



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

FIRST SECTION

CASE OF NUUTINEN v. FINLAND

(Application no. 32842/96)

JUDGMENT

STRASBOURG

27 June 2000

This judgment is subject to editorial revision before its reproduction in final form in the official reports of selected judgments and decisions of the Court.

In the case of Nuutinen v. Finland,

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

Mrs E. PALM, *President*,

Mr L. FERRARI BRAVO,

Mr R. TÜRMEN,

Mr B. ZUPANČIČ,

Mr T. PANȚÎRU,

Mr GAUKUR JÖRUNDSSON, *judges*,

Mr R. PEKKANEN, *ad hoc judge*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 6 June 2000,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case was referred to the Court by a Finnish national, Mr Pekka Nuutinen ("the applicant"), on 20 January 1999, and by the Finnish Government ("the Government") on 1 April 1999, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). The case originated in an application (no. 32842/96) against the Republic of Finland lodged with the European Commission of Human Rights ("the Commission") on 26 August 1996 under former Article 25 of the Convention.

The applicant's request to the Court was based on former Article 48 of the Convention, as amended by Protocol No. 9 which Finland had ratified. The Government's request was based on former Articles 44 and 48 of the Convention. The object of the requests was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 6 and 8 of the Convention.

2. The applicant, who was granted legal aid, was represented by Mr M. Fredman, a lawyer practising in Finland. The Government were represented by their co-Agent, Mr A. Kosonen of the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that the court proceedings for the determination of the paternity, custody and access rights of his daughter had been excessively lengthy and that the authorities had failed to make sufficient efforts to enforce the access orders, with the result that the applicant and his daughter had never been able to meet.

4. On 31 March 1999 a panel of the Grand Chamber decided, pursuant to Article 5 § 4 of Protocol No. 11 to the Convention and Rules 100 § 1 and

24 § 6 of the Rules of Court, that the case would be examined by one of the Sections.

5. On 1 April 1999 the President of the Court assigned the application to the First Section (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr M. Pellonpää, the judge elected in respect of Finland, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr R. Pekkanen to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. In 1987 the applicant was convicted of having caused danger to others and sentenced to one year's imprisonment. In 1990 the Kuopio City Court (*raastuvanoikeus, rådstuvurätten*) convicted him of attempted manslaughter and sentenced him to three years' imprisonment. The court had regard to an opinion on his mental state submitted by the Unit for Forensic Psychiatry of the Kuopio County Prison on 29 June 1990 as well as to a related opinion of the National Medico-Legal Board (*lääkintöhallitus, medicinalstyrelsen*) of 11 July 1990. The Board had concluded that the applicant had committed the offence while not fully in control of his faculties but that he was not in need of psychiatric care.

8. On 21 January 1992 the Kuopio City Court convicted the applicant of having threatened and assaulted his then girlfriend H and of having subjected her to coercion. Those offences were found to have been committed while he was not fully in control of himself during H's pregnancy in October 1991, when their relationship had been ending. The applicant was sentenced to three months' imprisonment.

9. In March 1992 H gave birth to a daughter, I. The two subsequently moved from Kuopio to Helsinki. In November 1992 the applicant was released from prison and recognised I as his child. In the light of H's objections a judge of the Kuopio City Court refused to confirm the recognition.

10. On 30 November 1992 the Population Registration Authority (*väestörekisterikeskus, befolkningsregistercentralen*) granted a request by H that her and I's address would not be disclosed for marketing, polling or addressing purposes.

11. In an action of 21 September 1993 the applicant requested that his paternity in respect of I be confirmed, that custody of her be shared and that she be granted a right to see him every second weekend from Friday to Sunday night. In addition, the applicant requested access arrangements enabling I to spend part of the annual holidays with him. The Kuopio City Court's summons was served on H on 13 October 1993, the first hearing having been fixed for 14 January 1994.

12. Before the City Court H contested the paternity claim and objected to joint custody and to any form of access between I and the applicant. The hearing was adjourned until 6 May 1994, the City Court having ordered the parties to deliver blood samples by 8 April 1994 on pain of an administrative fine (*uhkasakko, vite*) in the amount of 1,000 Finnish marks (FIM). H was also under an obligation to have samples delivered by I.

13. In April 1994 H married another man.

14. Taking note of H's failure to deliver blood samples, the City Court, on 6 May 1994, adjourned the proceedings until 9 September 1994. H was ordered to produce the samples by 12 August 1994 on pain of a further administrative fine in the amount of FIM 2,000. At its hearing on 9 September 1994 the City Court adjourned the proceedings until 16 December 1994, having decided to seek opinions on the question of access both from the Kuopio Social Welfare Board (in respect of the applicant) and from the Helsinki Social Welfare Board (in respect of H and I).

15. On 2 December 1994 the Helsinki Social Welfare Board requested that the time-limit for the submission of its opinion be extended until 31 May 1995 so as to enable it to carry out a thorough investigation. The City Court then requested the Board to provide a preliminary opinion by 14 December 1994.

16. In its opinion of 12 December 1994 the Kuopio Social Welfare Board noted that the applicant did not wish to be in contact with H and her new husband and was willing to accept that the authorities act as intermediaries during an initial period of access. The applicant further considered that the initial meetings should take place in the city or town where his daughter was resident.

17. In its preliminary opinion of 14 December 1994 the Helsinki Social Welfare Board suggested that the examination of the access question be adjourned until the end of May 1995 so that a solution convenient to the child could be found in these exceptional circumstances. The Board alluded to H's strong fear of the applicant and to her new pregnancy expected to reach its term in December 1994.

18. On 16 December 1994 the Kuopio District Court (*käräjäoikeus, tingsrätten*; the former City Court) confirmed the applicant's paternity in respect of I (which was no longer disputed by H). On an interim basis, right of access in respect of the child was granted for two hours on the last Saturday of March, April and May 1995. The meetings were to take place in Helsinki on the premises of an association in this field. The final decision in respect of custody and access was adjourned until 2 June 1995.

19. In a written opinion of 2 March 1995 drawn up for the purposes of the access proceedings Dr V, a child and youth psychiatrist, stated as follows:

“[H], [I], [H's husband] and [their son] have paid a visit to my practice.

[H] has shown me a number of documents relating to certain court proceedings; in part to the [access proceedings] and in part to [the applicant's assault on H]. It transpires from the documents that the intention is to organise unsupervised meetings between [I] and [the applicant].

On the basis of the above material I must, as an expert, oppose the meetings in question until further notice. Both supervised and, in particular, unsupervised meetings would amount to a flagrant violation of the best interests of the child and would subject [I] at least to a serious mental and possibly also physical danger and could damage her mental development to an extent which would be difficult to treat.

This opinion is of a preliminary character because I am currently examining the matter [more] thoroughly. The examination will last a few months, following which I will be prepared to submit a more detailed and more reasoned opinion. ...”

20. In a letter of 22 March 1995 the Helsinki Social Welfare Authority informed the applicant that the meeting between him and the child fixed for 25 March 1995 would not take place. H had informed the Social Welfare Authority that she had no intention of bringing I to the meeting-place, the reason being that she feared that the child might be subjected to “something harmful”. The Social Welfare Authority's attempts to convince H to comply with the court order had been unsuccessful.

21. On 18 April 1995 the applicant lodged a request for enforcement with the County Administrative Board (*lääninhallitus, länsstyrelsen*) of Uusimaa, acting as Chief Bailiff (*ulosotonhaltija, överexekutor*). He referred to H's failure to bring I to the meeting fixed for March. Moreover, a leading official of the Helsinki Social Welfare Authority had informed the applicant that H was keeping his paternity secret from the child.

22. In a letter of 21 April 1995 the Helsinki Social Welfare Authority informed the applicant that H would not bring the child to the meeting fixed for April either. This letter had been preceded by a social welfare official's telephone calls to the applicant and H. The official had suggested to H that a plain-clothed police officer could attend the meeting. H had refused, indicating a wish to attend the meetings herself. When informed that this wish could be accommodated, H had retracted her consent, at least in

respect of the April meeting. When requested to state her position in respect of the May meeting, H had thought her answer would remain negative.

23. On 18 May 1995 the Helsinki Social Welfare Authority informed the applicant that H would not bring the child to the May meeting either.

24. On 22 May 1995 the applicant repeated his enforcement request, referring to H's failure to bring I to the April meeting.

25. On the same day H requested that the Helsinki Registry Office (*maistraatti, magistraten*) order her and the child's address to be kept secret in accordance with the 1993 Population Data Act (*väestötietolaki, befolkningsdatalag*, no. 507/1993). H referred to the applicant's conviction in 1992 and suspected that he was threatening the lives of her and the child. On 24 May 1995 the Registry Office ordered that the address of H and I should be kept secret for two years. This order was later extended.

26. On 29 May 1995 O.A. and R.K., Office Director and Senior Social Welfare Officer of the Family Advice Centre of the Helsinki Social Welfare Authority, submitted the final opinion to the Kuopio District Court on the question of access. They noted H's strong fear and suspicions in respect of the applicant and his intentions. H seemed to fear that the meetings between the applicant and his daughter would cause physical or psychological harm to the child or her new family. In the explosive situation at hand it would be difficult to organise the visits in an atmosphere which could be beneficial to the child. In the long term visits were nevertheless to be aimed at, as it was in the child's best interests to meet her father in secure conditions and to be able to form her own opinion of his good and bad features. Regrettably, it had proved impossible to have any of the interim access arrangements enforced. This had significantly prevented the officials from forming their opinion of the applicant's abilities to relate to his child.

27. A summary by the Family Advice Centre dated 18 November 1996 indicated that, prior to drawing up the opinion of 29 May 1995, officials had met H three times together with the child and once also together with the grandmother. The officials had intended to request investigations by the Family Advice Clinic (*perheneuvola, familjerådgivningen*) but H had already contacted a private child psychiatrist (Dr V), on whose preliminary opinion she had relied early on, refusing to comply with the interim access arrangements. She had categorically refused to accept any such access, even when it had been proposed to organise the meetings at the Family Advice Centre in the presence of a police officer. She had feared for her own and the child's safety and had considered that access would not be in the child's best interests. She had not wanted any information about the child to be given to the applicant. She had referred to his criminal record, the 1990 opinion on his mental health and the threats he had addressed to her family. The social welfare official had concluded that the parents' relationship was negative and filled with hatred. The applicant had been contacted by telephone and letter as he had found it unnecessary to attend a meeting with

the social welfare officials. Occasionally, he had been very aggressive and threatening towards the officials. The Family Advice Centre's summary concluded that in the light of the information available at the time the Helsinki Social Welfare Board had been unable to formulate any clear proposal to the Kuopio District Court in respect of access rights.

28. On 2 June 1995 the District Court adjourned the access proceedings until 15 June 1995 at the request of H. In its decision of the latter date the District Court afforded custody of the child solely to H and granted the child the right to meet with the applicant for two hours on the last Saturday of every other month. The District Court furthermore ordered H to pay the administrative fine imposed on 14 January 1994. The District Court had at its disposal Dr V's final opinion of 17 May 1995 in which he had stated, *inter alia*, as follows:

“... I have met [I] twice and [H], her husband and second child on three occasions. ... [The applicant] refused to see me ... but spoke to me over the telephone. ...

