CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF GLASER v. THE UNITED KINGDOM

(Application no. 32346/96)

JUDGMENT

STRASBOURG

19 September 2000

FINAL

13/12/2000

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of GLASER v. the United Kingdom,

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

Mr J.-P.COSTA, *President*,
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Mr P. KŪRIS,
Mr K. JUNGWIERT,
Sir Nicolas BRATZA,
Mr K. TRAJA, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 30 May and 29 August 2000,

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

PROCEDURE

1. The case originated in an application (no. 32346/96) against the United Kingdom of Great Britain and Northern Ireland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a British citizen, Mr Maric Glaser ("the applicant"), on 5 November 1993.

2. The applicant was represented by Carter Bells, Solicitors, practising in Kingston upon Thames. The United Kingdom Government ("the Government") were represented by their Agent, Mr Eaton of the Foreign and Commonwealth Office.

3. The applicant alleged that there had been a failure by the authorities to take adequate measures to enforce the contact orders issued by the court in respect of his children, invoking Articles 6 and 8 in this regard. He also invoked Article 9 in relation to alleged infringement by the courts of his freedom of religion.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (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.

6. By a decision of 7 September 1999, the Chamber declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1946 in India and lived for a period in South Africa, where he married in January 1979 and had three children: PM. born in 1982, A. born in 1984 and F. born in 1985. The family moved to England in 1986 but, following marital difficulties, the applicant's wife left the family home with the children in September 1991. She agreed to return in November when the applicant agreed to move out. Divorce proceedings were instituted on 24 October 1991 and the divorce became final on 10 June 1993.

9. Contact between the applicant and his children was arranged by agreement with the mother present between November 1991 and March 1992. However, in March 1992, contact was stopped by the mother who claimed that the children no longer wanted to see their father. In April 1992, the applicant's former wife made allegations that the applicant had sexually abused the children, but these allegations were not substantiated in investigations carried out by the Child Protection Unit in June 1992. It was however considered that the patterns of behaviour of the children were consistent with the behaviour of children under considerable stress and, with the consent of both parents, the family were referred to the Child, Adolescent and Family Centre for therapeutic intervention. Meanwhile, in May 1992, an application by the applicant for a residence (custody) order was refused.

10. On 2 September 1992, an interim contact order was made by the Kingston-Upon-Thames County Court providing for weekly supervised access. This contact never took place.

11. On 6 November 1992, the same County Court made a further interim order for supervised access, with Christmas access to be by arrangement. Two periods of supervised access took place on 21 November and 12 December 1992. The children were reported as showing no signs of distress and the two younger children as appearing to enjoy seeing the applicant. The Christmas access did not take place as the mother took the children to Wales.

12. A psychiatric report dated 7 January 1993 noted that the children had felt terrified of the applicant and raised concerns of emotional abuse. It

found that the oldest child, PM., who suffered intrinsic learning difficulties, had been clearly disturbed by the applicant's behaviour and distressed by his mother's difficulties in the marriage. A. had been stressed and troubled, with the knowledge of the applicant's suicide attempts adding to his emotional burden. The youngest child F. was the least troubled, though the memories of hitting and shouting were clearly also frightening and disturbing for her. All three children separately indicated that they wanted to live with their mother and were worried about contact with the applicant. There was evidence of a fairly ritualised and damaging cycle of events with the applicant being unreasonably harsh with his children on repeated occasions. Any further contact would have to be handled judiciously and it was of paramount importance to avoid further undue stress to the children.

13. The County Court made a further interim order for supervised access on 12 January 1993. This order was, in the main, complied with. A further order was made by the County Court on 16 March 1993 for weekly contact to take place in the presence of a mutual friend or in a public place. In a welfare report before the court at that time, the court welfare officer concluded that a break in contact would be unhelpful in counteracting the children's negative views of their father and it was also noted that, if no contact order was made, then contact was unlikely to occur, whatever the children's wishes. A psychiatric report dated 12 March 1993 suggested that there should be an increase in contact, unsupervised, and that there was no reason why overnight stays with the father could not be permitted. The report noted that the applicant had acknowledged hitting the children with a belt in the past, had provided a reason for it (his illness) and had apologised to the children for it. The applicant states that he represented himself in the hearings leading up to the June 1993 order.

14. On 15 June 1993, a contact order was made by the County Court including weekly access, overnight stays and making provision for Summer and Christmas holidays. This contact order has never been complied with. In July 1993, the applicant's former wife left the family home with the children and moved, it subsequently transpired, to Scotland.

15. On 25 July 1993, the applicant brought to the attention of the County Court that the order of 15 June had not been complied with and applied for an order to compel his former wife to comply, failing which such penal action as the court deemed fit should be imposed. At the hearing of his application on 2 August 1993, the applicant appeared in person and his former wife was represented by counsel. The judge was told that the mother was very unhappy about contact, that the telephone was disconnected, that the house appeared to be occupied and that the door was unanswered. The applicant informed the judge that the mother might be suffering from depression. The applicant stated in his memorial that the County Court judge said that he had power to make an order requiring the mother to be brought before the court, but suggested instead that the matter should be

dealt with by the High Court (Family Division) because of its greater powers. Therefore on the same day the applicant applied to the High Court *ex parte*.

16. The applicant's application to the High Court requested that the contact order of 15 June be enforced. He stated that he effectively asked the judge to take such action as was necessary to enforce the order for contact, and that he did not make a specific application because he was following the suggestion of the County Court judge and did not know what to do. The applicant appeared in person. Mr Justice Singer invited the Official Solicitor to act as *guardian ad litem* for the children and, if accepted, granted leave to the Official Solicitor to submit documents in the case to such experts as he chose, and for those experts to carry out such examinations and investigations concerning the children as they thought appropriate.

