr E.V. had not met any of the applicants or children, nor had he consulted with the other psychiatrists before making his proposal.

60. On 11 October 1994, the County Administrative Court upheld the access restriction issued on 17 May 1994. It noted that neither of the witnesses who had been heard orally had been willing to state any opinion in regard to the children's development. It reasoned, *inter alia*, as follows:

(translation from Finnish)

"... [By allowing] access to take place once a month and [by allowing contact by virtue of correspondence] it will be ensured that the children will retain knowledge about their biological parents. If the grounds for the public care later cease to exist, a reunification of the family will thus be possible. ..."

61. The County Administrative Court dismissed the applicants' request for cost-free proceedings, since the relevant legislation did not cover disputes concerning access restrictions. At the Court's hearing, the applicants were nevertheless assisted by Ms Suomela.

62. On 18 October 1994, K. appealed against the care order in respect of J. as confirmed by the County Administrative Court on 9 September 1993.

63. On 17 November 1994 social welfare officials revised the public care plan, proposing that the children meet the applicants once a month on neutral premises at the Family Advice Centre of K., where the foster parents were living. The applicants objected thereto, considering that this would have entailed a further restriction of their access to the children. Instead they requested two meetings a month, one of which was to be at their place of residence. On 22 December 1994, they demanded a separate written decision concerning their access request in order to enable them to appeal the same.

64. In a letter of 22 December 1994 the Social Director informed the applicants that there were no longer any grounds for the access restriction. Meetings between the applicants and the children were nevertheless only authorised for three hours once a month on premises chosen by the Social Welfare Board. The meetings would also be supervised.

65. In his decision of 11 January 1995 the Social Director confirmed that there were no longer grounds for the access restriction. On 31 January and 28 February 1995 the Social Welfare Board confirmed the decision of 11 January 1995. The applicants appealed.

66. K. was hospitalised from 15 to 24 February and from 11 April to 29 May 1995, apparently on account of psychosis.

67. On 14 March 1995 the Social Welfare Board rejected the applicants' request of 26 May 1994 that the care order be revoked, stating as follows:

(translation from Finnish)

“At the moment the health situation of the children's mother, K., is better and the family situation has changed also in other respects in comparison with the situation in 1993 when the decisions to take the children into care were made.

...

According to Dr K.P., a specialist in psychiatry, K. still has “a lot of instability in her emotional life as well as fragility, brought by the last five years' experiences and the diagnosis of mental illness for which she needs - still for a long time - therapeutic support and treatment. A regular medication is also needed in order to guarantee the continuation of her well-being and to make it possible for her to manage in open care and to act as a custodian of her children. Dr K.P., however, did not give her more precise opinion as to K.'s ability to take care of and bring up her children even though Dr K.P. was explicitly asked to give such an opinion.

K. can act as the custodian of her children. She cannot, however, be responsible for the needs and education of the children - not even with the support of T. and the open care support measures. Their ability to act as educators taking care of the children's needs is inadequate.

According to the statement given by the children's clinic of the municipality of K., the ability of K. and T. to understand the needs of the children and to respond to them is very limited. Even though T. is capable of interaction with the children, also he finds it difficult to respond to the needs of the children's emotional life. K. is also incapable of creating an emotional relationship with the children. At an earlier stage, Dr J.H., a psychologist at the local health care centre, has reached the same conclusion in her statement given during the custody proceedings concerning K.'s oldest child. In his expert statement Dr E.V., a child and youth psychiatrist, reached a similar conclusion. Already in the spring of 1992 Dr J.H. realised that K.'s problem is related to the diminishment of the boundaries between her and her children. She stated that K. melts herself and her children into one entirety without being able to see the single and individual nature of the children. According to J.H., K. is also unable to take into account the children's needs in accordance with their age. Dr E.V. finds that the children do not seem to be independent objects to K. but that she sees them as so-called "self-objects". She finds it difficult to realise that children are love- and care-needing individual human beings. Instead, she sees as if they were meant for her own use only."

The applicants appealed on 5 April 1995, also requesting that they be granted cost-free proceedings and afforded free legal representation. They also requested an oral hearing.

68. On 7 April 1995, a further child, R., was born to the applicants. Having given birth, K. was, on 13 April 1995, committed to compulsory psychiatric care and treated at the hospital of H. until 29 May 1995, while R. was being cared for by T. According to the observation of a specialist in psychiatry, dated 10 April 1995, K. "must have been suffering from paranoid schizophrenia for a longer time".

69. On 15 June 1995, the County Administrative Court granted the applicants cost-free proceedings and appointed Ms Suomela as their representative in the case concerning their appeal against the Social Welfare Board's decision of 14 March 1995. It decided not to hold a hearing in respect of the applicants' request for a revocation of the care orders. It provided the parties with an opportunity to supplement their written observations.

70. As regards the applicants' appeal against the Social Welfare Board's decisions of 31 January 1995 and 28 February 1995, the County Administrative Court considered, on 15 June 1995, that the revised care plan drawn up on 17 November 1994 had already entailed an access restriction which had been renewed by new decisions later, without the applicants having been properly heard, in respect of their access request. The matter was referred back to the Social Welfare Board for new consideration.

71. In the light of the County Administrative Court's decision the Acting Social Director, on 28 June 1995, formally restricted the applicants' access to the children to one meeting a month up to 31 May 1996. The meetings were to take place in the foster home. In addition, the foster parents were to visit the applicants with the children every six months. The Director considered, *inter alia*, that it was important that the children settle themselves in their growth environment in the foster family. Closer contacts with their parents would mean change and insecurity as well as the creation of a new crisis in their development. The process of settling which had started well would be jeopardised. For the children's progress it was therefore necessary that their situation remain stable and secure. The Director's decision was confirmed by the Social Welfare Board on 22 August 1995. The applicants appealed.

72. With regard to the justification of the care order concerning J. the Supreme Administrative Court, on 21 August 1995, granted K. cost-free proceedings as from 1 March 1994 and appointed Ms Suomela as her representative. It upheld the County Administrative Court's decision of 9 September 1993.

73. On 28 September 1995, the County Administrative Court rejected the applicants' appeals of 5 April 1995 without holding an oral hearing. The Court noted, *inter alia*, that according to medical certificates, K.'s state of health had improved but her emotional life was still unstable. She therefore continued to be in need of psychotherapy and medication. In addition, a further child had been born to the applicants and K. had again been treated at the hospital of H. These two factors had caused an additional strain militating against a revocation of the care orders.

74. On 3 November 1995, the County Administrative Court rejected the applicants' appeal against the access restriction confirmed on 22 August 1995.

75. On 25 May 1996, social welfare officials revised the public care plan, proposing that the children meet the applicants once a month in the premises of a school at the children's place of residence. As the applicants were not present when the proposal was made, the care plan was again revised on 9 October 1996 insofar as the access restriction was concerned. The applicants then proposed that the children meet the applicants without supervision once a month. The public care plan was, however, revised as proposed by social welfare officials.

76. On 17 June 1996, the Social Director restricted both applicants' access to the children, until 30 November 1997, to one monthly visit in the premises of a school at the children's place of residence, where access was to take place under supervision during three hours. One of the foster parents was also ordered to be present at the time of the access. The Director's decision was confirmed by the Social Welfare Board on 20 August 1996. The applicants appealed against the decision to the County Administrative

Court, requesting an oral hearing. The court obtained a statement from a child psychiatrist, Dr J.P., who was also recommended by the applicants' representative to the Social Welfare Board. Dr J.P. states, *inter alia*, as follows:

(translation from Finnish)

"The right of access of M. and J. to the persons close to them must primarily be examined in the light of their psychological growth and development and health. This point of view requires the examination of quality, permanency and continuance of their human relationships, because the psychological growth and development take place in interaction with human relationships. In my opinion the human relationships are to be examined from the children's point of view. ...

... In conclusion I note that before M. was placed in the children's home ... the mother had been in psychiatric hospital treatment 8 times, in total some 13 months. Thus M. had lived with his mother for 45 months, i.e. 3 years 9 months. The longest that they spent together was 2 years 1 month. ... T. has, as "stepfather", helped to look after M. for at most 10 months. ... foster parents have so far looked after M. for 3 years 3 months without interruption. ... In practice M. has not had any kind of relationship with his biological father

In the light of the facts above, I note that the human relationships in the early childhood of M. have, due to the circumstances, been non-continuous, short-term and changing. The most stable and continuous relationships have been with the foster parents Therefore, these relationships are the most relevant and important ones for the psychological growth and development of M.