... [I] is strongly attached to her mother and her stepfather, whom she wishes to call her father.

The conversation with [the applicant] was rather original. He was ... rather agitated and paranoid and unable to explain why. He refused to cooperate, although I explained that this would have been very important and in the interests of his child. Instead he threatened me with ... court proceedings and negative publicity; ... At the beginning of the conversation he lied to me, saying that the person answering the telephone was a neighbour. His paranoia was illustrated by accusations against everyone; everyone seemed to be wrong and to be persecuting him; only he was right. This fits well with the impression one gets from the documents, namely that [he] very easily becomes aggressive and that his ability to control his impulses is very poor. These factors combined with his paranoid attitude and feeling of always being right makes him very dangerous as regards [I].

... I consider it very likely that the planned meetings between [I] and [the applicant] will seriously damage at least [I's] mental development. They might also endanger her physical health. I continue to be of the opinion that [H] ... should not agree to any such experiments ... at the expense of the child's future. [The applicant] must first show that he is able to create a secure and good relationship towards [H]; only subsequently can meetings of this kind be contemplated. ...”

29. As regards the question of access the Kuopio District Court found as follows:

“According to the opinion of the ... Helsinki Social Welfare Authority, [I] is a well-balanced child with a trusting attitude towards adults. Witness [V] has stated in his opinion that the tests carried out by [M.H.], Chief Psychologist, and [V's own] psychological interviews have shown that she is well cared for and mentally balanced and that she has developed and continues to develop well ... According to [V], [I] is a healthy and happy child. [He] is of the opinion that [the applicant] cannot be granted access rights ..., since [H] is afraid of meeting [him] and [I] can sense that fear on the part of her custodian.

Bearing in mind that the three-year-old [I] is a well-balanced child, who is behaving in a manner which is adequate for her age, short meetings between her and her biological father and other strangers cannot be considered harmful to her, provided [her] custodian is able to support her mentally in connection with the meetings. There is thus no reason to prohibit access ... completely. ...

For these reasons, ... the District Court finds that [I] is entitled to meet her father and to stay in contact with him. ...”

30. The District Court specified that the meetings between the applicant and I were to take place at a children's centre in Kauniainen (near Helsinki), where the meetings could also be supervised. Both parties appealed against the judgment, the applicant seeking more extended access and H opposing access altogether.

31. On 4 July 1995 the County Administrative Board appointed an official of the Helsinki Social Welfare Authority to act as conciliator in the enforcement proceedings. She was ordered to submit her report by 1 August 1995. H's lawyer informed the conciliator that H could not be reached in July 1995, since she was on holiday.

32. On 19 July 1995 the conciliator requested to be replaced by another official, the applicant having objected to her appointment as she had been involved in drawing up the Helsinki Social Welfare Authority's opinion to the Kuopio District Court.

33. On 21 July 1995 the County Administrative Board appointed the suggested official to act as conciliator and ordered her to submit her report by 15 August 1995. H informed the conciliator that she wished the matter to be handled by her lawyer, who would be on holiday until 15 August 1995.

34. On 10 August 1995 the applicant repeated his enforcement request and referred to H's failure to bring I to the July meeting.

35. In her report of 21 August 1995 the conciliator found that conciliation had to be excluded, given the complete deadlock. H was categorically opposed to any access between I and the applicant and had refused even to discuss the matter in person with the conciliator. The applicant, for his part, was approaching the matter so aggressively and expressing such threats that it rendered any dialogue difficult. Even his telephone calls to the conciliator had been impertinent and had contained threats.

36. Heard in writing by the County Administrative Board, H referred, *inter alia*, to the applicant's criminal convictions and prison sentences as well as to the views of Dr V. In his rejoinder the applicant essentially considered that such material was irrelevant for the purposes of the enforcement proceedings.

37. On 19 September 1995 the County Administrative Board rejected the applicant's request for enforcement of the initial access arrangements, noting that the District Court's interim order of 16 December 1994 had been

replaced by its final decision of 15 June 1995. The applicant appealed to the Helsinki Court of Appeal (*hovioikeus, hovrätten*).

38. On 29 September 1995 the Court of Appeal of Eastern Finland, in response to the parties' appeal in the main proceedings concerning custody and access, made some minor changes in respect of the implementation of the access rights. Both parties sought leave to appeal to the Supreme Court (*korkein oikeus, högsta domstolen*).

39. On 7, 8 and 9 December 1995 the applicant repeated his enforcement request, referring to H's failure to bring I to the September and November meetings.

40. On 19 December 1995 the Helsinki Court of Appeal, acting as appellate body in the enforcement proceedings, quashed the County Administrative Board's decision of 19 September 1995 and ordered it to reconsider the applicant's request as comprising a request for enforcement also of the access arrangements ordered on 15 June 1995.

41. The County Administrative Board joined the remitted request and the applicant's fresh request for enforcement and again heard H in writing. The County Administrative Board summarised her statement, *inter alia*, as follows:

“... [The applicant's] intention has clearly been to harass [H] by requesting the imposition of administrative fines. The imposition of fines would not be in the best interests of the child, since [H's] financial possibility of caring [for I] would thereby be significantly jeopardised. The courts' finding that the biological father's rights are so strong that they must be given more weight than the experts' views on the best interests of the child is astonishing. Both the social welfare officers of the City of Helsinki and child psychiatrist [V] have been of the opinion that [access between I and the applicant] would not at this stage be in the best interests of the child.”

42. On 13 February 1996 the County Administrative Board ordered H, on pain of an administrative fine of FIM 5,000, to comply with the access arrangements ordered on 15 June 1995 and upheld on 29 September 1995. The County Administrative Board found that H had not put forward any acceptable reason for her refusal to bring I to the meetings fixed for July, September and November 1995. Moreover, the Supreme Court had not suspended the enforcement of the decision of 29 September 1995 of the Court of Appeal of Eastern Finland. Finally, the expert views to which H had referred, allegedly showing that enforcement would not be in the child's best interests, had already been known to the first-instance court in the civil proceedings regarding access and custody. That material could therefore not be invoked at the enforcement stage.

43. On 7 March 1996 the Supreme Court refused leave to appeal in the main proceedings concerning custody and access.

44. On 7 May 1996 the Deputy Chancellor of Justice (*apulaisoikeuskansleri, justitiekanslersadjointen*) found that the Kuopio District Court had not postponed the first set of the main proceedings

unnecessarily, given the failure by H to produce the necessary blood samples and the District Court's requests for opinions from the social authorities.

45. In response to the applicant's further request for enforcement the County Administrative Board, on 14 October 1996, ordered H to pay the fine of FIM 5,000 imposed in February 1996 and directed her to comply with the access arrangements on pain of a further fine of FIM 8,000. The County Administrative Board noted that the address of the centre where the meetings were to take place had changed. However, even after H had been informed of the new address (on 4 June 1996) she had refused to comply with the arrangements. She could also have verified the possible supervision of the meetings by contacting the centre directly.

46. In December 1996 the applicant brought fresh proceedings before the Helsinki District Court, seeking to obtain shared custody of I and extended access rights. H objected and sought to have the access rights revoked. She invoked her and her family's right to respect for their private and family life within the meaning of Article 8 of the Convention. She had now told her daughter that, being her biological father, the applicant wished to see her. The daughter, however, had allegedly not been interested in meeting him. H furthermore referred the applicant to her parents' address in Kuopio, where he could send presents intended for his daughter without having to know her whereabouts.

47. On 11 December 1996 Chief Inspector P.-L.H. of the Ministry for Social Welfare and Health Affairs requested the Deputy Senior Physician of the Kuopio Social Welfare and Health Centre to forward copies of the applicant's patient records. Reference was made to the drafting of the Ministry's opinion to the Ministry for Foreign Affairs in respect of his application to the Commission. According to P.-L.H., it had transpired from the documents already obtained that the centre in question was in the possession of records pertaining to the applicant's mental health which were of major importance to the Government's observations to the Commission. The request was based on sections 56 and 58 of the 1982 Social Welfare Act (*sosiaalihuoltolaki, socialvårdslagen*, no. 710/1982) and section 13, subsection 3(1), of the 1992 Act on the Status and Rights of Patients (*laki potilaan asemasta ja oikeuksista, lagen om patientens ställning och rättigheter*, no. 785/1992). Copies of the requested records were subsequently disclosed to the Ministry.

48. As from 1 December 1996 a request for enforcement of access rights was to be lodged with a district court which could also order that a child be escorted to meetings for enforcement purposes. In January 1997 the applicant requested the Helsinki District Court to order such enforcement.

49. By letter of 23 January 1997 Chief Inspector P.-L.H. forwarded to the Ministry for Foreign Affairs the request of counsel for H to obtain copies of the applicant's submissions to the Commission and the

Government's observations in reply. H had argued that this material would be of relevance both to the enforcement proceedings and the second set of custody and access proceedings which the applicant had just initiated. P.-L.H. stated, with reference to the material obtained by the Ministry for Social and Health Affairs, that H would have good reasons to propose that the District Court order a fresh conciliation and obtain a new opinion from the Social Welfare Board.

50. On 11 February 1997 the Helsinki District Court appointed two conciliators of the Western Social Welfare Centre of Helsinki (R.C., Senior Social Welfare Officer, and E.B., a psychologist of the Family Advice Clinic) and ordered them to submit an opinion by 4 March 1997. The conciliators met separately with the parents and, as suggested by H, also planned on interviewing the child.

51. On 12 February 1997 the Helsinki Court of Appeal upheld the County Administrative Board's decision of 14 October 1996 in the first set of enforcement proceedings.

52. In their report of 9 March 1997 the conciliators noted, *inter alia*, that in spite of her argument that it was important to ascertain the child's own opinion H had refused to bring the child to a meeting with them. The applicant, for his part, had demonstrated in the course of the conciliation that he could become very aggressive. He had stressed his own intelligence and good health. In his view his current situation was simply a result of the protracted access proceedings. On this point the conciliators noted, however, that already in 1990 he had been diagnosed as suffering from a mental disturbance. In his opinion the conciliators were always siding with H and the conciliation was only a means of prolonging the proceedings. He did not trust the Helsinki Social Welfare Authority or the judicial organs. He had threatened court proceedings and publicity. The conciliators continued as follows:

“It is of course natural that [the applicant] is frustrated ..., having tried in vain to meet his child. However, this does not ... explain such a strong aggressive behaviour. [The applicant's] suspicions also showed in that he recorded all telephone conversations and [our] meeting. ...

[The applicant] emphasised the child's right to know who her father is and to meet him. However, the fact that [H] has refused to comply with the access arrangements does not change the fact that [the applicant] is a complete stranger to the child. [The applicant's] lack of understanding is reflected, for instance, in his refusal to accept that the child could bring along a support person to the meetings, his reason being that he himself has to come to the meetings alone. ...”