17. The Official Solicitor accepted the invitation to act on or about 3 September 1993. He wrote to the mother at her last known address on 2, 9 and 14 September to arrange for an interview with the children. He received no response. On 13 September, he instructed enquiry agents in Edinburgh to seek to ascertain the location of the mother and children. They were unsuccessful.

18. Meanwhile, it appears that the applicant hired a private detective who traced the children to Edinburgh in August 1993. However, the mother moved them again to an unknown address.

19. The applicant applied *ex parte* to make the children wards of court and was represented at this stage by counsel. His application requested that the children be located immediately and that the mother be restrained from moving the children from their current address without the leave of the court and that arrangements be made for the children's schooling. On 1 October 1993, the High Court issued an injunction prohibiting the children's mother from removing them from jurisdiction without leave of the court and made the three children wards of court. It also directed the Tipstaff to seek and locate the children and to notify the applicant's solicitors of their address. (The Tipstaff is a court official who executes orders of the court.)

The Tipstaff was given a description of the children and addresses at which they might be living. He passed the information to the police who found no trace of them at those addresses. The police placed the names of the children and their mother on the police national computer so that, if they came to the attention of the police, their location would be notified to the Tipstaff.

20. On 26 October 1993, the Official Solicitor wrote to the Department of Social Security Contributions Agency (DSS) seeking an address for the mother. On 1 November 1993, the DSS forwarded a letter to the mother. The mother did not respond.

21. As however no progress was apparently being made, the applicant, who was still receiving advice from solicitors, made a further application *ex*

parte to the High Court for information to be provided by particular bodies. On 17 December 1993, the High Court ordered the DSS (including the Child Support Agency), Kingston and Richmond Health Services, National Health Service Records and the Open University to divulge to the court any information which it had on the location of the children.

22. On 13 January 1994, the Official Solicitor wrote again to the DSS, asking them to forward a letter to the mother. She responded on 30 January 1994, declining to disclose her address or to take up the invitation to arrange interviews.

23. An address was provided to the High Court by the Child Support Agency during January 1994. The applicant's solicitors wrote to the court requesting disclosure of this address. On 25 January 1994, leave was given by the High Court to disclose the address of the applicant's former wife to the applicant's solicitor on an undertaking that the solicitor would not disclose the same to the applicant. The applicant stated that this never happened, as his former wife and the children had changed address again. The Government disagreed, saying that the address was supplied but that the applicant's enquiry agents were unable to locate the children who had been moved again.

24. As the applicant felt that he was not making any progress, he applied to the High Court again, this time in person. On 21 February 1994, the High Court again ordered the relevant authorities to disclose any information which they had as to the current address or whereabouts of the children. The High Court also ordered that any address or information would not be disclosed to the applicant without leave of the court, but that the court would notify him as soon as possible after receipt of relevant information for the purpose of enabling him to seek further directions. The applicant was informed by the court on 24 March 1994 that they had new addresses.

25. The applicant stated that the District Judge refused to disclose the address, so he applied in person *ex parte* to the High Court. The application was adjourned on 28 March 1994 pending the Official Solicitor agreeing to act for the children in the wardship proceedings. At the adjourned hearing on 12 April 1994, the applicant again appeared in person. The High Court disclosed the address to the Official Solicitor, the children were joined as defendants to the proceedings and the matter was adjourned until 10 May 1994 to allow the Official Solicitor to report on any information which he had on the whereabouts and welfare of the children. On 15 April 1994, the Official Solicitor wrote to the mother. As issued on 26 April 1994, the terms of the High Court order indicated that the children's address (received from the National Health Service Central Register) be disclosed to the Official Solicitor only.

26. On 10 May 1994, the applicant again appeared in person before the High Court. He was granted indirect contact with the children, by way of letters, cards and presents, to be monitored by the Official Solicitor. Details

of the address of the children and the social workers involved in the case were ordered not to be disclosed to the applicant. The matter was adjourned by the High Court for further directions in four weeks.

27. On 7 June 1994, the High Court disclosed to the applicant, who appeared in person, that his children were resident in Scotland although, despite his request, he was not informed of their address so as not to unsettle his former wife. Also on this date the High Court ordered the Official Solicitor to identify for the applicant the appropriate court in which he should issue proceedings in Scotland in order to enforce the order for contact made on 15 June 1993. The High Court also agreed that, upon receiving notice that the father has issued proceedings, it would forward to the relevant court in Scotland the address of the children and the social worker instructed in the case, it being for that court to decide whether, and if so when, to disclose this information to the applicant. It then adjourned the proceedings.

28. On 17 June 1994, following the applicant's application of 14 June 1994 to the High Court to forward a copy of the contact order of 15 June 1993, that order was registered in the Court of Session in Scotland. This permitted the order to be treated as an order made by a Scottish court, which would enjoy the available powers to enforce it but did not confer any jurisdiction on the Scottish courts to vary the order. They had power to act immediately for the welfare of the children (section 12 of the Family Law Act 1986) or to issue interim directions to secure their welfare pending the determination of the application to enforce the contact order (section 29(2) of the 1986 Act).

29. On or about 12/13 July 1994, the applicant commenced proceedings for the enforcement of the English court order. The applicant stated that he was told that he had to have a solicitor in order to commence proceedings, unless he applied to waive this which would have meant further delay. He therefore instructed solicitors. The Government have submitted that this is not the correct position. There was no requirement for a solicitor to act in these type of proceedings, save that an advocate or solicitor advocate had to sign the petition for enforcement or permission (though permission could be obtained from the court to proceed in the absence of a signature). An order was made on 13 July 1994 for the service of the proceedings on the mother, and forbidding the mother from removing the children from Scotland, pursuant to the applicant's request.