... J. was born in June 1993. She was taken into public care immediately after she was born. At first she stayed in the District Hospital for a short time, and later at a reception home for small children. T. as the biological father of J. looked after her for two weeks in June and August 1993. J. was placed in the foster family, ..., in January 1994, when she was some 7 months old. So far J. has stayed with her foster family for some 3 years 3 months without interruption. J. is now a little over 3 years 10 months old.

In the light of this, I note that, due to the circumstances, J. has not had any other significant and important relationships than those with her foster parents. The relationship of J. with the foster parents is of primary importance for her psychological growth and development. ...

...Especially from the point of view of the children but naturally also from the point of view of the foster parents, the foster family is a family to which the principles concerning family enshrined in the United Nations Convention on the Rights of the Child and in the European Convention for the Protection of Human Rights and Fundamental Freedoms can be applied in the same way as to biological families. This point of view is especially important when, due to the circumstances, the biological family has not lived together.

In the light of facts given above, I note that the arrangements helping and supporting the foster parents of M. and J. are in the best interest of the children. The arrangement shall, in the first place, ensure the important, continuous and safe human relationships of M. and J. with the foster parents... .

It is also important for the psychological growth and development of M. and J. that, in the safe and stable conditions offered by the foster family, they are able to maintain and create a good internalised picture of their biological parents ... from whom they have been separated because of the circumstances.

In my opinion this can be done by complying with the decision of 20 August 1996 of the Social Welfare Board of S., concerning the right of access. At present an unrestricted right of access or a right of access of the extent suggested by the applicants is not in the interest of the children, because the capability of K. and T. to fulfil the emotional needs of M. and J. is deficient, ... Such arrangements concerning the right of access clearly endanger the health and development of M. and J. In my opinion the question of an unrestricted right of access should be evaluated when the children have attained the age of twelve."

77. In a statement of 10 September 1996 Dr K.P. stated that in her opinion K.'s psychiatric state could not be regarded as an obstacle for K.'s acting as the custodian of her daughter R.

78. On 2 April 1997, the care plan was again revised by the social welfare authorities. The applicants had been informed of the time of the meeting concerning the revision of the care plan on home visits on 15 January and 10 March 1997. Their representative had also been informed of the meeting by a letter sent on 10 February 1997. The applicants did not attend the meeting, and neither did their representative. The applicants were thus not explicitly heard in this respect but, as they had expressed their opinion on other occasions, the authorities recorded their point of view in the plan.

79. On 12 June 1997, the County Administrative Court rejected the applicants' appeal against the Social Welfare Board's decision of 20 August 1996 to restrict the applicants' access right. The County Administrative Court refused the applicants' request for oral hearing.

80. Although the applicants had stated only in their rejoinder that the appeal was also made on behalf of R., the County Administrative Court found in its decision that it was in part made in her name. The court stated that a person to whom the decision is directed, or a person upon whose right, duty or interest the decision has a direct effect, has the right of appeal. The court considered that the Board's decision, which concerned R.'s siblings' and parents' right of access, was not such a decision.

81. On 28 November 1997, the Social Director restricted the applicants', and consequently their youngest child R.'s, access to J. and M. to one monthly visit of three hours in the premises of a school at the children's place of residence until the end of 1998. The applicants did not appeal.

82. The care plan was revised on 1 December 1998.

83. According to a statement made on 3 July 1998 by Dr K.M. (formerly Dr K.P.), K. has not been hospitalised since May 1995 and her health has been stable since the beginning of 1995. There have been no problems concerning the care of R. (who has lived with her parents all the time and has not been taken into care). It is recommended by Dr K.M. that the social welfare authorities should reduce or finish control visits to the applicants' home in order to give K. a possibility to settle down to normal life without constant supervision from the authorities.

84. The restriction orders were prolonged by the Social Director, on 11 December 1998, to last until the end of 2000. The visits are to take place under supervision in the premises of a school at the children's place of residence. However, one of the visits is to take place at the applicants' home in the presence of the foster parents. The Social Director considered, *inter alia*, that the reunification of the family was not in sight as the foster family was now the children's factual home; that the applicants' access to the children once a month and through correspondence was enough to maintain the children's awareness of their biological parents; and that closer contacts with the applicants would endanger the children's development and bring change and insecurity as well as create a new crisis in their development. The applicants appealed against this decision to the Social Welfare Board which, on 2 February 1999, rejected the appeal and upheld the Social Director's decisions. In the reasoning of the decisions, the Board quotes both the County Administrative Court and Dr J.P.

85. The applicants' appeal against the Social Welfare Board's decision of 2 February 1999 concerning the right of access is currently pending before the Administrative Court (formerly County Administrative Court).

86. According to the reports, written by the supervisor who attended the meetings of the children and the applicants during the period from 25 May 1996 to 10 January 1999, the adults got on quite well together during the meetings. J. often plays games with M. When R. was smaller, J. played by herself, but later it seems that the girls, J. and R., spend more time together. On the other hand, it seems that the first applicant makes very little contact with J. and M. According to the supervisor's description, especially in the earlier reports, the first applicant seems to have concentrated on R.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The principles of the Child Custody and Right of Access Act and the Child Welfare Act

87. Section 1 of the Child Custody and Right of Access Act (*laki lapsen huollosta ja tapaamisoikeudesta, lag ang. vårdnad om barn och*

umgäengesrätt 361/1983) defines what is meant by child custody and what is required from the custodian. According to its first paragraph, the objectives of custody are to ensure the well-being and the balanced development of a child according to its individual needs and wishes, and to ensure for a child close and affectionate relationships in particular with its parents.

88. The Child Custody and Right of Access Act requires both the parents and authorities to ascertain the wishes and views of the child when making and executing a decision concerning the child, if this is possible in view of the age and stage of development of the child (Sections 4.2, 8, 9.4, 11, 34.1 point 3; and Sections 34.2, 39.1 and 2, 46.2). Court decisions concerning the custody and access of a child cannot be executed against the will of a child who has attained the age of 12.

89. Also according to the Child Welfare Act (*lastensuojelulaki, barnskyddslag 683/1983* as amended by Act 139/1990), a child who has attained the age of 12 is given an independent right to be heard in most important child welfare decisions related to his or her person and to appeal therefrom.

90. In situations where the child does not live with its parents or where they are separated because of need of protection or other corresponding reason, the child has in principle the right to keep up personal relations and contacts with its parents. However, this right can be limited on specific grounds and by certain procedures prescribed by law, for example, because of a danger and threat caused by contacts or on the basis of the best interests of the child (Section 2 of the Child Custody and Right of Access Act; Sections 19.2, 24 and 25 of the Child Welfare Act; Articles 9 and 10.2 of the Convention on the Rights of the Child).

91. According to Section 1 of the Child Welfare Act, a child is entitled to a secure and stimulating growing environment and to a harmonious and well-balanced development, and has a special right to protection. The objective of the Child Welfare Act is that a child will in all circumstances get such care and upbringing as is required by the Child Custody and Right of Access Act.

B. Assistance in open care

92. In case the parents or custodians of the child are not able to provide the child with sufficiently secure conditions for its growth and development, the Social Welfare Board and holders of its offices shall take the necessary measures in accordance with the Child Welfare Act. These measures include the assistance in open care referred to in Sections 12 to 14 and the duty to take a child into care and provide substitute care referred to in Section 16.

93. According to Section 13.1 of the Child Welfare Act (as amended by Act 139/1990), when the need for child welfare is caused primarily by inadequate income, deficient living conditions or lack of housing, or when these factors constitute a serious obstacle to the rehabilitation of a child and family, or a young person in the process of becoming independent who had been a social welfare client before attaining the age of 18, local authorities must provide adequate financial support without delay, and correct deficiencies in housing conditions or provide housing according to need.

94. Assistance in open care referred to in Section 13.2 of the Child Welfare Act includes general assistance in accordance with the Social Welfare Act (*sosiaalihuoltolaki, socialvårdslag 710/1982*). In addition to general assistance, special forms of assistance are mentioned: lay helper or supporting family; adequate therapy; holiday and recreational activities; and assisting a child in his or her education and training, in job and home finding, and in his or her leisure activities and other personal needs, by providing financial and other support. The assistance shall be provided in co-operation with the child or young person and its parents or other persons caring for them.