53. The conciliators concluded that it would be in I's best interests that the meetings with the applicant be organised after the child had been properly prepared for them and would feel calm and safe. Otherwise the child would be under a duty to meet the applicant instead of enjoying a right to this effect.

54. Apart from interviewing the applicant and H the conciliators had also heard one of the previous conciliators as well as Chief Inspector P.-L.H., the mother of H as well as the supervisor at the centre where I's meetings with the applicant should have taken place. With reference to Chief Inspector P.-L.H.'s opinion that the conditions for the meetings should be revised, the conciliators attached a secret memorandum containing information obtained by the Ministry for Social and Health Affairs which had not been at the courts' disposal earlier. According to the memorandum, Chief Inspector P.-L.H. had obtained, while preparing the Government's observations on the application before the Commission, various patient records indicating that the applicant had been suffering from mental problems for years. When the conciliators had raised this point with the applicant, he had become very aggressive, contending that he had no such problems. The access dispute had begun to affect his nerves and his doctor had rightly been concerned about that, not about any mental problems. The applicant had again threatened court proceedings and publicity. He had refused even to consider psychiatric care or therapy. His language had been "unbelievably inappropriate".

55. The District Court heard the applicant, H, two witnesses on the applicant's behalf and conciliator R.C. The applicant contended that he had not behaved violently in recent years. Nor was he in need of therapy, care or medication against his alleged mental problems. The witnesses on his behalf testified along the same lines. Having been unable to interview the child, conciliator R.C. found herself unable to state any view as to whether the meetings would be in the child's best interest.

56. In its decision of 7 April 1997 the District Court found that the testimonies by the applicant's witnesses could not refute the medical indications relating to his mental state. Those indications did not, however, show that enforcement of the access arrangements would be contrary to the interests of the child, bearing in mind the limited access and the meeting place. The court was composed of one presiding professional judge and three lay members.

57. The District Court dismissed the applicant's request that the child be brought to the meetings. Having regard to the attitude of H, the District Court found it most likely, however, that the court-ordered access would not take place despite any changes in the arrangements. The fact that the child had never met the applicant could therefore be seen as a weighty reason for ordering the child to be brought. On the other hand, such a measure could not be the right way for the child to get to know the applicant. Instead the child was to be given a possibility to get to know him gradually in conditions where she would feel that this would happen on a voluntary basis. The District Court therefore concluded that there were no weighty reasons militating in favour of escorting the child to meetings and ordered that a professional supervisor as well as H and/or another person close to the

child should attend the child's meetings with the applicant for six months. The applicant had agreed to those changes. The District Court ordered H to comply with the modified arrangements on pain of a further administrative fine, this time automatically staggered in view of the special reasons at hand. The amount of the fine was FIM 10,000 at the outset, to be increased by FIM 2,000 for each of the three forthcoming meetings between I and the applicant with which H would refuse to comply (in May, July and September 1998).

58. The District Court furthermore ordered that the applicant could not bring other persons with him to the meetings. Neither could he record the meetings on audiotape, let alone film and/or photograph the other persons attending the meetings, without their consent. In order to keep I's whereabouts secret from the applicant, she and the accompanying persons would arrive at the meeting place ten minutes after the applicant and leave ten minutes before him.

59. The District Court finally waived the administrative fine imposed on H on 14 October 1996. It noted that, whereas the Kuopio District Court's decision of 15 June 1995 could have given the impression that the meetings would be supervised, the centre where they were to be organised had informed H that the meetings would not be supervised without an explicit court order to that effect. In these circumstances H had had reason to suspect that enforcement would not be in the child's best interests. Her refusal to bring I to those meetings had therefore been acceptable.

60. The District Court's decision was upheld by the Helsinki Court of Appeal on 14 August 1997 and leave to appeal was refused by the Supreme Court on 30 December 1997.

61. Meanwhile, at a preparatory hearing on 23 April 1997 the Helsinki District Court decided to adjourn the second set of the custody and access proceedings pending receipt of fresh opinions from the social welfare boards of Helsinki and Kuopio by 30 October 1997. It found no reason to amend or revoke the access rights on an interim basis.

62. In its opinion of 2 September 1997 the Kuopio Social Welfare and Health Board stated, *inter alia*, as follows:

“... At [our] meeting [the applicant] stated that his life situation had improved and that things were going well. He was unwilling to provide any further information to [the social welfare officers], stating that he would inform the court directly of his conditions.

[The applicant] called on 14 August 1997 to say he was moving away from Kuopio ... He refused to indicate his new place of residence.

In the light of the foregoing the Kuopio Social Welfare and Health Board is unable to put forward a recommendation concerning access, since there is no adequate information as to the conditions of the applicant. ...”

63. The Helsinki Social Welfare Authority was granted an extension until 31 December 1997 for the submission of its opinion. The opinion of that date stated, *inter alia*, as follows:

“[H] was interviewed at the Family Office on 11 July 1997 and briefly on 13 August 1997. She cancelled the [five] appointments reserved for her [between July and December 1997] ...

... The child has not been interviewed. [H] refused to bring [I] to the Family Office. Nor did she accept that [social welfare] officers pay a visit to her home, where the child could have been interviewed in familiar surroundings. [H] wishes to keep her family (her husband and children) outside the access dispute. ...

H objects to any meetings between I and [the applicant]. In her opinion [the applicant] has nothing positive to give to the child. On the contrary, she fears that [he] will frighten [I] with his uncontrolled behaviour. She considers [the applicant] to be mentally unstable and fears physical violence on his part. ...

H will not permit [the applicant] to see [I] until [the child] is ready for it and expresses a wish to that effect. If the child is ordered to be brought, [H] will leave home with the child. ... The child itself should have the right to decide whether or not it wishes to see its father. ...

... The officers in charge of this investigation have not met with [the applicant]. In telephone conversations his behaviour has been inappropriate and threatening towards the officers of the Family Advice Clinic. He has behaved in the same manner towards the conciliators of the ... Social Welfare Authority.

In the course of the investigation a meeting between [I] and her father could not be organised. Such a meeting might have produced valuable information with a view to assessing the success of future meetings. ... On the basis of the information now collected it is not possible to assess at what age the meetings could be successful with regard to the best interests of the child. The circumstances would at any rate have to be very secure. ... In her early teens [I] will herself be ready to decide ... on possible meetings with her father. ...”

64. In their opinion of 19 December 1997 (attached to the Helsinki Social Welfare Authority's opinion) psychiatrists M.L. and O.H. of the Family Advice Clinic of the Southern Social Welfare Centre stated, *inter alia*, the following:

“... We met I together with her mother on 28 October 1997 and the mother alone on 29 September 1997. We offered three different appointments to [the applicant] but he refused to attend. ...

We have not met the child separately and have not conducted any psychological examination, considering that this would not shed any further light on the matter.

The investigation is incomplete, since in respect of the father it was limited to telephone calls and letters received from him. It was not possible to arrange a meeting between the ... father and the daughter or a ... meeting between the mother, the daughter and the father, since the mother did not agree to such a meeting.

[The applicant] could not agree on a date for a meeting. At first he doubted whether he would be able to attend the meetings due to his studies and the long distance [between Helsinki and Rovaniemi]. Later he stated that he would not attend the meetings unless his daughter had been interviewed at [the Clinic] before him. When we offered ... to meet him after [I]'s visit ..., he refused, requiring that we arrange a meeting between him and [I]. ... Finally, [he] noted that under domestic law it was for the authorities of his place of residence to provide an opinion on his conditions.

During the telephone conversations [the applicant] ... occasionally used inappropriate and aggressive language towards us. It was not possible to have a dialogue with him. [His behaviour] did not reflect any real understanding of the world of a five-year-old girl or of the feelings and reactions which she could be facing if she met him in the current extremely tense conditions.

... A five-year-old child's perception of the world is still [that it is] identical to that of its parents ... Accordingly, even if [H and I's stepfather] were to support [I] in her meetings with her biological father, [the] internal fears and resistance she would sense in her [*de facto*] parents would place her in a situation of anxiety and contradiction.

Subjecting the child to the very difficult disputes between its biological parents could endanger her normal mental development. ...

... It would be very important for [I] that the legal battle between her biological parents cease. ...”

65. The applicant moved to Rovaniemi towards the end of 1997. In December 1997 he brought further enforcement proceedings before the Helsinki District Court, again referring to the exceptional circumstances which in his view required that the child be brought to the meetings. A preparatory hearing was held on 2 February 1998, by which time H and I had apparently moved to Oulu.

66. On 3 March 1998 the Helsinki District Court again dismissed the applicant's demand that the child be brought to the meetings. Neither the presiding judge nor any of the three lay members had examined the previous enforcement request decided on 7 April 1997. The District Court had again heard the applicant and H as well as psychiatrist M.L. of the Family Advice Clinic and also based itself on the Helsinki Social Welfare Authority's opinions of 29 May 1995 and 31 December 1997, the opinion of the Family Advice Centre of 19 December 1997 and the Kuopio Social Welfare and Health Board's opinion of 2 September 1997.

67. The District Court further ordered H to pay the administrative fines imposed on 7 April 1997 in the amount of FIM 16,000. She was also ordered to comply with the access arrangements on pain of a further automatically staggered fine. Access was now to take place in Oulu. The amount of the fine now imposed was FIM 20,000 at the outset, to be increased by FIM 6,000 for each of the three forthcoming meetings between I and the applicant which H would refuse to respect (in March, May and July 1998). Both parties appealed against the decision.

68. On 20 April 1998 the Helsinki District Court considered the applicant's fresh request for shared custody and extended access rights. It decided to hear him, H, two witnesses on the applicant's behalf (S.H. and K.P.) and four on behalf of H (Dr V, Dr O.H., M.H. and M.L.). H was to be heard in the applicant's absence, as her fear of the applicant might prevent her from supplying all the relevant information. The District Court dismissed a request by H that the applicant's aggressive behaviour be assessed by an expert. The oral evidence was taken on the same day. Neither the presiding judge nor any of the lay members had participated in the decisions of 7 April 1997 and 3 March 1998 in respect of the applicant's enforcement requests.

69. The District Court also had regard to the opinion on the applicant's mental state submitted by the Unit for Forensic Psychiatry of the Kuopio County Prison on 29 June 1990, the related opinion of the National Medico-Legal Board of 11 July 1990, Dr V's final opinion of 17 May 1995, the Helsinki Social Welfare Authority's opinion of 29 May 1995, the conciliators' opinion of 9 March 1997, the attached secret memorandum, the opinion of the Family Advice Centre of 19 December 1997, the Helsinki Social Welfare Authority's opinion of 31 December 1997 and the pre-trial investigation record of the Kuopio Police Department drawn up in November 1991 in respect of the applicant's offences against H.

70. In its decision of 29 April 1998 the District Court dismissed the applicant's request for joint custody, revoked the access arrangements and upheld the secrecy order in respect of the child's whereabouts. Having heard H orally in the applicant's absence, the District Court had become convinced that her fear of the applicant was genuine and primarily based on his assault and other offences committed in 1991, when H had been pregnant. This fear explained in a plausible manner why she had consistently refused to let I meet the applicant even under supervision. The testimony of witnesses M.H. and M.L. had further strengthened H's account of her fears.