30. On 20 July 1994, the mother filed her answers to the proceedings alleging that it was not in the children's interests for there to be contact and that the children would be at risk. The mother applied for an order staying the enforcement proceedings pending the commencement by her of proceedings to vary the June 1993 contact order. The applicant states that the allegations made by the mother in her answers had all been adjudicated on already by the English courts.

31. The applicant applied again to the High Court in England, which remained the court of primary jurisdiction, for an order directing the mother to appear before the court to show cause why the contact order should not be amended to provide for further staying and visiting contact at Christmas 1994 and Easter 1995 and thereafter in place of that originally ordered; why a penal notice should not be attached to the order; and to provide for an early hearing of the matters. On 27 July 1994, the High Court refused the application as the applicant had engaged in proceedings in Scotland to enforce the contact order and it would be a duplication of those proceedings to consider the same matters. The High Court considered it appropriate for the courts of Scotland to adjudicate concerning enforcement of the contact order and/or to make their own order for such contact.

32. On 5 August 1994, the applicant lodged a motion asking the Scottish court to make an order enforcing the June 1993 order. This application was heard on 9 August 1994. Though it was not opposed, it was not proceeded with by the applicant. The applicant says that when it became clear that the judge was not going to grant enforcement of the order, as the judge did not consider the order made sense, the applicant's counsel withdrew the application (without the applicant's specific instructions) fearing that a refusal of the order would make it difficult for any other judge to disagree.

33. On 17 August 1994, the applicant lodged another motion asking the Scottish court to make an order enforcing the June 1993 order. On 19 August 1994, the matter was heard before a different judge and this time the application was defended. In the light of allegations of sexual abuse (which had been rejected following investigation in England) made by the applicant's former wife, a new report was ordered to be prepared *quam primum* by an advocate. The order stated that a named advocate was to enquire into and report on all the circumstances of the children and the proposed arrangements for their care and upbringing, with particular reference to the question of access. The applicant appealed this order but leave to appeal was refused on 1 September 1994. The applicant stated that he had to appear in person as his lawyer would not act.

34. An advocate, Ms J., was appointed on 27 September 1994 to carry out enquiries and submit a report. The advocate visited the mother at home on 22 October 1994 and on 23 January 1995, and saw the children alone on 22 October 1994 and 31 January 1995. She spoke to the applicant on the telephone at the beginning of November and arranged to see him on 11 November 1994, when they spoke for three hours. On 21 November 1994, the advocate visited the doctor, Dr C., who had reported on the children in the family proceedings in England, seeing the videos of meetings and also the social worker, Mrs T., involved with those proceedings. She visited the teachers of the younger children and saw the guidance teacher of the oldest child on 5 December 1994. On 12 January 1995, she spoke to Mrs N., a Scottish social worker involved with the

family from June 1994, when the mother's doctor had made a referral for the family to be assessed as a matter of urgency by the Royal Hospital for Sick Children, Edinburgh, due to concerns that the children were showing disturbed behaviour. She noted that Mrs N. had talked to the social worker Mr P., who had told her that only PM. had told him that he did not want to see the applicant. The hospital team had not completed its assessment of the children due, *inter alia*, to the mother's failure to respond to an invitation for a further interview.

The advocate also incorporated in her report the report of May/June 1994 prepared for the Official Solicitor by the social worker Mr P., who had carried out two interviews with the children, two interviews with the mother and interviews with the children's head teacher and class teachers. The advocate submitted her report to the court on 31 January 1995.

35. The advocate's report recounted the history of the proceedings and her own contact with the children, their mother and the applicant. It concluded:

> "This is a complex case. One fact that I think is established is that these children were found by a number of professionals ... in the period 1992 and 1993 to be under stress. What was never established to anyone's apparent satisfaction was the reason for that. It seems to me from my investigations ... that the stress is likely to have been brought on by their parents' relationship and the way that impinged on them. I think it is also most probable given the children's (particularly <A.>'s) accounts of being belted by the <applicant> that that behaviour was at least part of the cause of their stress. I accept the <applicant's> point that the children's stance may have been influenced a great deal even if only indirectly by the fact that they live with and now rely on <their mother>. I have to give the children some credit however particularly at their age for knowing their own minds. They seem to have quite clearly determined to communicate to me both by words and deed that they did not wish to see their father and that they were in <A.'s> words 'better with their mother than they were with both of them'.
>
> ... The question is what is the best way forward for them ... . The <applicant> however accepts that at this stage some eighteen months since the order and since he last saw them that it would not be appropriate for him to have the access that was ordered in June 1993. It would not be in their interests for him simply to turn up and take them over the times ordered. If there were to be access it would have to be as he acknowledged built up over time starting with supervised access of some sort possibly with some sort of counselling.
>
> ... I also accept to some extent what he suggests to the effect that the <mother> has made it her business to ensure the children will not see him. What is difficult to get to the bottom of is her motive. I think I accept that she is motivated by what she believes is in the best interests of the children even if she may on occasions be misguided. I think she has not always told the truth ... . Effectively she did not want to do anything to make access work. She was only keen to take those steps which she had to show that it would not work.
>
> ... The <mother> has also been good at passing certain anxieties which could perhaps have been kept from ... the children whether deliberately or otherwise <Her

suspicion that the applicant had killed the children's guinea pig, that they were being tracked down by a private detective> ... She has thus instilled fear in the children which she has fuelled by changing their Christian names ... .