C. Taking a child into care and substitute care

95. According to Section 16 of the Child Welfare Act, the Social Welfare Board shall take a child into care and provide substitute care for him or her if (a) the child's health or development is seriously endangered by lack of care or other conditions at home, or if the child seriously endangers his or her health and development by abuse of intoxicants, by committing an illegal act other than a minor offence, or by any other comparable behaviour, (b) the measures of assistance in open care are not appropriate or have proved to be inadequate; and (c) substitute care is considered to be in the best interests of the child.

96. According to Section 9.2 of the Child Welfare Act, substitute care shall be provided without delay where it is needed and is in the best interests of the child.

97. If a child is in imminent danger or otherwise in need of an immediate care order and substitute care, the Social Welfare Board may take him or her into care without submitting the decision to the County Administrative Court for approval (Child Welfare Act, Section 18).

98. An emergency care order shall expire within 14 days of the decision unless it is taken up as a normal care order referred to in Section 17 during the said period. Such a care order must be made within 30 days, or on special grounds within 60 days of the emergency order. A decision on emergency care can be appealed in the normal way.

D. The duration and termination of care

99. Care in accordance with Section 16 of the Child Welfare Act terminates when the child attains the age of 18 or concludes marriage. Public care shall be terminated earlier where the preconditions for the termination of care exist.

100. According to Section 20 of the Child Welfare Act, the Social Welfare Board shall discharge a child from care, when the need for care or substitute placement referred to in Section 16 no longer applies, unless such discharge is clearly contrary to the best interests of the child.

E. Custodians and their rights

101. Taking into care differs from adoption in so far as the parents are able to keep limited custodial rights and guardianship responsibilities. Taking a child into care also maintains contact between the child and the parents as well as relationships under family law such as statutory succession, including the right to a family name and to inheritance.

F. The competence of the Social Welfare Board

102. On the custody of a child in care Section 19.1 of the Child Welfare Act stipulates as follows:

“When the Social Welfare Board takes a child into care, it shall be empowered to decide on the child’s care, upbringing, supervision, other welfare, and residence. The Board shall, however, make every effort to co-operate with the parents or other custodians of the child.”

G. The right of access

103. Through a decision to take a child into care, the Social Welfare Board automatically takes over the competence to decide on the contacts between the child and its parents and other persons close to the child (Section 19.2 of the Child Welfare Act).

104. According to Section 24 of the Child Welfare Act a child who is in substitute care shall be ensured the continuous and secure human relations that are important for his or her development. The child is entitled to meet his or her parents and other persons close to him or her and to keep in touch with them. The Social Welfare Board shall support and facilitate the child’s access to his or her parents and to other persons close to him or her.

105. According to Section 25 of the Child Welfare Act, the Social Welfare Board or the director of a residential home may restrict the right of access of a child in substitute care to its parents or other persons close to him or her, as stipulated in detail in Decree, if (a) such access clearly endangers the development or safety of the child; or if (b) such a restriction is necessary for the safety or security of the parents, or the children or staff in the residential home. On the above-mentioned grounds, the Social Welfare Board may decide that a child's whereabouts shall not be disclosed to its parents or custodians while the child is in care.

106. According to Section 25 of the Child Welfare Act and Section 9 of the Child Welfare Decree (*lastensuojeluasetus, barnskyddsförordning 1010/1983*), a decision concerning the restriction of the right of access shall be valid for a specified time, and it shall mention the persons whose rights are restricted. In addition, the decision shall mention what kind of contacts are restricted by the decision and to what extent the restriction is in force.

107. A decision to restrict the right of access restricts the child's right to meet its parents and other persons close to the child. Such close persons to the child are the child's custodian or other legal representative, members of family and those persons who have in reality kept in touch with the child before and when the child has been in care.

H. Care plan

108. A care plan shall be made for each case of family-orientated and individual child welfare, unless the matter under consideration requires only temporary counselling or guidance. This plan must be adjusted when necessary.

109. In a case of a child taken into care (Section 16 of the Child Welfare Act) or a child placed in residential care as assistance in open care (Section 14 of the Child Welfare Act) the care plan shall mention (a) the purpose and objectives of the placement; (b) what kind of special support will be organised for the child, for the persons in charge of the child's care and upbringing and for the child's parents; (c) how the child's right of access to its parents and other persons close to the child is going to be organised; and (d) how after-care is going to be organised.

110. According to Section 4 of the Child Welfare Decree, the care plan shall be elaborated in co-operation with those involved.

I. Child welfare authorities

111. According to Section 4 of the Social Welfare Act, a Social Welfare Board, with several members elected by the municipality, shall be responsible for providing social welfare in its area, and shall be charged with the responsibilities assigned to social welfare boards in other Acts.

112. According to Section 12 of the Social Welfare Act, the decision-making authority of a municipal Social Welfare Board can be delegated to officials subordinate to such board, with the exception of decisions involving compulsory welfare for an individual.

J. Appeal in accordance with the Child Welfare Act

113. According to Section 17.2 of the Child Welfare Act, a decision made by the Social Welfare Board on taking a child into care or placing him in substitute care, must be submitted within thirty days to the County Administrative Court for approval, if a child who has attained the age of 12 or his or her custodians oppose the measure or if the hearing required by Section 17.1 of the Act could not be arranged.

114. According to Section 36, decisions concerning taking into care or placement in substitute care can be appealed to the County Administrative Court within thirty days of notification of the decision. During that time, such an appeal may also be lodged with the local Social Welfare Board which shall forward it to the County Administrative Court together with its own statement within fourteen days. The submission and the appeal shall in this case be dealt with and decided at the same time.

115. According to Section 37.1 of the Child Welfare Act, appeals against a decision on care orders, on placement in substitute care, on termination of care, or on a matter concerning housing, as stated in Section 13.1 of the Act, made by the County Administrative Court in pursuance of this Act, may be lodged with the Supreme Administrative Court.

116. According to Section 37.2 of the Child Welfare Act, other decisions than those stated in subsection 1, relating to family-oriented and individual child welfare rendered by the County Administrative Court in pursuance of the Child Welfare Act, cannot be appealed.

117. According to Section 35.2 of the Child Welfare Act, a child who has attained the age of 12, his or her parents, his or her custodians, and the person responsible for his or her care and upbringing or who was responsible immediately prior to the case in question, may appeal in cases concerning the taking of a child into care, placement in substitute care or termination of the care.

K. Other provisions on appeal

118. A person challenging a decision made by an official subordinate to a municipal Social Welfare Board shall have, under the Administrative Procedure Act (*hallintomenettelylaki, lag om förvaltningsförfarande 598/1982*), the right to have the decision reviewed by a municipal Social Welfare Board within fourteen days of having been informed of the

decision. A decision made by the Social Welfare Board can be appealed to the County Administrative Court.

119. According to Section 46 of the Social Welfare Act, a decision made by the Social Welfare Board is subject to appeal to a County Administrative Court within thirty days of the service of the decision. Certain decisions by the County Administrative Court can be appealed to the Supreme Administrative Court.

120. When a decision of an authority can be appealed, the authority in question shall attach to its decision the information and instructions concerning the right of appeal.

121. According to Section 47 of the Social Welfare Act, a decision made by a municipal Social Welfare Board is enforceable regardless of appeal if (a) the decision requires immediate implementation; or (b) for reasons due to the arrangement of social welfare, the enforcement of the decision cannot be delayed; and (c) when the Social Welfare Board has ordered the decision to be enforced at once.

122. When an appeal has been lodged, the appellate authority can stay the enforcement of the decision, or order that the said enforcement be suspended.

123. Section 38.1. of the Administrative Judicial Procedure Act (*hallintolainkäyttölaki, förvaltningsprocesslag 586/1996*) which entered into force on 1 December 1996) contains rules on the right for an oral hearing before administrative courts.

L. Interested parties and their rights

124. According to the Child Custody and Right of Access Act, a person under 18 years of age is legally incompetent (minor). A child who has attained the age of 12 is entitled to be heard in child welfare cases as stipulated in Section 15 of the Administrative Procedure Act; he or she is also entitled to demand the social services and other support mentioned in Section 13.