71. The District Court furthermore found it established through the testimony of Dr O.H. that H was considering I's best interests by keeping the child out of her disputes with the applicant. Above all, H had been physically assaulted by him during her pregnancy. Her fears relating to that incident had not been dispersed despite the passage of time. Those fears would inevitably be passed on to I and any access at her age would produce distress and confusion which could lead to a permanent depression and anxiety. Access without any risks could take place once I was able to form her own opinion, namely at the age of 14 or 15. When telling I of her biological father, H had also stated that she did not want the child to meet with him, fearing "something bad" could happen. In the opinion of Dr O.H. the child would at any rate have sensed H's fears intuitively. During the investigation the applicant had cooperated with difficulty and had questioned Dr O.H.'s competence. According to Dr O.H., it would have

been crucial to the investigation that the applicant be interviewed in the presence of I. The telephone conversations with him had not clarified his motives for wishing to see his child.

72. The District Court noted that Dr V's testimony had been consistent with that of Dr O.H. and found no reason to question Dr V's competence in the field. Moreover, the District Court's hearing of the applicant in person had strengthened the view that he was unable to distinguish between the child's interests and his own and was perceiving the child's access right as an obligation.

73. Finally, the District Court ordered that the conciliation report and certain passages of its decision which recounted the contents of that report should be kept confidential for a period of forty years.

74. In the light of the quashed access arrangements the Helsinki Court of Appeal, on 22 May 1998, dismissed the applicant's appeal against the District Court's decision of 3 March 1998 and relieved H of paying the administrative fine imposed on 7 April 1997 and upheld for payment on 3 March 1998.

75. In his appeal against the District Court's decision of 29 April 1998 in the second set of custody and access proceedings the applicant requested either that the case be referred back to the District Court for a further investigation into his daughter's conditions and his ability to relate to her, or that an oral hearing be held before the Court of Appeal. The applicant argued that since the mother's fears dated back to his assault in 1991 her fears during the recent years could only be of an imaginary character, given that the two had only met in the court room. By consistently defying the court-ordered access arrangements which had been decided and maintained in the best interests of the child H had eventually managed to have the child's access rights revoked. The applicant also demanded that he be given the necessary information allowing him to contact the child.

76. On 15 December 1998 the Helsinki Court of Appeal refused the applicant's appeal after rejecting his request for a remittal or re-hearing. In refusing to admit the proposed fresh evidence it noted, *inter alia*, that the applicant had refused to provide detailed information on his own situation at the time of the Kuopio Social Welfare Board's investigation in the autumn of 1997.

As to the merits of the appeal, the Court of Appeal found as follows:

“According to section 10 of [the Act on Child Custody and Right of Access (*laki lapsen huollosta ja tapaamisoikeudesta, lag angående vårdnad om barn och umgängesrätt*, no. 361/1983)], 'a matter relating to child custody and right of access shall be resolved by keeping the interests of the child foremost in mind. To this end, special attention shall be paid to the manner in which custody and right of access may best be realised in the future'. Certain international conventions which are binding on Finland emphasise everyone's right to family life as well as the right of a child, who has been separated from a parent, to maintain regular and direct contact with both parents. However, the best interests of the child is a determining factor even in the

application of these conventions, and this is explicitly provided for in Article 9, paragraph 3 of the Convention on the Rights of the Child.

According to the opinions of the social welfare authorities ... and the witnesses heard before the District Court, [I], who was born [in 1992], has been subjected to exceptionally strong conflicts between her parents. According to the opinions, a five-year-old child is not able to form an opinion of her own which would be distinct from the fears of her mother. Accordingly, meetings at this stage would cause anxiety and confusion in [I], possibly leading to more serious mental problems. During the consideration of the matter [the applicant] has not been able to make a distinction between the interests of the child and his own.

The Court of Appeal notes that on the basis of domestic law and international conventions the child has a right of access also in respect of the parent with whom he or she does not reside. If not considered to be in the best interests of the child, this right ... may be set aside by ... the authorities. A right for the parent to enjoy access in respect of his or her child can also be derived from the right to family life provided for in international conventions. In a case of this kind involving conflicting interests or rights the matter shall be decided in accordance with the best interests of the child.

Considering the above and the other reasons for the District Court's decision, the Court of Appeal finds ..., whilst recognising the importance ... of creating a father-child relationship between [I and the applicant] as early as possible, that in the present circumstances it is not in the best interests of [I] to grant the right of access requested by [the applicant]. ...”

77. On 23 February 1999 the Supreme Court refused the applicant leave to appeal.

78. On 11 November 1999 the applicant requested the Parliamentary Ombudsman (*eduskunnan oikeusasiamies, riksdagens justitieombudsman*) urgently to investigate whether any public official had committed an offence in office, or had incited to such an offence, on account of the disclosure to the Ministry for Social and Health Affairs of the applicant's patient records at the Kuopio Social and Health Care Centre. The Ministry's request to obtain the material had allegedly not been founded on domestic law. Information emanating from this material had not only been relied on by the Government in their observations to the Commission but had also been conveyed to conciliator R.C. after the Ministry's Chief Inspector P.-L.H. had advised H to request a fresh conciliation report. The conciliator had conveyed the information further to the Helsinki District Court which had relied on it in its decisions of 7 April 1997 and 29 April 1998 with the result that the access rights had ultimately been revoked.

No decision has yet been forthcoming from the Parliamentary Ombudsman.

II. RELEVANT DOMESTIC LAW

A. Paternity, custody and access

79. According to the 1975 Paternity Act (*isyyslaki, lag om faderskap*, no. 700/1975), a court shall collect, of its own motion, all necessary evidence in respect of a paternity investigation (section 30). To this end the court may order the child, the mother and the possible father or fathers to deliver blood samples on pain of an administrative fine. In case of non-compliance the fine shall be upheld for payment and a further fine may be imposed. Alternatively, the court may order that the person in question be brought by force to deliver the sample (sections 1-3 of the 1975 Act on Certain Blood and Other Investigations into Hereditary Features (*laki eräistä veri- ja muita periytyviä ominaisuuksia koskevistä tutkimuksista, lag om vissa blodundersökningar och andra undersökningar rörande ärftliga egenskaper*, no. 702/1975). Cases relating to the establishment or annulment of paternity shall be dealt with urgently (section 46 of the Paternity Act).

80. According to the 1983 Act on Child Custody and Right of Access, the child shall have the right to maintain contact with the parent with whom he or she is not living (section 2). The court shall place primary emphasis on the interests of the child and have particular regard to the most effective means of implementing custody and access rights in the future (sections 9 and 10). The court's interim orders and decisions are immediately enforceable, unless they state otherwise (section 17).

B. Enforcement of access rights

81. The 1975 Act on the Enforcement of Decisions Concerning Custody of Children and Access Rights (*laki lapsen huollosta ja tapaamisoikeudesta annetun päätöksen täytäntöönpanosta, lag om verkställighet av beslut som gäller vårdnad om barn och umgängesrätt*, no. 523/1975 – “the 1975 Act”) was in force up to 1 December 1996, when it was replaced by Act no. 619/1996 (“the 1996 Act”). Under the 1975 Act enforcement proceedings were to be instituted before the Chief Bailiff which, before ordering enforcement, was to assign, as a conciliator, a person appointed by the Social Welfare Board or another suitable person to mediate between the parties with a view to enforcing the decision and to draw up a report. Such conciliation was to be aimed at persuading the person taking care of the child to comply voluntarily with his or her obligations under the relevant decision. Conciliation was not to be ordered if it was evident from previous attempts that it would be unsuccessful or, in the case of a custody decision, if immediate enforcement was in the child's interests and dictated by strong reasons (sections 4 and 4a).

82. If deemed necessary, the Chief Bailiff was to obtain opinions from State and municipal authorities and hear the child itself and others. The Chief Bailiff could also proceed to hear witnesses and experts and have the child examined by a physician (section 11).

83. The Chief Bailiff's decision could be enforced immediately and could include the imposition of an administrative fine for enforcement purposes (sections 5 and 13).

84. If, following a decision regarding access, the conditions had changed so significantly that a re-examination by a court would be in the best interests of the child, the Chief Bailiff was to dismiss the enforcement request (section 7).

85. Under the 1975 Act enforcement could not take place against the child's own wishes if he or she was twelve years of age or sufficiently mature for his or her wishes to be taken into account (section 6). The 1996 Act contains a similar provision (section 2).

86. According to the 1996 Act, a request for enforcement shall be lodged with the competent district court which shall normally appoint a conciliator to mediate and draw up a report (sections 6 and 8). The court may hear the conciliator, the child and others orally, obtain opinions from State and municipal authorities and order that the child be examined by a physician or other expert (section 12). The court shall dismiss the request if, in light of changed circumstances or for any other reason, enforcement would be manifestly contrary to the child's best interests (section 14).

87. The 1996 Act furthermore provides for the possibility of escorting the child to meetings with a view to enforcing access arrangements, if it is likely that access would not otherwise materialise and provided there are, from the point of view of the child's best interests, particularly weighty reasons (section 16). The conciliator or a representative of the social welfare authority must escort the child. He or she must request the presence of a person close to the child and, if necessary, that of a physician or other expert (section 24). All measures must be carried out without shocking the child. If enforcement is impossible owing, for instance, to the shock experienced by the child, it must be postponed (section 3).

88. In the drafting history of the 1996 Act the government proposed that a court could issue a standing escorted access order which would be valid for six months (see Bill no. 96/1995, pp. 44-45). Parliament's Standing Legal Affairs Committee did not accept this proposal. Considering that being escorted was stressful for the child, the Committee found that an escorted access order should only be issued for one meeting at a time (Committee Report no. 7/1996).

89. The district court may order the defendant either to hand over the child to the party seeking enforcement or to disclose the child's whereabouts on pain of an administrative fine (sections 15 and 17). For particular reasons, the fine may be automatically staggered, its final amount depending

on the duration of the non-compliance (section 18). Certain provisions of the 1990 Act on Administrative Fines (*uhkasakkolaki, viteslag*, no. 1113/1990) are also applicable. Accordingly, the fine is fixed on the basis of all relevant circumstances and may be reduced for particular reasons. The district court may also quash and reconsider the imposition of a fine if the circumstances have changed, if important fresh evidence has been obtained or if the fine has been imposed by a manifestly incorrect application of the law (sections 8, 11 and 12).

C. Access to confidential information

90. The Act on Custody and Access Rights with regard to children does not compel a custodian to disclose a child's whereabouts to a parent who lacks custody. Under the Social Welfare Act, social welfare officials may not, without the consent of the person concerned or that of, for instance, his or her custodian, disclose personal and family information obtained in the performance of their duties. This duty of confidentiality does not prevent officials from disclosing information to those entitled to obtain it for the performance of their official duties (section 57). Thus the social welfare authorities are entitled to obtain, from a public body such as a municipal care centre, any material required for the performance of their duties (section 56). The confidentiality of patient records, as stipulated in the Act on the Status and Rights of Patients, may thereby be waived (section 13 of the said Act). A refusal to disclose information requested under section 56 of the Social Welfare Act constitutes an offence (section 58).