... I also accept that some of the evidence I heard and saw appeared to contradict the <mother's> absolute view that the children were always terrified about seeing the <applicant>.

It may be that my only role in this Petition is to report to your Lordship on the circumstances of the children and I think I have done that in perhaps more detail than might be desired. If I am to give a recommendation with regard to disposal of this Petition it is clear as stated above that it would not be in the best interests of the children that it be immediately granted in the terms sought.

I am not clear if I am expected thereafter to give a view as to whether any access should be awarded in this or any other Process. If I were to be expected to do so it would clearly be the most difficult task. On the one side I accept that the <mother> has managed to manipulate the situation to a great extent and has deliberately flouted the English order and kept the children from their father for eighteen months. I also accept that it is generally thought to be preferable, other things being equal, for children to grow up seeing both parents ... . But if I were to have to give a view I think I would have to allow myself to be influenced by what I saw of these children and of their parents. The <applicant> appeared to have an obsessive personality and be particularly obsessed by his relationship with the <mother>. His attitude and intensity would be wearing on anyone including his children. Further I did gain the impression even at this stage that he was more interested in the <mother> than the children.

The <mother> was certainly pleasant in demeanour even if she was obviously much more determined and hardnosed than she appeared. She certainly had manipulated the situation effectively. But ultimately I think the only course which it would be in this case appropriate to take would be to listen to and observe the children. They not only told me and meant it ... that they did not wish to see their father. They also seemed ... to be genuinely much happier than they had been and to be very much more settled and confident than they ever have been. It would be unfortunate if this were to be disturbed by a further attempt to re-establish a relationship with their father ... particularly when it seems in all the circumstances that it would probably be unsuccessful. For these reasons ... I would humbly recommend ... with some hesitation, that the children be allowed to continue as they are and not be asked to go through further arranged visits with their father at this stage."

36. Following extended discussion and correspondence between the applicant and his legal advisers, on 11 May 1995 the applicant applied, it appears with the assistance of a lawyer, for a hearing of his petition which the court on 16 May 1995 listed for June 1995. On 29 May 1995, the applicant applied for leave to amend the order sought by him - firstly, to insert a plea that the mother's answers should be rejected and the orders sought by the applicant be granted in full and, secondly, for an order that the mother deliver the children into the care and control of the applicant between 9 am and 7 pm on one weekday forthwith, and on every second weekend thereafter between 9 am on Saturday until 7 pm on Sunday, and between 9 am and 7 pm on one weekend day every four weeks after the said

initial access period. This arguably would have had the effect of increasing the contact from two out of four weekends to three out of four weekends.

37. On 14 June 1995, the mother applied for an order withdrawing her answers to the applicant's petition, which was unopposed by the applicant and granted by the court on 16 June 1995.

38. On 22 June 1995, an order was made by the court allowing the applicant's petition to be amended and an order for contact was made in the amended terms.

39. On 5 September 1995, the applicant commenced proceedings seeking to have the mother punished for contempt for failure to comply with the order of 22 June 1995. On 25 September 1995, the mother applied for the rescission of the order of 22 June 1995 on the basis that it was incorrect because it was at variance with the order of June 1993, lacked clarity and contained material errors.

40. The applicant returned to the High Court in England requesting that the original order of June 1993 be varied. This approach was taken on the basis that the Court of Session could not refuse to enforce a fresh order. However, given the change in circumstances, the applicant decided in December 1995 that the chances of getting any court to enforce the order of 15 June 1993 were remote, and he decided to withdraw the action for enforcement.

41. On 31 October 1995, the mother applied to the courts in England for an order removing proceedings to Scotland and, on 7 November 1995, the applicant applied again for a contact and/or residence order. The mother mistakenly lodged her application with the County Court that issued the original contact order, which on 24 November 1995 declined to hear the matter as it was now a High Court case. In a judgment handed down on 31 January 1996 by the High Court, Mr Justice Singer found it appropriate that the decisions as to contact be considered by the Scottish courts, and made an order under section 2(A)4 of the 1986 Act. This decision was taken with particular regard to the statement by the former wife's Scottish lawyers that they could issue proceedings within a week in Scotland to determine custody and contact. The children were however to remain wards of court and it would be open to the applicant to apply to lift the stay on proceedings in England if the proceedings in Scotland were not pursued. The judge noted that the applicant claimed that he would be disadvantaged by the change of jurisdiction, as he was not conversant with Scottish procedures and as it would be more expensive for him to travel to Scotland for hearings and to consult with lawyers. However, he found that the mother and children were firmly settled in Scotland and that any difficulties posed by the mother in filing evidence or co-operating with interim orders would be more speedily dealt with if the proceedings were before the Scottish courts. He commented that to some extent the Scottish courts had already entered into the merits and that the reporter, who had been unclear as to her role,

may have gone beyond her remit in assisting the court in its enforcement role when indicating that the June 1993 order was not one which she would subscribe to.

42. On 16 April 1996, the mother commenced proceedings in the Court of Session in which she sought an order that there should be no contact between the children and the applicant. The applicant sought an order for contact by a defence lodged on 29 April 1996. A hearing was set down in Scotland for November 1996.

43. On 19 July 1996, the order of 22 June 1995 was rescinded by the Scottish court on the joint application of the mother and the applicant.

44. On 23 September 1996, the applicant applied for interim contact, which application came before the court on 27 September 1996 but was not proceeded with by the applicant's counsel. The hearing set for November 1996 was deferred by agreement of both parties, following the mother's voluntary co-operation in seeing a psychologist, allowing the children to be seen by the psychologist and permitting the applicant to send the children cards and presents.