125. Section 17.1 of the Child Welfare Act determines the parties to be heard in matters concerning taking a child into care, placing a child in substitute care and termination of care. According to this Section, the following persons have the right to be heard in accordance with Section 15 of the Administrative Procedure Act: (a) the custodian of the child, (b) a biological parent who is not the custodian of the child, (c) a person currently in charge of the child's care and upbringing or who was in charge immediately prior to the case in question, and (d) a child who has attained the age of 12. They will also have to be notified of a decision concerning taking a child into care and termination of care following the procedure for special notification. The authorities also have, when necessary, an obligation to inform them of possibilities of appeal.

126. Section 15, subsection 1, of the Administrative Procedure Act lays down a general obligation to hear the parties. Before any decision is made the party shall be afforded an opportunity to reply to the claims put forward by others as well as to any evidence that may affect the decision.

M. Supervision of the activities of child welfare authorities

127. The County Administrative Board, in the capacity of a State authority on regional level, has the general competence to supervise the activities of municipalities. Also, following a procedural appeal, the County Administrative Board (*lääninhallitus, länsstyrelsen*) can investigate whether a local authority has acted in accordance with the law.

128. In addition, the Ministry of Social Affairs and Health supervises and directs, in its capacity as the highest authority in social welfare and health matters, the activities of municipalities and, when necessary, also the activities of the County Administrative Board in child welfare. Appeals concerning individual cases addressed to the Ministry of Social Affairs and Health are sent to the County Administrative Board which decides on the matter as the first instance.

129. The Parliamentary Ombudsman and the Chancellor of Justice (*oikeuskansleri, justitiekansler*) have the competence to supervise the legality of the measures taken by any authorities.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

130. The applicants complained that their right to respect for their family life had been violated on account of the placement of M. and J. in public care. The authorities never gave the applicants a chance to work out their problems with the help of their relatives and by taking advantage of various support measures provided by the social and health care authorities. Such arrangements would, for instance, have enabled the children to stay with their relatives and the authorities could have avoided resorting to a public care order immediately. Instead, J. was placed in public care without having been given an opportunity to bond with the applicants and obtain her mother's milk and without entrusting to T. the responsibility for her care. The care order issued in respect of M. allegedly caused him serious mental trauma and unnecessary suffering. The Social Welfare Board and the courts failed to carry out a proper examination of the applicants' request for a reunification of their family. The access restrictions were excessive, thereby

distancing J. and M. both from their parents and other relatives. The County Administrative Court's decision to uphold the access restriction issued on 17 May 1994 was principally based on an opinion submitted by an expert approached by the Social Welfare Board, Dr E.V., who had not interviewed the applicants. Most recently, the care orders were upheld on account of K.'s unstable state of health around the time when she gave birth to her fourth child in April 1995. In effect her state of health deteriorated because the social welfare officials had given her to understand that this baby might also be placed in public care. The applicants invoke Article 8 of the Convention. That Article, in so far as relevant, reads as follows:

“1. Everyone has the right to respect for his ... family life

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 ... for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Whether there was an interference with the applicants' right to respect for their family life under Article 8 of the Convention

131. The Government accepted, in their written observations, that there had been interferences with the applicants' right to respect for their family life as guaranteed by Article 8 § 1 of the Convention. The Government, however, considered that these interferences did not constitute a violation of this Article as they were “in accordance with the law”, pursued legitimate aims under Article 8 § 2 of the Convention and could be regarded as “necessary in a democratic society”.

132. The Court recalls that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (see, amongst others, the *Johansen v. Norway* judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-III, § 52). The impugned measures, as was not disputed, evidently amounted to interference with the applicants' right to respect for their family life as guaranteed by paragraph 1 of Article 8 of the Convention. Such interference constitutes a violation of this Article unless it is “in accordance with the law”, pursues an aim or aims that are legitimate under paragraph 2 of Article 8 and can be regarded as “necessary in a democratic society”.

B. Were the interferences justified?

1. “In accordance with the law”

133. It was undisputed before the Court that the impugned measures had a basis in national law and, to that extent, the Court is satisfied that such was the case.

2. Legitimate aim

134. In the Court’s view the relevant Finnish law was clearly aimed at protecting “health and morals” and “the rights and freedoms” of children. There is nothing to suggest that it was applied for any other purpose in the present case.

3. “Necessary in a democratic society”

135. In determining whether the impugned measures were “necessary in a democratic society”, the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify these measures were relevant and sufficient for the purpose of paragraph 2 of Article 8 of the Convention (see, *inter alia*, the Olsson v. Sweden (no. 1) judgment of 24 March 1988, Series A no 130, § 68).

In so doing, the Court will have regard to the fact that perceptions as to the appropriateness of intervention by public authorities in the care of children vary from one Contracting State to another, depending on such factors as traditions relating to the role of the family and to State intervention in family affairs and the availability of resources for public measures in this particular area. However, consideration of what is in the best interest of the child is in every case of crucial importance. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned (see the Olsson v. Sweden (no. 2) judgment of 27 November 1992, Series A no. 250, § 90), often at the very stage when care measures are being envisaged or immediately after their implementation. It follows from these considerations that the Court’s task is not to substitute itself to the domestic authorities in the exercise of their responsibilities for the regulation of the public care of children and the rights of parents whose children have been taken into care, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see, for instance, the Hokkanen v. Finland judgment of 23 September 1994, Series A no. 299-A, § 55; the above-mentioned Johansen judgment, § 64; and the decision of 8 February 2000 as to the admissibility of application No. 34745/97 in the case of Scott v. the United Kingdom, Third Section, unpublished).

The margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake. Thus, the Court recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care. However, a stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by those authorities on parental rights of access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed (the above-mentioned Johansen judgment, § 64).

It is against this background that the Court will examine whether the measures constituting the interferences with the applicants' exercise of their right to family life could be regarded as "necessary".

(a) The taking into care

(i) Submissions of those appearing before the Court

(a) The applicants

136. The applicants alleged that the measures at issue could not be regarded as "necessary in a democratic society". They argued that the taking of the children into public care was too drastic a measure to begin with as J. was taken into care directly from the hospital's delivery room and the decision was based only on speculations concerning the possible danger to the child. Had the hospital staff seen any signs of behaviour suggesting a danger to the child, an urgent compulsory care order could have been made by the Social Director at any time in a matter of minutes. The decision was, in the present case, made already in advance and could not, therefore, be justified by K.'s behaviour. There were no grounds for an urgent care order as K. and the baby were in a controlled environment at the hospital and M. was at the children's home.

137. According to the applicants, the picture created by the social welfare workers of their clients in their reports was utterly negative and affected, as such, the staff of the children's home. The social workers claimed, *inter alia*, that the mother was an alcoholic, the father a restless motorcycle trimmer, and the grandfather was said to be emotionally cold. The care orders were justified by K.'s mental health and quarrels between K. and T. As the social welfare authorities had, however, only twice seen the applicants in a quarrel, the taking of the children into care was clearly an overreaction to the applicants' family situation. The applicants do not deny that they have had their disagreements as most couples do. They argued that women during their pregnancy can be somewhat unstable. T. had, however,

understood K.'s mental stress and was willing to continue the relationship and the family life with K. and their children.

138. The applicants further noted that the third reason given for the care decisions was the applicants' financial problems. The applicants agreed that many of their problems were caused by their poor financial situation but stress that such a reason could never form a legal justification for taking children into public care. The applicants stressed that Section 13 of the Child Welfare Act stipulates that if financial problems cause a need for child protection, the family has to be economically supported.

139. The applicants also stressed that the urgent compulsory measure to take J. into public care was based on the risk J.'s health allegedly would face if the mother found out that J. was going to be taken into public care. The reasoning for the urgency is not rational. According to the law, the only reason for imposing an urgent compulsory care measure is actual, immediate danger. The decision cannot be based on speculation about possible danger caused by the actions of the social authorities and by the consequences of the decision itself. In the present case, the urgent compulsory care order could have been made by the Social Director at any time later if the hospital staff had seen any signs of K.'s behaviour endangering the child's safety.

Moreover, there were no reasons to take the children into care as T. was perfectly capable of taking care of J. and as M. was already voluntarily placed in a safe environment at the children's home. The social welfare authorities' records did not support in any way the idea that their demand that T. should cut his relationship with K. could be regarded as "necessary" in a democratic society in order to protect the well-being of J. On the contrary, if taking the child into public care was considered to be justified under these circumstances, it would entail that people with mental problems would be deprived of the support of their loved ones.