91. Under section 8 of the 1996 Act a conciliator must have access, to the same extent as social welfare authorities, to medical and other information as stipulated in section 56 of the Social Welfare Act. The conciliator may also seek executive assistance in gathering such information. The conciliator's report may contain information which should not be disclosed, bearing in mind the child's best interests. The court may disclose such information only to a party to the proceedings and to other authorities.

D. Secrecy orders

92. According to the 1987 Act on Personal Data Files (*henkilörekisterilaki, personregisterlag*, no. 471/1987), a registered person may prohibit the keeper of the register from disclosing his or her address (section 23). A custodian has the same right in respect of a child.

93. According to the Population Data Act, a registry office may, on request, order that an address may only be disclosed to authorities if the person in question has reason to fear for his or her own or his or her family's health or safety. The secrecy order may be granted for two years, following

which it may be prolonged on an annual basis (section 25, subsection 4, as in force as from 1 June 1994).

PROCEEDINGS BEFORE THE COMMISSION

94. Mr Nuutinen applied to the Commission on 26 August 1996. He alleged that the court proceedings for the determination of his paternity and the custody and access rights in respect of his daughter had been too lengthy; that the access rights had been excessively limited at the outset; that the authorities had kept his daughter's whereabouts secret; and that they had failed to make sufficient efforts to enforce the access orders, with the result that the applicant had never been able to contact his daughter.

95. The Commission declared the application admissible on 15 January 1998. In its report of 21 October 1998 (former Article 31 of the Convention)¹ it expressed the unanimous opinion that there had been a violation of Article 6 § 1 of the Convention but not of Article 8.

FINAL SUBMISSIONS TO THE COURT

96. In their memorial the Government requested the Court to hold that Finland had violated neither Article 6 nor Article 8 of the Convention.

97. The applicant asked the Court to find that there had been a violation of both Article 6 and Article 8 of the Convention on account of the length of the proceedings and the non-enforcement of the access rights. He also lodged additional complaints under these provisions (see paragraphs 98-99 below).

THE LAW

I. SCOPE OF THE ISSUES BEFORE THE COURT

98. In his memorial to the Court of 10 December 1999 the applicant complained that the Government had violated Article 6 of the Convention by unlawfully supporting his opponent H in domestic proceedings which were the subject of his application to the Commission. Reference was made to the disclosure of his patient records at the request of the Ministry of

1. *Note by the Registry.* The report is obtainable from the Registry.

Social and Health Affairs. Although the records had not been unknown to the authorities prior to the Ministry's request, they could not be disclosed without the applicant's consent. The applicant had been unable to obtain any confidential material relating to his opponent which could likewise have been put before the courts. Although obtained illegally, the medical records had been accepted as evidence by the courts. Accordingly, as a result of the Government's intervention to his detriment in the domestic proceedings, the applicant had not been placed on an equal footing with his opponent. In sum, the court proceedings ending on 30 December 1997 and 23 February 1999 had not been fair within the meaning of Article 6 § 1 of the Convention.

99. The applicant further complained that the above disclosure of his medical records and their forwarding to conciliator R.C., the Helsinki District Court and the Ministry for Foreign Affairs had also violated his respect for his private life as guaranteed by Article 8 of the Convention. He was now unable to use public health services, fearing that any future records on him would likewise be disclosed unlawfully and to his detriment. Neither could he afford to use private health services.

100. The Government did not comment on the above grievances.

101. The Court notes that the case now before it has been delimited by the Commission's decision on admissibility which dealt only with the applicant's complaints relating to the length of the proceedings, the extent of the access rights granted in respect of his daughter, the non-enforcement of that access and the measures taken by the authorities to keep her whereabouts and other information pertaining to her secret from the applicant (see, for instance, the *Olsson v. Sweden* (no. 2) judgment of 27 November 1992, Series A no. 250, pp. 30-31, § 75). The Court is nonetheless competent, in the interests of economy of proceedings, to take into account facts occurring during the course of the proceedings before it, in so far as they constitute a continuation of the facts underlying the complaints declared admissible (see, for instance, the *Olsson v. Sweden* (no. 1) judgment of 24 March 1988, Series A no. 130, pp. 28-29, § 56).

102. Accordingly, the Court will limit its examination of the complaints under Article 6 to the length of the court proceedings, while also taking into account the proceedings which continued after the Commission had declared the application admissible. The Court cannot, however, examine the complaint relating to the fairness of the proceedings. Nor does the Court have jurisdiction to entertain the applicant's complaint under Article 8 that the allegedly unlawful disclosure of his medical records hindered him from using public health services.

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

103. The applicant complained that the proceedings had been excessively lengthy, in particular as they involved a number of unnecessary adjournments before the two district courts which had been competent at different stages of the various proceedings. He invoked Article 6 § 1 of the Convention which reads, in so far as relevant, as follows:

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

104. The Government submitted that the proceedings had not been unreasonably lengthy, bearing in mind the complexity of the case and the conduct of both the applicant and the relevant authorities. The proceedings had commenced in September 1993 when the applicant brought his initial action seeking the establishment of his paternity in respect of I and claiming custody and access rights. Considering that the civil courts were continuously re-assessing the child's best interests after the entry into force of the 1996 Act, the proceedings had ended in February 1999 with the Supreme Court's refusal of leave in the last set of enforcement proceedings.

105. In the Government's opinion the matter could be considered particularly complex, as clearly shown by the redefinition and final revocation of the access rights in the second set of the main proceedings. No particular delay was imputable to the authorities. In five years and five months the matters in question were examined five times, each time at two or three court levels. The courts were required to seek the truth. It was only after the applicant's paternity had been clarified in September 1994 that the Kuopio City Court could request opinions from the social welfare authorities concerning custody and access. The main reason for the Helsinki authority's delay in submitting its opinion was its legal obligation to carry out a thorough investigation. The meetings with the various parties had been aimed at an amicable solution. However, H had repeatedly cancelled agreed meetings shortly beforehand and refused even to consider any meetings between I and the applicant. The persistent refusal on the part of H to comply with the court-ordered access arrangements could not be imputed to the Government.

106. The Government further contended that the applicant himself was partly responsible for the delay. He had waited four months before requesting enforcement of the access rights granted in December 1994. He had requested that the conciliator be changed in the middle of the conciliation process. His demanding, threatening and aggressive behaviour had generally rendered the social welfare authorities' work more difficult. For instance, in late 1997 he had refused to attend meetings with social welfare officials and refused to disclose his new place of residence.

107. As to the nature of the matter at stake for the applicant, the Government submitted that, unlike the position in the case of H. v. the

United Kingdom, the proceedings had never resulted in an adoption order in respect of his child (see the judgment of 8 July 1987, Series A no. 120, pp. 62-63, §§ 85-86).

108. In agreeing with the applicant the Commission noted, in particular, that the two social authorities had not been requested to submit opinions on the question of access until the initial paternity, custody and access proceedings had been pending for one year. The Helsinki Social Welfare Board had then been granted a total of nine months for the preparation of its opinion. In the second set of the main custody and access proceedings it had taken the same authority eight months to submit a fresh opinion in a matter which was no doubt complex but by no means new to it. In sum, the overall proceedings had lasted over five years at the time of the adoption of the Commission's report, which was unreasonable.

109. The Court notes the parties' agreement that Article 6 § 1 applies to the proceedings as a whole, including the enforcement stage. The Court finds no reason to differ (see, for instance, the *Di Pede v. Italy* judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1384, § 24). Thus the proceedings lasted from September 1993 to February 1999, that is to say five years and five months.

110. The reasonableness of the length of proceedings is to be considered in the light of the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and that of the relevant authorities. On the latter point, the importance of what is at stake for the applicant in the litigation has to be taken into account. It is thus essential that custody cases be dealt with speedily (see, for example, the *Hokkanen v. Finland* judgment of 23 September 1994, Series A no. 299-A, p. 25, § 69). A delay at some stage may be tolerated if the overall duration of the proceedings cannot be deemed excessive (see, for example, the *Pretto and Others v. Italy* judgment of 8 December 1983, Series A no. 71, p. 16, § 37).

111. The Court accepts that the present case, although not particularly complex at the outset, became increasingly complicated due to the difficulties encountered at the enforcement stage. The enforcement proceedings had to be set in motion by the applicant and involved a continuous reassessment of the child's best interests as provided for, most recently, by the 1996 Act (see paragraphs 86 and 89 above).

112. As for the conduct of the authorities, the Court notes that in the initial proceedings regarding paternity, custody and access the first hearing before the Kuopio City Court was held in January 1994, four months after the applicant had brought his action. The hearing was adjourned for four more months while the parties were obliged to produce blood samples on pain of an administrative fine. Although H failed to produce samples emanating from herself and I, the court adjourned its hearing for a further period of four months, having imposed a further fine should she persist in her refusal to cooperate. Having obtained the necessary samples by the time

of its hearing in September 1994, the City Court adjourned the case for three months pending the receipt of the opinions of the Kuopio and Helsinki social authorities on the question of access. In December 1994 the City Court confirmed the paternity of the child but adjourned consideration of the custody and access issues for six months in view of the Helsinki Social Welfare Board's request for an extension of the time allowed for its opinion. Judgment was rendered in June 1995. It was upheld by the Helsinki Court of Appeal three months later and the Supreme Court refused leave to appeal six months later.

113. The Court further notes that it took four months before a preliminary hearing was held before the Helsinki District Court in the second set of the main proceedings, which the applicant initiated in December 1996. At the preliminary hearing the proceedings were adjourned for a further six months pending the receipt of fresh opinions from the Kuopio and Helsinki social authorities. The Helsinki authority was later granted a two-month extension. Although the opinions had been received by the end of 1997, the main hearing before the District Court took place four months later, in April 1998. Its judgment was rendered the same month, whereas the Court of Appeal dealt with the case in six months and it took the Supreme Court two months to consider the request for leave to appeal.

114. The Court accepts the Government's argument that the two social authorities could not be requested to submit opinions on the question of access until the paternity issue had been clarified in the first set of the main proceedings. The Court notes, however, that the Helsinki Social Welfare Board was afforded a total of nine months to prepare its opinion on the access question. Moreover, in the second set of the main proceedings the Helsinki Social Welfare Board was granted a total of eight months to submit a fresh opinion in a matter which was no doubt complex but certainly not new to it. These periods must be considered strikingly long in a case of this kind.

115. As for the conduct of the authorities during the enforcement proceedings, the Court notes that the first set was initiated in April 1995 and ended in February 1997, thus lasting less than two years. It is true that it took the Court of Appeal one year to decide on the applicant's second appeal. Given that those proceedings involved two rounds of examination on each of the two decision-making levels, their total duration cannot be considered excessive.

116. Turning to the second set of the enforcement proceedings in 1997, the Court notes that they lasted about one year and involved a three-level examination of the matter. The third set of the enforcement proceedings initiated in December 1997 ended with the Court of Appeal's decision five months later. The Court cannot detect any particular delay for which the authorities could be held responsible in either set of proceedings.