45. On 27 May 1997, an order was made by consent that the applicant should have contact as agreed between the applicant and his former wife and as consented to by the children. The applicant stated that as a result he has had indirect contact on a handful of occasions when either the applicant's sister or sister-in-law were allowed to see the children and convey messages, an indirect means of getting letters, presents and pocket money to the children and, very recently, via e-mail. A contact meeting was arranged, for the first time, since June 1993, for the afternoon of February 2000.

II. RELEVANT DOMESTIC LAW AND PRACTICE

Contact orders

46. In determining applications for contact, as with any question with respect to the upbringing of a child, the courts' paramount consideration is the welfare of the child - section 1(1) of the Children Act 1989 ("the 1989 Act") for England and Wales and sections 3(2) of the Law Reform (Parent and Child) Act 1986 and subsequently section 11(7) of the Children (Scotland) Act 1995 for Scotland.

The case-law recognises that the rights of the parents should only be interfered with when required by the welfare of the child (e.g. In re K.D. [1988] A.C. 806) and that it is almost always in the interests of the child that he or she should have contact with the non-custodial parent where the parents are separated (e.g. Re H [1992] 1 FLR 148, Re R [1993] 2 FLR 762, Re P (Contact: Supervision) [1996] 2 FLR 314).

Enforcement of contact orders

47. The courts may issue orders relevant to altering the residence of the child or the general powers of enforcement available in respect of failure to comply with a court order. In particular, they can commit a parent to prison or sequester their assets.

48. The Court of Appeal has stated that the courts should not hesitate to use their powers of enforcement where it will overall promote the welfare of the child but that cases may arise, if infrequently, where a court may be compelled to conclude that in the existing circumstances an order for immediate direct contact should not be ordered where to do so would injure the child (Re O (Contact: Imposition of Conditions) [1995] 2 FLR 124).

Powers and means of tracing children

49. The County Court has power pursuant to section 34 of the Family Law Act 1986 to authorise an officer of the court or police constable to take charge of a child and deliver him or her to a person to whom an order requires that the child be given up for, *inter alia*, purposes of contact.

50. The High Court may make a "seek and find" order, requiring that the Tipstaff find the relevant child and take him or her into custody for the purposes of delivering as directed by the court; or a "seek and locate" order requiring that the child be located only.

The Tipstaff is a court official who executes orders of the Court. He does not fulfil the role of an investigator or enquiry agent. It is not his function to set up independent lines of enquiry of his own. The Tipstaff acts on information provided to him by the parties in a case and will be assisted by the police, including a special department of New Scotland Yard which conducts investigations on his behalf.

51. The orders that the High Court makes depend on the nature of the application made to the court by a party in the case and on the evidence provided. The court does not determine what order to make independently of this.

52. The types of order include :

i) permitting publicity, through the media, about the child and the fact that there is a court order trying to locate the child;

ii) requiring any one who has relevant information about the child's whereabouts, to disclose it to the Tipstaff, and the Court; and

iii) requesting the disclosure of addresses from Government departments.

53. The Official Solicitor is Official Solicitor only to the Supreme Court of England and Wales (section 90 of the Supreme Court Act 1981). He or she has no legal powers or role in Scotland nor any independent power to enforce any order, any such step having to be taken through the court and subject to the court's control. The court can invite the Official Solicitor to act for

children but cannot require him or her to do so. When the Official Solicitor is invited to act as *guardian ad litem* for children in proceedings he or she does not have any role independent of the proceedings, only being there to represent the children in those proceedings. He or she collects evidence and participates in the proceedings as considered appropriate. The Official Solicitor is not in the position of a court welfare officer and is not part of the social welfare authorities.

Relationship between the jurisdictions of England, Wales and Scotland.

54. The Family Law Act 1986 ("the 1986 Act") confers on the court dealing with the matrimonial affairs the primary jurisdiction over the granting of children orders except where it considers it would be "more appropriate" for matters to be determined in another part of the United Kingdom (sections 2A(4) and 13(6)).

55. Section 25 of the 1986 Act provides for the recognition of children orders made in any part of the United Kingdom. The procedure requires the court which made the order to send the relevant documents to the appropriate court in the other part of the United Kingdom, where the prescribed officer of the receiving court on receiving the certified order must forthwith cause the order to be registered. The new court in which the order is registered has the "same powers for the purpose of enforcing the order as it would have if it had itself made the order" (section 29). The decision of how to enforce the order must depend on what "will overall promote the welfare of the child" (Re O (Contact: Imposition of Conditions) [1995] 2 FLR 124). In balancing the competing interests of those involved, the courts retain jurisdiction to refuse an order if satisfied, for example, that enforcement would result in physical or moral injury to the child (Woodcock v. Woodcock 1990 SLT 848 at 853B).

THE LAW

I. ARTICLE 8 OF THE CONVENTION

56. The applicant submitted that the authorities in England and Scotland failed, in their procedures and decisions, effectively to enforce his right to contact with his three children who were living with their mother, who had failed to comply with court orders granting him contact. He alleged a violation of Article 8 of the Convention, which provides:

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

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

The Government disputed this contention.

A. Applicability of Article 8 of the Convention

57. The applicant's complaints concerned his alleged inability to secure contact with the three children of his marriage from 1993 onwards. It is not disputed that these matters concern "family life" within the meaning of Article 8 of the Convention and that this provision is applicable.

B. Compliance with Article 8 of the Convention

1. The applicant's submissions

58. The applicant submitted that the authorities in England and Scotland were under an absolute responsibility to enforce the order of 15 June 1993 which gave him defined rights of access to his children. He considers that they did not take appropriate steps to fulfil this responsibility and failed to apply any coercive measures in face of the mother's persistent failure to comply with court orders.