140. The applicants further recalled that the family centre had, in its written statement of 29 October 1993, stated that T. had taken good care of J. and had understood her emotional needs. After having monitored the development of the relationship of T. and J., the staff of the centre was of the opinion that J. had created an emotional relationship with her father and could be expected to develop as a healthy and well-balanced child. However, this statement was never communicated to the applicants or to their representative even though the latter had, in April 1994, requested a copy of all the documents related to the case. Neither had it been included with any documents before the domestic courts during the proceedings concerning J.'s care order or its termination. The applicants argued that they might have been able to defend themselves more effectively if they had been aware of the existence of such a document.

(b) The Government

141. The Government disagreed. They argued that the taking of both children into care, as was evident from two decisions of the County Administrative Court issued on 9 September and 11 November 1993, concerning the two children, M. and J., was based on deficiencies in their care and that the conditions in their home risked seriously jeopardising their development. The County Administrative Court concluded in identical terms that, considering the state of health of the mother, who had been mentally ill, and the conditions of family life, assistance in open care did not sufficiently ensure the growth process of the children and that the decisions to take them into care and place them in substitute care had been in the best interest of the children. In its judgment of 23 September 1994 the Supreme Administrative Court upheld the decision concerning M. On 21 August 1995, the same court upheld also the decision concerning J.

As to the sufficiency of the reasons for the purposes of Article 8, the Government recalled that a number of reports and certificates issued, *inter alia*, by the social welfare authorities and doctors were available to the Social Welfare Board and subsequently to the County Administrative Court and the Supreme Administrative Court when they considered the care issues. The measures were supported by detailed information which had been collected by psychiatric and social welfare authorities from 1989, who thus had gained profound knowledge of K.'s family situation.

142. The Government emphasised that, especially insofar as J. was concerned, it appears from the patient's documents that the hospital staff, taking into account the reasons for the care order decision, decided to place the child in the hospital's children's ward. As can be seen from the reasons of the decision, the very aim of taking into care was to protect the child, the mother being seriously mentally ill. Had the mother and the baby stayed in the same room, which is the normal practice in Finnish maternity hospitals, protection could not have been guaranteed. It is obvious that even in hospital conditions, it is not possible for the staff to supervise the patients all the time. Furthermore, the hospital documents contain no notes which would show that K. visited or attempted to visit the baby at the children's ward, or that she had been prevented from doing so.

(ii) The Court's assessment

143. The Court observes that the older child was taken into care in a situation in which he had voluntarily been placed in the children's home in order for the applicants to be able to concentrate on the arrival of a new baby, and that J. was taken into care directly from the hospital's delivery room without even the possibility of having her mother's milk. The care orders were based on, *inter alia*, the risks caused by K.'s mental health and disturbed behaviour. However, M. was already in a safe environment at the children's home, where he could be protected, and J. was at the hospital

where she could be protected as well. Moreover, according to the hospital records, the mother was acting calmly during the delivery and her behaviour in that situation could not, therefore, be used as a reason supporting the care orders. Further, she had never before behaved violently nor threatened to use violence against the children. The Court recalls that the Government argued that had the baby stayed in the same room with her mother, which is normal practice in Finnish maternity hospitals, protection could not have been guaranteed. However, the Court does not find that the care order was the only option for securing the safety of the child. Other measures should at least have been tried first.

144. While it is true that the mother, K., had a long history of mental illness, and that she had been hospitalised and even placed in compulsory psychiatric care before, the Court observes that the mother had been released from the hospital a month earlier and was not being treated for her mental illness at the time of giving birth. Thus she seems to have been in a relatively good mental condition at that moment. Moreover, the mother's psychotic behaviour only hours after having found out that she had been deprived of her new-born baby cannot serve as a reason supporting a decision already made. Nor can a possible threat of such behaviour, in the case of a forthcoming care order, justify such a decision. The Court finds it likely that any mother – with or without mental history – would, in such circumstances, face a risk of behavioural disturbances.

The Court finds that the reasons given and the methods used were arbitrary and unjustified under the circumstances. The Court notes that the applicants were not given any chance of even beginning their family life with new-born J. and that the care order concerning M. could not be reasonably justified in a situation in which the child was already in a safe environment and faced none of the risks mentioned in the relevant law as a precondition for the care order.

145. It must be noted, lastly, that the applicants were not informed of the decisions in advance even though the authorities had prepared the decisions well before. The social authorities had affirmed their intention to take the children into care by 11 June, at the latest, as the hospitals had been informed of this intention already in a letter dated the same day. The Court finds that the applicants should have been informed thereof. The authorities, on the contrary, carried on preparing the decisions without allowing any involvement of the applicants at that stage.

146. Despite the margin of appreciation enjoyed by the national authorities in assessing the necessity of taking a child into care, the Court considers, in the light of the case as a whole, that the reasons adduced to justify the care orders were not sufficient and that the methods used in implementing those decisions were excessive. In the light of the foregoing, the Court finds that in taking the above care measures the national authorities exceeded the margin of appreciation and that such measures

cannot, therefore, be regarded as “necessary” in a democratic society. Accordingly, the taking into public care constituted a violation of Article 8 of the Convention.

(b) The refusal to terminate the care

(i) Submissions of those appearing before the Court

(a) The applicants

147. The applicants noted that the duration of the taking into care is estimated to be long lasting and that the Government has several times repeated that the physical reunification of the family is not likely to happen at all. In the applicants’ opinion taking into care should be a temporary measure to be discontinued as soon as circumstances permit. The deprivation of the applicants’ parental rights and access restrictions had a permanent character and could only be considered “necessary” within the meaning of Article 8 § 2 if supported by particularly strong reasons. However, no such reasons existed.

148. The applicants noted that T. was told by the social workers already at an early stage after J.’s birth in 1993 that he could not expect to be able to live with J. if he continued his relationship with K. However, it was only much later, at the beginning of 1994, that K. and T. moved back together. At that time they both knew that J. and M. would be placed with a foster family and that the children would not be returned to their parents. When T. discovered that he would not be able to continue his family life with J., he had no reason not to move back living together with K. Therefore, according to the applicants, the decision not to return J. to his father was made before T. had made his decision to live with J.’s mother – not *vice versa*. The social authorities requested T. to cut his relationship with the mother of his child in order for him to be able to live with the child. That request was clearly illegal and unjustified, they argued.

149. Even assuming that the applicants’ situation at the time of the decisions to take the children into care had been somewhat unstable – which, according to the applicants, it was not – the social authorities should have made every effort to reunite the family as soon as possible, as the public-care measures are intended to be only of a temporary nature. However, the applicants were told, from the very beginning, that the family placement would be permanent and would last until the children were adult. This intention was several times repeated by the Government before the Court in Strasbourg. The authorities have, thus, acted in a clearly arbitrary way without any intention to terminate the care no matter what the circumstances, regardless of the applicants’ situation. This has placed them in a situation in which any proceedings instituted by them or evidence

brought by them before the domestic courts to support their case would be fruitless.

(b) The Government

150. The Government argued that the interference with the applicants' right to respect for their family life was "necessary in a democratic society". Taking a child into care often represents a measure of long duration – insofar as his or her childhood is concerned – and thus can be considered a completely normal measure. The Government questions whether the ultimate aim of reuniting the natural parent and the child really could be the purpose of Article 8 of the Convention. Attention should rather be paid to the particular circumstances of each case, and especially to the reasons for taking the child into care and maintaining the care decision in force. In this respect it should be remembered that childhood is a short but very important period in a person's life, considering his or her future development. Mistakes made by the parents towards their children are thus serious and cannot always be repaired. In this respect it should be remembered that a child is entitled to respect for his family life, in accordance with Article 8 of the Convention, in his foster family and in his home.

151. The Government did not foresee the physical reunification between the children and the applicants, and accordingly, no measures aimed at such a reunification have been carried out. A child often becomes strongly attached to his foster parents and it is therefore harmful for the child to detach him or her from the foster family and the relationships built within that family. The younger the child is, the faster the psychological relationship between the child and the foster parents develops. It may be necessary for the stability of the child that the family situation not be changed back again. Ultimately, both the taking into public care and the termination of public care must be decided in the best interests of the child.

152. The Government also observed that K. has suffered from schizophrenia since M. was under one year of age. During M.'s first five years, his mother had been in psychiatric hospital treatment, during different periods for 13 months altogether. M.'s biological father, who is not an applicant in this case, has never participated in M.'s care. J., on her part, has never lived with her biological parents.

The Government underlined that the children are living with the foster family. They have been there since the beginning of 1994 and have become attached to and feel at home in the foster family.