117. Summing up, the Court has detected certain delays imputable to the first-instance courts in the two sets of the main proceedings, first in respect of the establishment of the paternity of the child and subsequently as regards the written hearing of the Helsinki Social Welfare Authority on the access question. Notwithstanding the procrastination of H in producing blood samples capable of establishing I's paternity, the responsibility for ensuring compliance with the requirements of Article 6 rested ultimately with the courts. The Court further recalls that when requesting opinions from other authorities, the courts remain responsible for ensuring that the proceedings are not excessively prolonged (see, for instance, the *Martins Moreira v. Portugal* judgment of 26 October 1988, Series A no. 143, p. 21, § 60).

118. As for the conduct of the applicant, the Court agrees with the Government that he is to blame to some extent. As noted by the Court of Appeal in its decision of 15 December 1998 (see paragraph 76 above), he refused to provide detailed information on his own situation, which cannot but have hampered the fresh investigation requested by the District Court on 23 April 1997 (see paragraph 61 above).

119. The Court recalls, however, that what was at stake for the applicant was not only his right to obtain a speedy court confirmation of his biological and legal ties with I. Those ties were indeed confirmed already in December 1994 and access rights were granted. At the time the applicant had not yet seen his daughter, then almost two years old. She was almost seven years old when the ensuing proceedings eventually ended with the revocation of the access rights without the applicant ever having seen his child.

120. In the light of the criteria laid down in its case-law and having regard to the particular circumstances of the case, the Court therefore concludes that the overall length of the proceedings exceeded a "reasonable time". Accordingly, there has been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLE 8 OF THE CONVENTION

121. Before the Commission the applicant complained that in spite of the mother's defiance the authorities failed to make sufficient efforts to enforce the access rights in respect of his daughter. Those rights had been excessively limited at the outset and his daughter's whereabouts and other information about her had been kept secret from the applicant. As a result they were never able to meet and the access rights were ultimately revoked. The applicant invoked Article 8 of the Convention which reads, in so far as relevant, 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 the rights and freedoms of others.”

A. Non-enforcement of the access rights

122. The applicant contended that he had not been unwilling to negotiate with the social welfare officials. He had accepted that the initial meetings between him and his daughter should be supervised and that access should be increased gradually. However, as a result of the enforcement authorities' ineffectiveness he had been obliged to institute fruitless enforcement proceedings and to seek a reassessment of the substance of the custody and access matter. Meanwhile, the non-enforcement of the access rights had made him increasingly distressed, ultimately provoking him into behaving in a fashion which had resulted in the revocation of the access rights.

123. The Government recalled that the respondent State's positive obligation inherent in an effective respect for family life was not absolute. According to the social welfare officials and the conciliators involved, the relationship between the applicant and H had been exceptionally complicated. Given their very strong negative attitude both towards each other and towards the authorities, the authorities had done everything that could reasonably be expected of them in order to facilitate the enforcement of the access arrangements. In so far as the non-enforcement had been due to H's non-compliance with the court orders, the Government could not be answerable for her behaviour. The Government accepted that her refusal to bring I to the meeting with the conciliators at the beginning of 1997, despite her own suggestion that the child should be heard, had contributed to the unsuccessful outcome of the conciliation and the entire proceedings. However, the applicant had also hampered the enforcement attempts by failing to cooperate with the authorities in order to find a solution which would have been “working and positive from the child's point of view” and based on an investigation which would have been “as reliable and impartial as possible”. Instead his demanding, threatening and aggressive behaviour towards the authorities showed that the fearful attitude of H was justified. The applicant further refused to negotiate with H in the presence of the conciliators, unless the child was also present. The conciliators considered this demand to be contrary to the best interests of the child.

124. The Government, moreover, maintained their reference to the applicant's convictions of attempted manslaughter and assault in 1987 and 1990 as well as to the report on his mental health submitted in the proceedings leading to his conviction of the latter offence. In October 1991 the applicant had again threatened H and her parents. The Government considered the applicant to suffer from serious psychological problems, including a mixed personality disorder, as shown, for instance, by his

aggressiveness and difficulties in controlling his behaviour towards the conciliators. While preparing their pleadings to the Commission the Government had obtained more detailed information proving that the applicant's threatening and aggressive behaviour towards H and her resultant fears had constituted reasoned grounds for the non-enforcement of the access arrangements. According to this information, the applicant's mental health problems had again become acute in 1996, when he had been prescribed medication against his depression and insomnia but had refused to accept psychiatric treatment. The Government alluded to conciliator R.C.'s observations to the Helsinki District Court of 9 March 1998 in which she observed that the applicant had been giving incorrect information about his mental health and development. In the Government's view the applicant had thereby contributed to the fact that the access arrangements had not been subjected to stricter conditions at the outset. Such further restrictions could have diminished H's fears and suspicions, which were understandable and partly justified. Once it had been established that the courts had not had correct information at their disposal when ordering and upholding the initial access arrangements in 1995, the Helsinki District Court, on 7 April 1997, tried to increase H's willingness to comply with the court orders by placing the meetings under supervision by a professionally trained person and authorising H or a person of her choosing to attend them. By imposing automatically staggered fines the court also sought to have H cooperate, bearing in mind her strongly negative attitude towards conciliation and enforcement. The revocation of the access rights in April 1998 was based on the consistent opinions of the Helsinki Social Welfare Authority and Drs O.H. and V as well as on the oral statements of H before the District Court. At any rate, the enforcement possibilities had always been limited because otherwise the applicant's daughter would have been subjected to situations which would have been "unreasonable" for her. Nor would this have been in the interests of the applicant in the long term.

125. The Commission considered that the applicant might have contributed to the delays at the enforcement stage, in particular by not cooperating sufficiently with the social authorities during the preparations of their opinions to the Helsinki District Court in the second set of the main proceedings in 1997. While prepared to make certain allowances for the frustration which the applicant must have experienced after several unsuccessful enforcement attempts, the Commission noted that he had repeatedly behaved in an inappropriate and even aggressive manner towards social welfare officials and conciliators. However, the Government's allusion to the applicant's criminal past and his mental health which could have endangered the child's development had already been examined in the initial custody and access proceedings resulting in very limited access. Moreover, in April 1997 the District Court had found that the fresh evidence regarding the applicant's mental state did not show that enforcement of the

access arrangements would be contrary to the child's interests, bearing in mind the limited access and the meeting premises. The Commission concluded, however, that in the continuous reassessment of the child's best interests the District Court could reasonably consider it justified to revoke the access rights in April 1998. The national authorities having taken all the steps to enforce the access rights which could reasonably be required in the very difficult conflict they had to deal with, Article 8 had not been violated.

126. The Court finds it undisputed that the relationship between the applicant and his daughter amounted to "family life" within the meaning of Article 8 § 1 of the Convention and the Court sees no reason to differ.

127. The essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities. There may in addition be positive obligations inherent in effective "respect" for family life. Whilst the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition, the applicable principles are similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole, and in both contexts the State is recognised as enjoying a certain margin of appreciation (see, for instance, the Hokkanen judgment cited above, p. 20, § 55).

128. The obligation of the national authorities to take measures to facilitate meetings between a parent and his or her child is not absolute, especially where the two are still strangers to one another. Such access may not be possible immediately and may require preparatory measures being taken to this effect. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and cooperation of all concerned will always be an important ingredient. Whilst national authorities must do their utmost to facilitate such cooperation, any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention. Where contacts with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them. What is decisive is whether the national authorities have taken all necessary steps to facilitate access as can reasonably be demanded in the special circumstances of each case (see, for instance, the Hokkanen judgment cited above, p. 22, § 58).

129. In examining whether the non-enforcement of the access arrangements amounted to a lack of respect for the applicant's family life the Court must strike a balance between the various interests involved, namely the interests of the applicant's daughter and her *de facto* family, those of the applicant himself and the general interest in ensuring respect for the rule of law.

130. The Court recalls that the access rights were in force for over three years, starting with monthly two-hour meetings on neutral ground which were to take place between March and May 1995. In June 1995 access was restricted to a two-hour meeting every other month starting from July 1995. In April 1997 and March 1998 the Helsinki District Court, sitting in two completely different compositions, considered that the meetings were still in the child's best interests. However, in April 1998 the access rights were revoked by the same tribunal, now sitting in a third composition.

131. The Court further notes that the applicant's enforcement requests led to the imposition on H of a fixed administrative fine of FIM 5,000 in February 1996. In October 1996 she was ordered to pay this fine and a further fine of FIM 8,000 was imposed. The latter fine was not upheld for payment, having been replaced by an automatically staggered fine imposed in April 1997. In March 1998 H was ordered to pay this fine, eventually amounting to FIM 16,000. However, after the revocation of the access rights in April 1998 this fine was waived, even though it had been based on the mother's failure to bring I to meetings preceding the revocation. Neither was the mother ordered to pay the automatically staggered fine imposed in March 1998. Accordingly, the only fine eventually upheld for payment amounted to FIM 5,000.

132. The Court notes that, whereas escorting children to meetings with a view to enforcing access arrangements was excluded under domestic law prior to 1 December 1996, the 1996 Act provided for this possibility (see paragraph 87 above), if it was likely that access would not otherwise materialise and provided the particularly weighty reasons at hand were concordant with the best interests of the child. The applicant's first request to this effect was dismissed by the Helsinki District Court in April 1997 in spite of its finding that the mother would most likely continue her obstruction. In an attempt to have her cooperate and following the applicant's consent, the court instead modified those arrangements largely according to the mother's request. Whether alone, assisted or represented, she was now authorised to attend the meetings, which were to be supervised. Specific measures were also ordered to maintain secrecy in respect of the child's place of residence (see paragraphs 57-58 above).

133. It is true that even after the mother had refused to comply with the modified arrangements of April 1997 the Helsinki District Court, in March 1998, again declined to order that the child be brought in person to the meetings. Instead the District Court opted for ordering payment of the administrative fine imposed in April 1997, which was thereafter automatically staggered. At the same time an additional fine of the same nature was imposed on her, should she persist in her refusal to comply with the access arrangements. Only a month later, however, the District Court, now considering the applicant's request for extended access rights, revoked the access rights after having heard the parties, witnesses and the Helsinki

and Kuopio social authorities. Sitting in a new composition, the Helsinki District Court had become convinced that the mother's fear of the applicant was genuine, thus explaining why she had consistently refused to let her daughter meet the applicant even under supervision.

134. Although escorting I to meetings with a view to enforcing her access rights was thus never recommended or ordered, the Court sees no reason to question the Helsinki District Court's finding on two occasions that such a drastic measure would not have been in the child's best interests. The fact that the fines imposed on H were eventually lifted, with one exception in 1996, was due to the revocation of the access rights. The ultimate waiver of those fines cannot therefore be given any decisive significance in the assessment of whether the authorities could, at the time of imposing those fines, reasonably consider them to be sufficient as a means of enforcement.