In England, he stated that the initiative was left to him to seek repeated hearings and orders, requiring steps to be taken to locate the mother and children after the mother absconded from their last known address. The Tipstaff, who was entrusted with this task by the High Court, either did not use all his powers or did not have sufficient powers. There was also delay in the court informing him of the whereabouts of the mother, when her location in Scotland became known to it, which delayed his ability to commence enforcement proceedings in Scotland.

There were, in his view, no accessible or coherent procedures for enforcing the English court order in Scotland. The Scottish courts failed promptly to enforce the court order once it had been registered and began a re-investigation of contact issues, which delayed matters considerably.

59. The applicant complained that the lack of expedition by the courts in reacting to the flagrant breach of his rights resulted in further difficulties being caused to him due to the effluxion of time. It allowed the mother to change address several times and also, as the children grew older, it meant his chances of enforcing contact became more difficult, and finally,

impossible. He submitted that it should not have been for him to choose from a range of applications and remedies. Once he had presented the courts with evidence of the breach of his rights, it should have been the duty of the authorities to track down the mother, bring her before an appropriate forum and apply an effective solution, which should have included as appropriate re-considering the access or residence of the children, as well as the threat, at least, of committal for contempt.

2. The Government's submissions

60. The Government accepted that the State's duty under Article 8 of the Convention entailed the positive obligation to ensure that there was an effective and accessible framework available to the applicant for protecting and securing the right to respect for his family life, including contact with his children. In making decisions within that framework, there was an obligation on the authorities to pay proper regard to the rights and interests of all the individuals concerned, in particular, those of the children. There must however, in their view, be a wide margin of appreciation accorded to the State in respect of the framework chosen to secure Article 8 rights and the individual decisions of the domestic authorities pertaining to those rights.

61. The Government submitted that the Family Law Act 1986 provided a clear and coherent scheme for the enforcement of orders in differing jurisdictions. The authorities in both England and Scotland took the appropriate steps to fulfil their responsibilities in this regard. Appeal procedures were available, if the applicant disagreed with the court orders, but he only availed himself of this once. The applicant was able to ask the courts in England for the necessary orders to locate the mother and children, and his applications were heard expeditiously. Furthermore, it was a reasonable exercise of the discretion of the Scottish courts to order a report to ensure that enforcement of the order would not result in physical or moral injury to the children. The case required careful consideration and sensitive handling to prevent any further damage to the children.

62. They pointed out that the applicant had contributed to any lapse of time in the proceedings. He could have asked earlier for the High Court to order government agencies to provide the mother's address. He did not apply for the case to be brought back before the Scottish court for over four months after the report had been issued. Furthermore, he applied for an amended order of contact to be made which was outside the jurisdiction of the Scottish court and had to be set aside. They denied therefore that there was any lack of expedition on the part of the authorities which prejudiced the outcome of the proceedings.

3. The Court's assessment

63. The essential object of Article 8 is to protect the individual against arbitrary interference by public authorities. There may however be positive obligations inherent in an effective "respect" for family life. These obligations may involve the adoption of measures designed to secure respect for family life even in the sphere of relations between individuals, including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation, where appropriate, of specific steps (see, amongst other authorities, X. and Y. v. the Netherlands judgment of 26 March 1985, Series A no. 91, p. 11, § 23, and, *mutatis mutandis,* Osman v. the United Kingdom judgment of 28 October 1998, Reports 1998-VIII, p. 3159, § 115). In both the negative and positive contexts, regard must be had to the fair balance which has to be struck between the competing interests of the individual and the community, including other concerned third parties, and the State's margin of appreciation (see, amongst other authorities, the Keegan v. Ireland judgment of 26 May 1994, Series A no. 290, p. 19, § 49).

64. Where the measures in issue concern parental disputes over their children, however, it is not for the Court to substitute itself for the competent domestic authorities in regulating contact questions, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation. In so doing, it must determine whether the reasons purporting to justify any measures taken with regard to an applicant's enjoyment of his right to respect for family life are relevant and sufficient (see, amongst other authorities, Ölsson v. Sweden judgment of 24 March 1988, Series A no. 130, p. 32, § 68).

65. The Court's case-law has consistently held that Article 8 includes a right for a parent to have measures taken with a view to his or her being reunited with the child, and an obligation for the national authorities to take such measures. This applies not only to cases dealing with the compulsory taking of children into public care and the implementation of care measures (see, *inter alia*, the Olsson v. Sweden (No. 2) judgment of 27 November 1992, Series A no. 250, pp. 35-36, § 90), but also to cases where contact and residence disputes concerning children arise between parents and/or other members of the children's family (e.g. the Hokkanen v. Finland judgment of 23 September 1994, Series A no. 299, p. 20, § 55).

66. The obligation of the national authorities to take measures to facilitate contact by a non-custodial parent with children after divorce is not, however, absolute (*mutatis mutandis*, Hokkanen judgment cited above, p. 22, § 58). The establishment of contact may not be able to take place immediately and may require preparatory or phased measures. The co-operation and understanding of all concerned will always be an important ingredient. While national authorities must do their utmost to facilitate such co-operation, 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 (see Hokkanen v. Finland cited above, § 58; Olsson v. Sweden (No. 2), cited above, pp. 35-36, § 90).

The key consideration is whether those authorities have taken all necessary steps to facilitate contact as can reasonably be demanded in the special circumstances of each case (*mutatis mutandis*, Hokkanen v. Finland, cited above, § 58). Other important factors in proceedings concerning children are that time takes on a particular significance as there is always a danger that any procedural delay will result in the *de facto* determination of the issue before the court (H. v. the United Kingdom judgment of 8 July 1987, Series A no. 120, pp. 63-64, §§ 89-90), and that the decision-making procedure provides requisite protection of parental interests (W. v. the United Kingdom judgment of 8 July 1987, Series A n° 121, pp. 28-29, §§ 62-64).