The Government finally noted that in the present situation the right to respect for family life from the children's point of view means above all the right to live in the foster family which is their *de facto* family, and to live together. In this kind of case the mutual family ties between a child who has been taken into care and her biological parents shall, as far as possible, be ensured in some other way than by reuniting the family as a physical entity,

for example by visits and letters to the extent required and allowed by the interest of the child.

153. The Government recalled that after T. came to the conclusion that he did not want to live apart from K., it became evident that he could not take care of the child as he had at the same time to care for K., who was suffering from an acute mental illness including aggressive behaviour. K. did not begin therapy treatment until only one year after J.'s birth in 1993. Due to this therapy, which has continued since then, K.'s mental health has improved to such an extent that the parents can now take care of their youngest daughter, R., supported by measures of assistance in open care.

The foster family was, according to the Government, the first and only family to which the children have had a stable and secure relationship. Even assuming that the decisions of the administrative courts at the time upholding the placing of the children in public care were wrong in their assessment, which was not the case, the children could not be uprooted from their foster family without causing deep and irreparable damage to their development.

154. The Government noted that, when the children were taken into care, K.'s capability to act as a parent was deficient to such an extent that the public care was justified and in the best interests of the children. Therefore it was also obvious that it would not have been in the interests of J. to be placed in her biological parents' home. It was later proved that the long-term psychotherapy was an essential factor in K.'s rehabilitation.

(ii) The Court's assessment

155. The Court recalls its above finding of a violation of Article 8 (see § 146 above). Despite this finding it considers that the refusal to terminate the care and to consider the reunification of the family in the present case, merits to be examined on its own.

156. The Court recalls that, according to its established case-law, taking a child into care should normally be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parent and the child (see, in particular, the above-mentioned Olsson (no. 1) judgment, § 81). In this regard a fair balance has to be struck between the interests of the child in remaining in the public care and those of the parent in being reunited with the child (see, for instance, the above-mentioned Olsson (no. 2) judgment, § 90). In carrying out this balancing exercise, the Court will attach particular importance to the best interests of the child, which may override those of the parent. In particular, the parent cannot be entitled under Article 8 of the Convention to have such measures taken as would harm the child's health and development.

157. The question of whether the continued implementation of the care measures was justified must be assessed in the light of the circumstances and their development since June 1993. In this regard it is observed that the applicants still live together unmarried, taking care of their youngest child, R., who has not been taken into care. K. has been treated for her mental illness, hospitalised and has even been placed into compulsory care. However, according to the statements submitted to the Court, her mental health has been stable since 1996.

158. The Court notes that, at the time of the preparation of the care orders two medical experts with personal knowledge of K., doctors M.L. and K.R., were consulted by the Social Welfare Board. While they considered K. unable to care for M. at the relevant time, they were of opinion that her mental state could not be regarded as making her permanently incapable in that regard. This indicates that the impossibility of reuniting the family was not at the outset clear.

159. Despite this, the authorities competent to decide on the case seem to have proceeded from the assumption of the need for long-lasting care for the two children. The very manner of implementing the care order concerning J., i.e. the taking of the baby, on 18 June 1993, directly from the delivery room, was arbitrary and not conducive to facilitating a normal bond with the mother and the child. Moreover, the parents had no access at all to J. during the first days of her life. The authorities' later attitude strengthens the impression that a firm stand was taken against the reunification of the family.

160. Thus, the notes of 25 October 1993 in the case records of the Social Welfare Board show that T. had "again" been told that J. could not live with him as long as the applicants continued their relationship. Information recorded on 29 October 1993 of the positive experience gained from the way in which T. had taken care of the child is invoked, not as an argument to try to reunite the family, but rather as one supporting the conclusion that the prospects for a family placement – i.e. placement in a foster family – were good (see § 43 above). A strong presumption against the reunification of the family is evidenced by the statement, made by the authorities in connection with the placement of the children in the foster home in early 1994, to the effect that this placement would last "for years" (§ 47).

Such a determination on the part of the authorities is somewhat striking in view of the comments made in the same year by Dr K.P., a specialist in psychiatry, whose opinion had been requested by the Social Welfare Board in connection with the applicants' request of 26 May 1994 for the revocation of the care order. In her opinion of 22 September 1994 Dr K.P., who had met K. five times between 16 June and 20 September 1994, came to the conclusion that K.'s mental state, although not yet unproblematic, would not prevent her from acting as the children's custodian. While Dr K.P. did not explicitly recommend termination of the care she stated,

inter alia, that the struggle introduced by K. to have the care terminated and access restrictions loosened gave evidence of psychological resources. Dr K.Po., a psychologist whose opinion was attached to that of Dr K.P., concluded after having examined K. that the latter's mental state did not constitute a direct hindrance to her being the custodian of the children. Dr K.P. also testified before the County Administrative Court which, on 28 September 1994, held an oral hearing concerning the access restriction imposed on 17 May 1994. She stated that in her view K.'s health situation had improved and did not prevent her from caring for the children. Dr K.P., however, added that she could not as a psychiatrist for adults take any stand as regards the interests of the children.

161. The Board, in its decision of 14 March 1995 rejecting the request for termination of the care, emphasised that part of Dr K.P.'s opinion which referred to the continuing instability in K.'s emotional life and to her consequent need of therapeutic support. While generally referring to the improvement in K.'s and her family's situation, the Board does not seem to have paid attention to the specific references to positive developments in K.'s situation as recorded by Dr K.P. in her statement of 22 September 1994 submitted to the Board. On the other hand, the Board seems to have attached more importance to certain other material submitted to it, including the opinion given by Dr E.V, dated 6 June 1994. Dr E.V., who apparently had never met K., is quoted as saying, *inter alia*, that K. had difficulty to conceive of children as independent persons needing love and care.

162. By two decisions made on 28 September 1995, the County Administrative Court rejected the applicants' appeal made against the decision not to terminate the care. The court admitted, on the one hand, that K.'s health had improved. On the other hand, it concluded that the termination of the care was not possible.

163. Subsequent further improvement of K.'s health does not seem to have led to any reconsideration of the care. Such improvements have been recorded by Dr K.P. (later Dr K.M.) in her statements of 10 September 1996 (see § 77 above) and in that of 3 July 1998 (see § 83 above).

164. The picture that transpires from the case is one of determination on the part of the authorities not to consider the reunification of the family as a serious option despite occasional references to such a possibility (§ 60). The authorities seem to have firmly proceeded from a presumption of the need for long-lasting care and placement in a foster home. While this is not to suggest any bad faith on their part, the reunification of the family may by now have become very difficult, if not impossible. This development has no doubt been furthered by the restrictions on the applicants' right to visit the children. Since May 1994 that right has been limited to one visit per month, sometimes by decisions which more reflect an intention to strengthen the ties between the children and the foster family than to reunite the family (see § 71 above).

It is not the Court's task to substitute its view for that of the national authorities as to what should have been done. It cannot, for example, say that at a specific date the children should have been returned to the applicants. Nor does the Court suggest that public care should in all circumstances be a strictly temporary measure. Even so, in the circumstances of this case, it appears that there was a lack of any effort seriously to consider the termination of public care, despite evidence of an improvement in the situation which had led to the care orders, and that this amounted to such a lack of fair balance between the various interests involved as to constitute a violation of Article 8 of the Convention. Accordingly, there has been a violation of that Article on this ground also.

(c) The access restrictions and prohibitions

(i) Submissions of those appearing before the Court

(a) The applicants

165. The applicants recalled that M. was already placed on a voluntary basis at a children's home before the emergency care measure and later, after the care order was finalised, he was placed with the same foster family. They stress that the decision concerning the right of access to J. was not given before 21 June 1993, i.e. three days after the birth of the baby, but the baby was, however, taken from K. and placed in the children's ward in the hospital on the day she was born. The parents had no access to her at all during the first days of her life. In the applicants' view, the said decision was illegal because the restriction was not made for a fixed period. The parents were allowed to meet M. in the children's home and T. was allowed to meet J. almost daily beginning from 23 June 1993. K. did not meet with her children that often in the summer of 1993, but also her hospitalisation influenced her possibilities to meet with her children. The authorities allowed access to the children for the first time after they had been placed in their foster family and then for two hours under supervision. Even after that, access of the parents to the children has been subject to severe restrictions.