135. In view of his numerous requests for enforcement the Court is satisfied that the applicant himself took sufficient steps before the courts to seek implementation of the access arrangements. He must, however, be considered to have contributed to the delays at the enforcement stage by not having cooperated sufficiently, in particular with the Kuopio and Helsinki social authorities in the preparations of their opinions to the Helsinki District Court in the course of the second set of civil proceedings in the middle of 1997. While mindful of his frustration following numerous fruitless enforcement attempts, the Court finds it established that he repeatedly behaved in an inappropriate and even aggressive manner towards the social welfare officials and the conciliators investigating the matter.

136. The Government have also alluded to the applicant's criminal past and have questioned his mental health. It is true that the gist of this argument, namely that his meetings with his daughter would endanger her development was already examined in the first set of custody and access proceedings before the Kuopio District Court which resulted in the very limited access rights granted to the child. Moreover, in its decision of 7 April 1997 the Helsinki District Court found that the fresh evidence regarding the applicant's mental state did not show that enforcement of the access arrangements would be contrary to the child's interests, bearing in mind the limited access and the meeting premises. The Court considers, however, that in the continuous reassessment of the child's best interests the social authorities in Helsinki could, notably in the light of the applicant's more recent unwillingness to cooperate, reasonably formulate a recommendation that the access rights should be revoked until the child had reached a more mature age. Likewise the Helsinki District Court's decision to revoke the access rights in April 1998 cannot be considered unreasonable.

137. In the above-mentioned circumstances the Court considers that, having regard to the margin of appreciation afforded to the State, the national authorities took all the steps to enforce the access rights which

could reasonably be required in the very difficult conflict they had to deal with.

138. The Court concludes that there has been no violation of Article 8 of the Convention on account of the non-enforcement of the access rights.

B. Other complaints under Article 8

139. Before the Commission the applicant also alleged, with reference to Article 8, that the access rights had been excessively limited at the outset. Moreover, the secrecy orders regarding his daughter's whereabouts and the restriction on his right to receive information about her allegedly also constituted a violation of Article 8.

These complaints were not mentioned by the applicant in the proceedings before the Court, which does not consider it necessary to examine them of its own motion.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

140. 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. Damage

141. The applicant sought FIM 200,000 in compensation for non-pecuniary damage attributable to his mental suffering.

142. The Government considered this sum excessive. Were the Court to find a breach of Article 6, the award should not exceed FIM 10,000. Should the Court find a violation of Article 8, the Government left it to the Court to fix the amount of the corresponding award.

143. The Court recalls that it has found a violation only of Article 6 of the Convention. Considering the obvious frustration experienced by the applicant as a result of the excessively lengthy proceedings, the Court finds that sufficient just satisfaction would not be provided solely by the aforementioned finding. Making its assessment on an equitable basis, the Court therefore awards the applicant FIM 20,000 as compensation for non-pecuniary damage.

B. Costs and expenses

144. The applicant claimed reimbursement of costs and expenses totalling FIM 23,998, consisting of FIM 21,472 in legal fees (FIM 17,600 coupled with 22% value-added tax) and FIM 2,526 in translation and other costs.

145. The Government opposed the claim for reimbursement of legal fees in so far as counsel had charged FIM 1,700 for petitioning the Parliamentary Ombudsman. Even the remaining legal fees appeared somewhat excessive. The other costs for which reimbursement was sought were either not substantiated by invoices and receipts or their nature was unknown. The Government left it to the Court to fix the award after having deducted the legal aid already granted by the Council of Europe.

146. The Court recalls that an award under this head may be made only in so far as the costs were actually and necessarily incurred in order to avoid, or obtain redress for, the excessive length of the proceedings found to be in breach of Article 6. No compensation can therefore be awarded for the fee amounting to FIM 1,200 and relating to the preparation of the applicant's petition to the Parliamentary Ombudsman. The Court notes furthermore that the translation and other costs in the amount of FIM 2,526 have remained unsubstantiated. Making its assessment on an equitable basis, the Court awards the applicant FIM 10,000 in respect of the proceedings before the Commission and the Court, to be increased by any relevant value-added tax. From this sum must be deducted 5,800 French francs already received for legal fees and expenses from the Council of Europe by way of legal aid.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings;
2. *Holds* by four votes to three that there has been no violation of Article 8 of the Convention on account of the non-enforcement of the access rights;

3. *Holds* unanimously that it is not necessary to examine the other complaints under Article 8 which the applicant made before the Commission but did not reiterate before the Court;
4. *Holds* unanimously
 - (a) that the respondent State is to pay the applicant, within three months and together with any value-added tax that may be chargeable,
 - (i) for non-pecuniary damage, FIM 20,000 (twenty thousand Finnish marks);
 - (ii) for legal fees and expenses FIM 10,000 (ten thousand Finnish marks) less FRF 5,800 (five thousand eight hundred 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;
5. *Dismisses* unanimously the remainder of the applicant's claims for just satisfaction.

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

Michael O'BOYLE
Registrar

Elisabeth PALM
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Zupančič joined by Mr Panțîru and Mr Türmen is annexed to this judgment.

E.P.
M.O'B.

DISSENTING OPINION OF JUDGE ZUPANČIČ JOINED BY JUDGES PANȚÎRU AND TÜRMEŃ

We cannot agree that there was, in this case, no violation of Article 8. Beyond that, however, this litigation raises a number of fundamental concerns about the enforcement of final judicial decisions in child custody cases and consequently about the rule of law.

Recently, the Court has dealt with an identical issue in *Ignaccolo-Zenide v. Romania* (no. 31679/96, ECHR 2000-I). The recurring problem in these and other similar cases is the non-enforcement of judicial decisions and the insufficient judicial control over the so-called social services once judgment has been rendered. The difficulty derives from the idiosyncratic nature of custody and access issues.

Even so, it is an elemental requirement in judicial conflict-resolution to resolve disputes with finality and irrevocability. The doctrines of *res judicata*, legal certainty, *ne bis in idem* (in criminal procedure), for example, and ultimately the principle of the rule of law, call for no less. Needless to say, finality of judgment without its enforcement remains mere suggestion. In its judgment in *Hornsby v. Greece* (judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 510-11, § 40) this Court indeed reiterated that the “right to a court” embodied in Article 6 § 1 of the Convention does not only include the right to institute civil proceedings. That right would be illusory if a Contracting State's domestic legal system allowed for a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see the *Hornsby* judgment cited above).

The ultimate advantages attained by the mother's recalcitrance in this case bring to mind the old legal phrase of *beatus possidens*. Although the concept originally referred to property law situations in which the person in actual possession of the disputed object had a clear advantage over the person still claiming property rights but not having the possession, it seems strangely appropriate in the present case. In property law, the uncertainty of the situation, during which the legally questionable possession nevertheless continues, may last for years. Once, however, the *rei vindicatio* is finally resolved, the object of dispute is physically returned to the rightful owner. Typically, the mere *potential* of a right stands out against the unacceptable

actual state of affairs. The ultimate purpose of legal process is thus to enforce the change of that state of affairs.

The enforcement of judicial decisions, in turn, is at the centre of the rule of law question. Rule of law entails the replacement of *private* power, including the passive resistance of the *beatus possidens*, with *public* power. If subjects of the State are denied the legal assistance of public power, that is, are denied real justice, this leads to prevalence of the law-violating over the law-abiding citizens. This lawlessness diminishes the trust in the rule of law and causes anomie.

Of course, in child custody cases the courts do not deal with inanimate objects such as may be subject to possession and property rights and in which implementation may be achieved by sheer force. In child custody cases the law addresses enduring, painfully emotional and ever-changing *relationships* between parents and their offspring. The judgments here, because they concern human relationships, cannot be enforced with the same determination and severity. Yet, not all family-law disputes are of this kind. Unless property rights are involved, we may, for example, in simple divorce proceedings easily obtain a declarative, that is, not even constitutive, finality of *dissolution* of a chronically troubled emotional relationship. But while people may be eager to give real effect to the legal dissolution of a marriage relationship, the opposite may be true when it comes to the custody over their children.

The joint custody of both parents, in other words, is not a negative dissolution of a relationship. A child custody ruling by the court is the positive *establishment* of a legally regulated, but often intrinsically tense, triangular relationship. It is in the power of law, perhaps, to dissolve all kinds of relationships. It is not in the power of law to inaugurate and implement compassionate human relationships. Law may have power over the morality of duty, but it cannot even address the morality of aspiration. Love is impossible to legislate and adjudicate.

Paradoxically and *a fortiori*, as this case seems to demonstrate, prompt implementation of judicial decisions is a concern in such situations.

In custody litigation the best interests of the child are the foremost, although not the only, criterion of justice. Our own case-law indicates that the best emotional interests of the child are inextricably bound up with the emotional interests of both parents – or even those of the grandparents and other relatives. As the case at hand amply demonstrates, however, what was in the best interest of the child yesterday may today or tomorrow no longer be in his or her best interest. The finality of judicial decisions in child custody disputes is, therefore, always provisional and often impermanent.

Moreover, the tardiness or even the lack of enforcement of that finality, as in this case, may change the very assessment as to what is *now* in the best interests of the child. If in addition, in an ongoing custody dispute, the delay

itself is deliberately caused by the party required to abide by the final judicial decision, the problem metamorphoses into a logical absurdity.

How does this absurdity arise?

Judicial decisions are rendered through a logical syllogism (or, in the common-law tradition, through *stare decisis* analogy) in which the judge selects a major premise (the norm or the applicable case) depending on how he or she initially perceives the facts. Thereafter, in a process which the French fittingly call *la qualification du cas*, the facts made relevant by the selected norm come into focus. The selected legally relevant facts may modify the previous choice of the applicable major premise, or they may confirm it. Once this dialectic between the norm and the facts is settled, the subsumption of facts under the norm yields a judicial conclusion made explicit in the reasoning of the judgment. If this reasoning is persuasive on appeal, the judgment becomes final. This finality – *res judicata pro veritate habetur!* – implies immutability but above all straight enforceability of the judgment.

It is clear, therefore, that the facts, once selected as relevant – what we usually call “the truth” – are the independent variable of judicial decision-making. This is why Maat, the goddess of justice, was always portrayed with feathers, the Egyptian symbol of truth. The assumption in all this is, of course, that the facts of the case are a constant, that they are permanently given.

Indeed, in most cases legally relevant facts are irretrievably lost in the past and are therefore not liable to change. The choice of the applicable legal norm thus depends on unchangeable past events. It follows logically, that legal judgment is *predetermined* by the established veracity of the matter. Such predetermination based on past events, since it excludes arbitrariness, is another cornerstone of the rule of law.

In child custody litigation, however, where the recalcitrant parent delays implementation of the theoretically final judicial decision, the crucial *fact* of time – during which the child is critically and definitely alienated from her own father – changes the whole equation. After a decisive passage of time it is then suddenly no longer in the best interest of the so-alienated child to even recognise her own father...! Under the same norm, that is, under the same major premise, the fact changed through the critical passage of time has forced a converse judicial conclusion.