67. In the present case, the Court recalls, firstly, that the principal obstacle to the applicant enjoying the contact with his children awarded under the court order of 15 July 1993 was the opposition of the mother, who took the children from their home and disappeared, and her subsequent resistance to any contact being restored when they were located in Scotland.

68. Nonetheless, the applicant had been granted an order by the English County Court giving him specified rights of contact with his children. In these circumstances, the Court has examined whether there was an accessible and coherent mechanism provided for the enforcement of the applicant's contact rights with his children where the mother had refused to comply with the court order and changed residence from one jurisdiction in the United Kingdom to another.

69. The Court notes that both the English and Scottish courts had a range of measures available for the enforcement of their orders, including the power to obtain information from other government agencies to locate persons, the power to commit to prison and sequester goods. The Family Law Act 1986 provides that primary jurisdiction to grant orders concerning children remains with the court dealing with the matrimonial proceedings but that, on registration of an order of that court in another jurisdiction, the courts of that jurisdiction have power to enforce it as if it was their own order. There is equally provision for the court of primary jurisdiction to cede its role where it becomes more appropriate for substantive matters to be dealt with in another part of the United Kingdom.

The Court finds no fundamental defect in this structure to enforce the applicant's rights. It observes that once the mother was located in Scotland and the applicant applied for the 15 June 1993 contact order to be registered

in that jurisdiction as the necessary precondition to its enforcement, the registration was effected in the Court of Session within a matter of days. The procedure was therefore demonstrated as being simple and effective.

70. The Court recalls that the applicant has argued that in practice neither the English or Scottish courts acted effectively or expeditiously in enforcing his rights. While the applicant submitted that it was their absolute responsibility to enforce his rights, the Court reiterates that where other individuals are concerned, particularly children, the courts must ensure that the steps taken do not infringe their rights. Their decision-making process must inevitably involve a balancing of the respective interests, as coercive measures may in themselves present a risk of damage to the children concerned. Nor can the Court accept the applicant's argument that the initiative in pursuing enforcement should lie with the domestic courts once he had presented them with evidence of the mother's flagrant refusal to comply with the court order. It is the widespread practice throughout Council of Europe States for the plaintiffs or claimants in civil proceedings to bear substantial responsibility for their conduct and direction. It is, after all, their own rights and obligations which are at stake in the proceedings and their active participation can hardly be dispensed with in the normal course of events. Indeed, parental participation in the proceedings concerning children is required by Article 8 in order to ensure protection of their interests. Furthermore, as recognised by Article 35 § 1 of the Convention, it is for applicants to make proper and normal use of the remedies put at their disposal by the respondent State in seeking redress for the infringements of their rights (see, amongst other authorities, the Akdivar and Others v. Turkey judgment of 16 September 1996, Reports 1996-VI p. 1210, §§ 65-67).

It is true, however, that the competent authorities are also responsible, *inter alia,* for their input into the proceedings, be it the speed with which they act, or the compliance of their decision-making procedures with the requirements of the Convention. Consequently, where an applicant, as in this case, applies for enforcement of a court order, his conduct as well as that of the courts is a relevant factor to be considered.

71. Having regard to the considerations above, the Court has examined the various stages of the enforcement proceedings.

a) The period 25 July 1993 to 17 June 1994 - locating the mother and children

72. The Court recalls that on 25 July 1993 the applicant went before the County Court, complaining that the mother had failed to comply with the contact order of 15 June 1993 and was not apparently to be found at her address. The County Court proposed that the case be transferred to the High Court, which had greater powers, and the applicant applied to the High Court the same day. It appears that at this stage the applicant was not represented. He did not ask the High Court to make any specific order.

Mr Justice Singer took the step of inviting the Official Solicitor to act for the children and to undertake any necessary examinations and investigations. The Official Solicitor commenced attempts to contact the mother in September, which were unsuccessful. The matter came back before the High Court on the applicant's initiative on 1 October 1993, when the Tipstaff was directed to seek and locate the children. He commenced searching for the children with the assistance of the police, who went to possible addresses and placed the names on the Police National Computer. By the end of October, the Official Solicitor had contacted the mother through the DSS, without obtaining her address.

73. On 17 December 1993, again on the applicant's motion, the High Court made an order for Government agencies to disclose to it the address of the mother. An address was provided by the DSS in January 1994 but it appears that the mother moved again. On 21 February 1994, on the applicant's request, the High Court repeated its direction to Government agencies. The latest address of the mother was provided to the High Court on about 24 March 1994. However, while the Official Solicitor was informed of the address and entered into contact with the mother, and the applicant was permitted to enter into indirect contact with the children by letters and cards through the Official Solicitor, the applicant was not informed of the location of the mother and children by the High Court until 7 June 1994, to permit him to issue proceedings in the appropriate court for enforcement. The applicant's motion of 14 June 1993 for the contact order to be registered in the Scottish Court of Session resulted in the registration occurring on 17 June 1993.