166. The applicants also recalled that for the last six years the rationale for the continuation of the access restrictions had been that the children had to get attached to their foster family and that too close a relationship with their own parents endangered this purpose. For the authorities, it had been sufficient that the children were aware of their parents' existence. As this justification had once passed the administrative courts' proceedings it had been used for the reasoning of the rest of the restriction decisions from ever since.

167. The applicants stressed that the only reason given for the restriction orders was K.'s unstable health. Such reasoning did not, however, meet the strict preconditions set by the law. On 14 September 1993 a social worker had registered that the access of T. to J. was to be questioned as J.'s placement to the foster family was under preparation, and had anticipated that it would be difficult for T. to give up J. According to the applicants, from this moment the plan to alienate J. from her parents was systematic.

168. The applicants also noted that the applicants' decision to move back together was made at the beginning of 1994, when the children had already been taken into care and it was already known that the children would be placed in a foster home. When T. had found out, after all the promises and the trouble he had gone through, that he could not live with his daughter, he had no reason whatsoever not to move back to live with K. At this time both the applicants knew that the children would never be returned home.

169. According to the applicants, the decisions concerning severe access restrictions were not made in a democratic way as the applicants had no opportunity to take part in the decision-making. The procedure did not meet the principal requirements of the law, such as the need to act with utmost delicacy, according to the principle of least possible interference, and in the best interest of the children. For example, in December 1993, it was suggested to the applicants that they could keep contact with their children by post. Taking into account that J. was under one year of age, it is clear that she could not read or understand this kind of communication. The applicants also recall a situation in which the social workers had told them not to speak about the family placement to M. and when K. then told M. about the placement – the most important event in the child's life so far – she was punished by further access restrictions.

170. The applicants emphasised that their access to M. was restricted during his placement at the children's home as a voluntary open care measure, as M. was not allowed to visit his home. Such a decision concerning access restriction was clearly illegal as, according to the law, no restrictions are allowed when the child is placed voluntarily at the children's home. The first legal decisions concerning the access rights were made only much later, on 21 June 1993.

171. The applicants recalled that, on 15 July 1993, the care orders and the restriction orders concerning K.'s right of access to her children were ratified by the Social Welfare Board. The reasoning given for the restrictions was K.'s aggressive behaviour and emotional outbursts. Yet the social workers had registered that the meeting between K. and the children had gone well. She never harmed or threatened to harm her children in any way. The fact that she had been aggressive against the authorities – who had deprived her of her children – is not a legal basis to restrict access and to

deny the applicants' right to a family life with their children. On the contrary, such a decision only increased K.'s stress and psychotic reactions.

(b) The Government

172. The Government disagreed. They argued that a physical connection was not the only way to ensure family ties. In Finland the child welfare measures referred to in the Child Welfare Act, such as taking a child into care and substitute care, are assistance addressed to the child. The purpose of such assistance is not to alter the biological ties of the child to his family. The mother and the father remain as custodians and the guardians of the child who has been taken into care. The fact that a child has been taken into care and placed in a foster family does not prevent the child from meeting his or her parents as an equal adult and thereby creating normal family ties. However, the taking into care inherently embodies some practical and natural restrictions of the right to access.

173. The Government doubted whether all the complaints concerning access restrictions were declared admissible by the Court. In any case, the Government emphasised that the time-limits and other conditions set forth in the Child Welfare Act were met.

174. The Government also stressed that T. was assisted by the authorities in various ways in his efforts to create a relationship with the baby at the beginning. He was supported and guided at the family centre, and also supported financially. Furthermore, it was agreed that monthly appointments would be made for T. to see a family counsellor. Considering that the aim was that T. would live with the baby, it was also planned that a support family would be organised, as well as domestic help provided weekly. At the same time, T. had continued meeting K. frequently. Apparently, he hoped that her health would improve so much that they could bring up the baby together despite the fact that his co-operation with the authorities was based on the idea that he alone would take care of the baby.

The Government furthermore emphasised that the social welfare records clearly show that, at the beginning of the placement of M. in the children's home, the visits by K. and T. as well as by other relatives were wanted and unlimited. The applicants were given an opportunity to spend nights in the children's home during the weekends. The visits had to be limited only when the illness of K. got worse, and her behaviour during the visits caused strong negative emotional reactions in M. as well as confusion and anguish in the activities and atmosphere of the children's home as a whole.

The restrictions of the right of access to M. while in the children's home were addressed especially to K. because of her acute psychiatric illness. The subsequent decisions on the right of access concerned both applicants and were based on various statements by doctors and other experts.

175. The Government also recalled that the applicants have had the opportunity to contact with their children by letter and telephone. Two different domestic courts, when dealing with separate issues concerning K.'s access to her children, found exceptionally important reasons to restrict her access rights. The applicants have, however, been allowed to meet their children regularly.

(ii) The Court's assessment

176. The Court considers, in the light of its conclusion above (§ 164), that it is not necessary to examine the access restrictions as a separate issue, except in so far as the present situation is concerned.

In this respect the Court observes that the applicants have - since 1994 - had access to the children once a month. While this may have been unreasonably restrictive earlier, the Court cannot overlook the fact that now the children have been in public care for almost seven years. In view of this the Court accepts that the national authorities, within their margin of appreciation, may consider such restrictions necessary in the light of the present-day interests of the children.

Accordingly, there is no violation of Article 8 of the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

177. The applicants complained that no effective remedy had been available to them in respect of the violation of their right to respect for their family rights under Article 8 of the Convention. Article 13 of the Convention reads as follows:

“Everyone whose rights and freedoms as set forth in this 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.”

178. The Government argued that it was not possible to take up the applicants' claim even in respect of Article 8 as the applicants could not derive from Article 13 a right to a remedy for the alleged violations referred to, and thus there could not be a question of a violation of that Article.

The Government further noted that the authority referred to in Article 13 may not necessarily be a judicial one, but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Although no single remedy may itself satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so.

The Government referred to the possibility of demanding in court, in pursuance of paragraph 2 of Section 93 of the Constitution Act and the relevant provisions of the Penal Code, that the concerned officials be subjected to criminal proceedings and possibly be made liable to pay damages as, under the Act on Compensation, the State might be ordered to pay damages. In conclusion, the Government considered that the applicants had been entitled to sufficient remedies within the meaning of Article 13 because they were, if necessary, able to obtain sufficient legal protection in relation to their claim under Article 8 of the Convention.

179. The Court notes that the applicants could apply to administrative courts against the care order, refusal to terminate the care and various access restrictions. It is true that the applicants' appeals did not prove successful. However, the effectiveness of the remedy for the purpose of Article 13 does not depend on the certainty of a favourable outcome (see the *Vereinigung Demokratischer Soldaten Österreichs and Gubi v. Austria* judgment of 19 December 1994, Series A no. 302, § 55). There is no indication that the Finnish administrative courts would not, as a general matter, fulfil the requirements of an "effective remedy" within the meaning of Article 13. Taking also into account the other remedies invoked by the Government, the Court considers that the applicants had available remedies satisfying the requirements of that provision. Accordingly, there is no violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

180. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damages

181. The applicants alleged that they had sustained non-pecuniary damage corresponding to the sums paid by the Government for the costs of the family placement, i.e. FIM 3,500 per month per a child. The applicants requested that the Government start to take steps to reunite the family and to compensate them also for the family life lost during these actions. If the family was to be reunited in February 2001 the value of the lost family life would be FIM 336,000. If the Government did not reunite the family the compensation for 18 years would be FIM 756,000. K. also claims a lump sum of FIM 40,000 and T. claims a lump sum of FIM 20,000 for non-pecuniary damage for their mental distress.

182. The Government observed that the family placement costs which have been paid by the Government for the subsistence of the children cannot be taken as a ground for evaluating possible non-pecuniary damage to the applicants. The Government considered that if the Court were to find a breach under Article 8 of the Convention, its judgment should include sufficient just satisfaction in respect of the non-pecuniary damage. However, the sums presented by the applicants was regarded as far too excessive. The Government left the decision-making to the Court's discretion to be exercised on equitable basis.

The Government noted that the applicants had not sought any compensation under the alleged failure of the Government to comply with the requirements under Article 13 of the Convention. Accordingly, no compensation could be awarded and, according to the constant case-law of the Court, the finding of a violation would in any case have constituted sufficient just satisfaction in this respect.