The supervening change of decisive facts is practically possible in any legal situation, for example, pre-trial detention situations, *refoulement* cases, etc., in which the facts of the case are not fixed in the past. In such cases facts remain subject to change. Here, under the same normative major premise the future change in a factual pattern may trigger an opposite conclusion and judgment. For example, a pre-trial detention decision based on the so-called collusion danger may apply today, but will no longer apply tomorrow if depositions of witnesses have been fixed, material evidence

obtained, etc. In such cases, the *ne bis in idem* doctrine does not apply, the irrebuttable presumption of *res judicata*'s veracity becomes rebuttable, etc. Instead of one finality we may have many finalities of judgment – over the same subject matter. This is often the case in custody matters, too.

Turning to the specific case at hand, we note that even after the mother had refused to comply with the access arrangements modified largely according to her wishes the Helsinki District Court, in March 1998, for the second time declined to order that the child be brought in person to meet the applicant. It is true that the mother was ordered to pay the administrative fines imposed on 7 April 1997 in the amount of FIM 16,000. She was also ordered to comply with the access arrangements on pain of a further automatically staggered fine amounting to FIM 20,000 at the outset, to be increased by FIM 6,000 for each further act of non-compliance. However, she was eventually relieved of paying the first fine and the last-mentioned fine was waived following the revocation of the child's access rights in April 1998. The District Court, again sitting in a different composition, had by then become convinced that the mother's fear of the applicant was genuine, thus explaining why she had consistently refused to let the child meet him even under supervision.

In view of his numerous requests for enforcement, we are satisfied that the applicant himself took reasonable steps before the courts to seek implementation of the access arrangements. It is true that he may have contributed to the delays at the enforcement stage by not cooperating further, in particular with the Kuopio and Helsinki social authorities in the preparation of their opinions to the Helsinki District Court in the course of the second set of civil proceedings in the middle of 1997. It may also be true that he repeatedly behaved in an inappropriate and even aggressive manner towards the social welfare officials and the conciliators investigating the matter. We are nonetheless prepared to make certain allowances for the frustration which he must undoubtedly have experienced after the unsuccessful enforcement attempts which, around that time, had lasted some three years. It is important to recall that in early 1997 the applicant had consented to various modifications of the access arrangements requested by the mother, only to see her persist in her defiance of the court orders. Moreover, even though it was the mother who was clearly at fault for refusing to bring the child to the meetings, the Helsinki Social Welfare Authority began to question whether it was still in the child's best interests to meet her biological father. Reference was made, in particular, to his aggressiveness towards social welfare officials and to his refusal to attend meetings with them. At no stage during the social authorities' and the conciliators' investigations in 1997 was the child interviewed alone with a view to ascertaining her genuine attitude towards the applicant. When questioning the applicant's abilities to relate to his child the social

authorities and experts relied in part on the fact that no meeting had ever taken place between the two.

The Government have also alluded to the applicant's criminal past and have questioned his mental health. We note, however, that the gist of this argument, namely that the applicant would somehow not be fit to see his daughter and would jeopardise her development if such meetings were to be enforced, had already been examined in the first set of custody and access proceedings before the Kuopio District Court which resulted in the very limited access rights granted to the child. Moreover, in its decision of 7 April 1997 the Helsinki District Court found that the fresh evidence regarding the applicant's mental state did not show that enforcement of the access arrangements would be contrary to the best interests of the child, bearing in mind the limited access and the way it was to be implemented. This finding was concordant with the Helsinki Social Welfare Authority's opinion of 29 May 1995, which stressed that the child would eventually benefit from getting to know the applicant's good and bad features.

We note that the possibility for a court to order that a child be escorted to meetings with a view to enforcing its access rights was introduced in the 1996 Act, that is to say following the Court's judgment in the case of *Hokkanen v. Finland* in which similar non-enforcement of access rights was held to violate Article 8 of the Convention (judgment of 23 September 1994, Series A no. 299-A). In the 1996 Act the legislator placed particular weight on the best interests of the child. The conciliator or a representative of the social welfare authority must therefore be present during that procedure, which can only be ordered for one meeting at a time. The conciliator must request the presence of a person close to the child and, if necessary, that of a physician or another expert. All measures must be carried out to minimise the shock to the child. If enforcement is impossible due, for instance, to the shock experienced by the child, it must be postponed.

However, in spite of the exceptional circumstances of the present case, involving a custodian who felt entitled to override at every stage the courts' assessment that the access rights were in her child's best interests, the social authorities never recommended and the courts never ordered that at the very least an attempt be made to bring the child to a meeting with the applicant. It is true that any obligation to apply coercion in this area must be limited, given the need to take into account the best interests of the child and his or her rights under Article 8. Nonetheless, the possibility of employing coercive measures cannot be wholly excluded when the child's interests are deemed to coincide with those of the parent who, without enjoying custody,

wishes to create a relationship with the child (see *Ignaccolo-Zenide* cited above, § 106)¹.

In the present case the child's and the applicant's interests were indeed considered by the courts to coincide up to 29 April 1998, when the access rights were revoked. During more than three years the prevailing view of all authorities had been that the child would benefit from meeting the applicant. What is more, the ongoing reassessment of the child's best interests took place in both civil and enforcement proceedings pending simultaneously before different compositions of the same tribunal but essentially bearing on identical and in part already examined evidence. The applicant was thus required to have constant recourse to a succession of time-consuming and ultimately ineffectual remedies to enforce the access rights granted to his daughter (see the *Hokkanen v. Finland* judgment, p. 23, § 61). Such a state of affairs effectively set in motion a process which proved to be irreversible: maintaining and enforcing the child's right to meet with the applicant was no longer deemed to be in her best interests, given the lack of any physical interaction between the two (see, *mutatis mutandis*, the *Keegan v. Ireland* judgment of 26 May 1994, Series A no. 290, pp. 20-21, § 55).

Summing up, it is all but impossible to distinguish this case from *Ignaccolo-Zenide*. It is true that here the child has never seen the father, whereas in *Ignaccolo-Zenide* the girls knew (and violently rejected) their mother; it is true that in this case the mother might have had a justified fear of the father, whereas in *Ignaccolo-Zenide* the father fled the authorities more than the mother; it is true that the courts here approved of only a very limited access to the child, which was not the case in *Ignaccolo-Zenide*; and, finally, it is true that at least *de facto* – although it was not examined as such in this Court – *Ignaccolo-Zenide* was an abduction case, whereas the present case concerns denial of access.

These differences, however, are not as straightforward as that. That the child here never saw her father was due *precisely* to the mother's objectionable recalcitrance. To justify the ultimate denial of access on the ground that the access had been illegally denied all along borders on the absurd.

It may be true that the father in the present case is not an ideal person, but since when is personal perfection a precondition to becoming a father

1. In its report in the *Hokkanen* case the Commission found a fundamental difference between the reunification obligation resulting from the termination of *de jure* care and the obligation to terminate *de facto* care based on defiance of law and court orders: although in the latter situation too coercion should be avoided as far as possible so as not to contravene the interests of the child, it is clear that the threshold for enforcing cannot be the same as in the first-mentioned situation. A contrary approach could have the effect of encouraging child abduction as a means of eventually obtaining parental rights and would be incompatible with the rule of law (see the opinion of the Commission appended to the *Hokkanen* judgment cited above, p. 36, § 134).

or, consequently, to exercising parental rights? To say that he was aggressive and that the mother was afraid of him, in so far as his aggressiveness was a logical consequence of the fact that he has been brutally denied access to his only daughter, is part of the same circular absurdity. Likewise, the Finnish courts' progressively more limited access decisions were a concession to the mother's recalcitrance, made in the hope that perhaps she would be mollified. To claim that this very concession then justifies the ultimately total denial of access is simply not logical.

The distinguishing characteristic of the case we have decided today is that it was the respondent State, by not enforcing its own judgments, which caused the critical change in the decisive fact pattern. The paradoxical and unacceptable net effect of all this was that the mother, who refused to submit to a decision of the court, directly and patently profited from her own wrongdoing.

In human rights litigation it is usually the State which is remiss. And while this is so in this case too, the blame cannot be put squarely on the shoulders of the Finnish State. The dilemma we faced in *Ignaccolo-Zenide* is reiterated here. While we, too, abhor the use of crude force to intervene in tender human relationships, it is nevertheless true that judicial decisions devoid of enforcement become pathetic recommendations. In the end, moreover, the State's postulating of legal criteria in substantive family law, such as the best interests of the child, means little, unless, procedurally, judicial decisions applying them are consistently respected. Apart from not even attempting to fetch the child, the question remains open whether the Finnish State has done everything possible to protect not only the father's parental rights but first and foremost his daughter's right to meet with him, different court compositions having found this to be in her best interests. We recall that in *Ignaccolo-Zenide* one of the elements leading this very Court to find a violation of Article 8 was the authorities' failure to take coercive measures against the parent at fault (see paragraph 105 of the judgment cited above). The present case leads us to query whether a parent's refusal to participate in ensuring his or her child's access rights in respect of the other parent should not be regarded as a criminal offence or at least as contempt of court.

In the light of the foregoing and even having regard to the margin of appreciation afforded to the State, we find that the Finnish authorities failed to make the efforts which could reasonably have been expected to enforce the access rights granted in respect of the applicant's daughter. This non-enforcement led to the lack of a fair balance between the various interests involved. Accordingly, we believe, Article 8 has been violated.

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One must constantly keep in mind the original intent of all judicial conflict-resolution, which is to resolve by logic what would otherwise be resolved by arbitrariness, force, etc. The essence of the rule of law is that the logic of private force be replaced by the public force of logic.

To render justice is to enforce the satisfaction of the law-abiding party. This implies that the other party, found not to be in the right, must unconditionally subordinate itself to the ruling of the court. Unless that happens, private arbitrariness has prevailed over the public force of the law. The enforcement of judicial decisions, in other words, is an essential and unchangeable element of the rule of law.

Because the passage of time here retroactively validated the actions of a mother who for years obstinately disregarded any court decision which did not suit her, in the end the legally wrong party profited from her own wrongful behaviour. This goes against the wisdom of a Roman Law maxim: *Quod ab initio vitiosum est, tractu tempore convallescere non potest* (“What is wrong from the beginning cannot be validated by passage of time”). Of course, the passage of time in all child custody cases is such a fact – which can, in the end, determine what is in the best interests of the child. This is the reason, for example, why the time limits in the Hague Convention on the Civil Aspects of International Child Abduction are measured in weeks, not in months, let alone years. Since it is in the arbitrary power of a parent determined to disregard the decisions of the courts, and who is *beatus possidens* of the child, to literally *generate* such a new fact, that is, a new minor premise in the syllogism, clearly, the major premise called “the best interests of the child” will after the passage of years yield the reverse result.

The ancient formula *Nemo auditur propriam turpitudinem allegan.* (“Nobody should profit from his or her own wrongdoing”) explains even better this recurrent possibility of perversion of justice. It is, therefore, to be regretted that the European Court of Human Rights, especially in view of some of its own precedents, refused to see this issue and, in effect, legalised the obstinate parent's disregard for the rule of law.