183. The Court finds that the applicants' claim for non-pecuniary damage in respect of the violation of Article 8 of the Convention – the only violation found by the Court – is excessive. Taking into account the obvious frustration caused to the applicants by the breach of their right to their family life, the Court, making its evaluation on equitable basis, awards the applicants FIM 40,000 each, that is FIM 80,000 in total, as just satisfaction for the applicants' non-pecuniary damage in respect of the violation of Article 8 of the Convention.

B. Costs and expenses

184. The applicants sought FIM 5,190 in respect of their own costs and expenses relating to their representation. The applicants also sought FIM 249,475 in respect of the costs which were born on their behalf by the Society for Family Rights in Finland (PESUE).

185. The Government noted that an award may only be made in so far as the costs and expenses were actually and necessarily incurred in respect of national proceedings or other domestic steps undertaken to avoid, prevent or obtain redress for a violation. Furthermore, only the complaints declared admissible by the Court can be awarded, and only in respect of a violation found by the Court. The Government noted in this respect that the majority of the applicants' complaints were declared inadmissible by the Court in its decision of 8 June 1999.

As to the applicants' own claim for costs and expenses, the applicants did not submit any documents or receipts indicating whether these expenses were really incurred and paid, and if so, whether these expenses related to the domestic or Strasbourg proceedings. The Government noted that it was for the Court to assess the amount of the expenses entailed, having regard to the supporting documents produced. At any rate, the Government found the

total sum somewhat excessive, and left it to the Court to decide on this point.

The Government noted that, according to the Court's case-law, an applicant's counsel cannot rely on Article 41 to claim just satisfaction on his or her own account. Whether the claim for costs and expenses requested by the Society for Family Rights in Finland fell within this category, was left by the Government to the Court's discretion. The Government, however, stated that neither this part of the claim relating to the reimbursement of costs and expenses included sufficiently detailed documents or receipts to verify whether these costs and expenses were really incurred and paid. Accordingly, the same principles presented by the Government in connection with the applicants' own claims above also applied to this claim. The Government also questioned the necessity to have two lawyers and Ms Suomela representing the applicants before the Court. At any rate, the Government found the total sum clearly excessive. The Government left the final assessment to the Court's discretion.

Finally, the Government noted that the sums paid by the Council of Europe should be deducted from the possible reimbursement of costs and expenses.

186. The Court notes that the Society for Family Rights in Finland was not a party to the present proceedings and that their costs and expenses are therefore not to be awarded. The applicants had not alleged that they would be responsible for reimbursing the costs and expenses incurred by the Society. As these costs were not actually incurred by the applicants themselves, this part of the claim must be rejected.

Taking into account that the applicants' complaints have only been partially declared admissible by the Court and that only a part of the admitted complaints have led to the finding of a violation, the Court, making its assessment on an equitable basis, awards the applicants FIM 5,190 in respect of the proceedings before the Commission and the Court and for domestic costs together with any relevant value-added tax, from which must be deducted the FRF 2,230 already received for legal fees from the Council of Europe by way of legal aid.

C. Default interest

187. According to the information available to the Court, the statutory rate of interest applicable in Finland at the date of the adoption of the present judgment is 10 % per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention;
2. *Holds* that there has been no violation of Article 13 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, (i) for non-pecuniary damage, 40,000 (forty thousand) Finnish marks each, that is a total of 80,000 (eighty thousand) Finnish marks; (ii) for legal fees and expenses, 5,190 (five thousand one hundred and ninety) Finnish marks less 2,230 (two thousand two hundred and thirty) French francs to be converted into Finnish marks at the rate applicable on the date of delivery of the present judgment;
 - (b) that simple interest at an annual rate of 10 % shall be payable from the expiry of the above-mentioned three months until settlement;
4. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 27 April 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court..

Vincent BERGER
Registrar

Georg RESS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following concurring opinion of Mr M. Pellonpää is annexed to this judgment:

G.R.
V.B.

CONCURRING OPINION OF JUDGE PELLONPÄÄ

I have voted for the finding of a violation of Article 8 in this case. I, however, disagree with the majority as to the reasons for this finding. In my view the taking of the children into public care did not *per se* violate Article 8, but I agree that the developments following the care decisions disclose an attitude not compatible with the applicants' right to respect for their family life guaranteed by that Article. In short, I do not share the conclusion drawn in § 146, whereas I subscribe to what is said in § 164.

I note that the care decisions of 15 July 1993 were essentially based on the mother's serious illness, her occasionally uncontrolled emotional reactions which could be traumatic for the children, the economic and other difficulties of the family and T's inability to take care for the mother and the children at the same time. It was added that the mother was incapable of receiving advice and guidance, and that open-care measures could not be provided to the extent necessary. The emergency care orders issued on 18 and 21 June 1993 had been based on similar grounds.

The question is whether these reasons were, in the circumstances of the case, relevant and sufficient, taking into account the margin of appreciation which must be accorded to the national authorities. As recalled by the Court, those authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into public care, whereas stricter scrutiny is called for in respect of any further limitations (§ 135).

Basing myself on the facts as presented in the judgment, I note that K. had been hospitalised on the ground of her mental problems on several occasions, including a period of compulsory mental care a little more than a year before the decisions at issue. On 19 March 1993 K's mother had expressed her dissatisfaction with what she regarded as a lack of support by the mental health authorities and her fear that something might happen if her daughter is not admitted to care. Soon thereafter, on 24 March 1993, K. was in fact placed under observation with a view to determining whether she should be placed in compulsory psychiatric care, but the conditions for such care were not considered to be met (see § 14). On 7 June 1993 T. had said that M. was in need of hospital care (§ 16). A few days later, on 11 June 1993, a social welfare official acquainted with the situation of the family expressed her concern about the health of K. and her forthcoming baby (§ 20).

As regards the allegedly uncontrolled behaviour of K. and its traumatic effects on the children, I note that the file indeed contains references to incidents showing such behaviour (§§ 14, 17), as well as evidence of disturbing signs in the development of M. (§ 16).

I further note that the authorities do not seem to have proceeded to the care decisions hastily. Apparently since 1989 there had been contacts between the family and the social and welfare authorities, who had taken various measures in view of the family's economic and social difficulties. Also the applicants' relatives had been in contact with the social workers but, it seems, had not been able to offer any decisive help (see § 18).

It appears that the possibility of resorting to public care measures was raised for the first time in late March 1993 (see § 17). Before the actual care decisions, the Social Welfare Board obtained the opinion of two doctors who had treated K. during various periods she had spent in hospital. In their opinion of 12 May 1993 the doctors considered that, while K's mental state should not be regarded as preventing her from permanently caring for M., she was at that time unable to care for him.

In view of these circumstances, I consider that the reasons for taking the two children into care were both relevant and sufficient and thus cannot be characterised as arbitrary. This in my view applies not only to the care orders of 15 July 1993 but also to the emergency care orders of 18 and 21 June of the same year. Within their margin of appreciation the national authorities, who had the benefit of direct contact with those involved, were reasonably entitled to consider that in the circumstances the interests of the children required an interference going beyond the open-care measures so far applied. That the method of implementing the emergency care decision with regard to J. can be criticised is another matter to which I will return below.

I am also satisfied that the decision-making process leading to taking the children into public care did not fail to involve the applicants to a degree sufficient to provide them with the requisite protection of their interests. While the applicants do not seem to have been informed of the plan to take the children into care as a temporary measure as soon as the baby was born, I accept that in the circumstances of the case the authorities may have had legitimate reasons for acting as they did. In my view they did not exceed their margin of appreciation in this respect either. In any case, the applicants were given sufficient opportunity to be heard and make representations before the Board's care decisions of 15 July 1993. They also could appeal and did appeal on two court levels.

Having said this, I do agree that the manner of implementing the emergency care order concerning J. appears harsh even considering the difficult circumstances of the moment. This, however, does not render the emergency care order itself and the reasons given for it arbitrary and incompatible with Article 8 of the Convention. While the way of implementing the emergency care order of J. could arguably be regarded as a human rights violation of its own, I consider it proper to look upon that aspect of the case in the context of the other developments regarding the modalities of implementing the public care decisions at issue. The

restrictions applied immediately after J. was born, which are very aptly described by the Court as “not conducive to facilitating a normal bond with the mother and the child” (§ 159), can thus be regarded as one sign of the firm attitude of the authorities against the reunification of the family. The manner of implementing that emergency care order together with the other reasons elaborated in §§ 156-164 of the judgment justify the conclusion that there has been a violation of Article 8.