74. The Court observes that there was a delay of about eleven months before the applicant commenced enforcement proceedings in Scotland. While he complained that the High Court failed to take prompt or sufficiently coercive action against the mother during this time, the Court is not persuaded that the High Court acted improperly or inappropriately. As the mother's definitive location was unknown until May 1994, no coercive steps were in fact possible through most of this period and, once she was in Scotland, the High Court no longer had jurisdiction to enforce. Nor is the Court persuaded that there was any failure by the authorities to protect the applicant's interests by leaving it to the applicant to approach the High Court to make the applications for such orders to locate the mother as he required. When the applicant first appeared in the High Court on 25 July 1993, it was not clear whether the mother had left home with the children, temporarily or definitively, and certainly it was not known to the authorities that she had left the jurisdiction of the English court. The steps taken by the High Court, first to appoint the Official Solicitor to represent the children and carry out an investigation, then to instruct the Tipstaff who could use the police to search possible addresses and access the Police National Computer, and finally to order Government agencies to disclose the

mother's address, show a not unreasonable progression in the measures applied. The argument of the applicant that the High Court should, on its own motion, have ordered the last measure first immediately, relies on the hindsight that this was the step which finally succeeded in locating the children. In any event, the applicant, who was represented in the High Court proceedings from about 1 October 1993, was himself at liberty to make an application for this measure to be applied at any stage.

75. The Court has considered whether the delay in the authorities passing onto the applicant the information about the mother's address had the effect of prejudicing the applicant's position. The applicant claimed that their failure to inform him of the mother's address, which they knew from January 1994, prevented him taking steps to register the order in Scotland expeditiously. The Court observes that, while an address was located in January 1994, the mother had moved immediately to another unknown address. It is also apparent that the applicant already knew from August 1993 that the mother had absconded to Scotland, due to his own enquiries through a private detective. There was nothing therefore to prevent him applying to the High Court for registration of the order in Scotland.

76. It is however the case that the mother's exact address, which was necessary in any eventual service of proceedings, was not provided to him for a period of about two and a half months (24 March 1994 to 7 June 1994). Though no reason for the delay has been recorded, it appears that the mother's stringent objection to this must have played a role and it may have been feared that she would move the children yet again if the applicant was informed. It also appears that the address had been passed to the Official Solicitor, who entered into contact with the mother and whose appointed social worker secured interviews with the mother and children during which the question of access was raised. It appears probable that it was the mother's emphatic refusal to envisage contact that made it clear that the matter would have to be transferred to the Scottish courts who had jurisdiction to take enforcement steps and that, in those circumstances, the decision was taken to give the address to the applicant to enable him to institute the necessary proceedings. In these circumstances and having regard to the balance which has to be struck between the different interests involved, the Court does not find that the relatively short lapse of time in passing on the exact address to the applicant disclosed a lack of respect for his rights.

b) The period 18 June 1994 to 1 September 1994 - applications to the Scottish courts for enforcement

77. The Court recalls that a period of two months elapsed between registration of the English contact order and the hearing of the applicant's application for enforcement on 19 August 1994. Though the applicant complained that the Scottish court appeared unsympathetic on his initial

motion, the Court notes that his renewed motion was heard within two weeks. While the applicant also claimed that he was misled as to the requirement of legal representation, the Court finds that it is not apparent that this was anything more than a misunderstanding on his part or that it caused him any prejudice in the proceedings.

78. The applicant strongly criticised the decision of the court on 19 August 1994 to order a report to be made into the circumstances of the children and the situation concerning access. He claims that as the matters of contact, and the mother's allegations of abuse, had already been adjudicated upon in the English proceedings, the Scottish courts unnecessarily obstructed enforcement of his rights.

79. The Court observes however that a period of over a year had elapsed since the contact order in issue had been granted. It finds that it was not unreasonable of the Scottish court, which had to have regard to the welfare of the children in carrying out any enforcement steps, to investigate the current position of the children. It is not evident that the Scottish court was intending, by asking for such a report, to redecide any of the past issues. It examines below whether the necessary expedition was taken in proceeding with the report and bringing the case back before the court for decision.

c) The period 2 September 1994 to 31 January 1995 - the preparation of a report

80. The advocate who was to prepare the report was appointed on 27 September 1994 and from October 1994 to January 1995 carried out interviews with the mother and children (twice), the social worker appointed by the Official Solicitor, the children's teachers and the Scottish social worker involved with the children, as well as visiting the doctor and social worker involved in the English proceedings. Her lengthy report was submitted to the court on 31 January 1995. The Court finds that the time taken - four months from her date of appointment, five and a half from the decision of the court to order a report - does not disclose, in the circumstances of a difficult and sensitive case, a lack of necessary expedition, even if arguably matters could have proceeded more quickly if the advocate had been appointed some weeks earlier.

d) The period 1 February 1995 to 25 September 1995 - the order for enforcement

81. Though the report was ready at the end of January, the applicant did not apply for the case to be heard by the court until 11 May 1995. His application was for specified access to be ordered. He did not request any other steps to be taken at this stage. His application was granted on 22 June 1995, even though the advocate's report had found that the children did not want to see the applicant and that any attempt to re-introduce access at this point risked causing them further stress. To the extent that the applicant

complained of delay in that order being issued, the Court finds that it was open to the applicant to apply for the court to hear his application at an earlier stage, particularly since he was legally represented at this time. It does not find that in the circumstances of this case it was the responsibility of Scottish court to bring the case back for rehearing of its own motion before this date.

e) The period 26 September 1995 to 31 January 1996 - the changing of court of primary jurisdiction

82. When the order of 22 June 1995 was not complied with by the mother, the applicant took the next step of applying for her to be found in contempt of court, with the potential penalties of fines or committal which that involved. He did not however pursue these proceedings. His explanation was that, due to the mother's application to have the order of 22 June 1995 rescinded, it was clear that he would not be able to succeed. He accepted that the order was faulty in that it amended the terms of the original English order and that this was outside the Scottish court's jurisdiction. He complains that it was a fault of the system that there was no possibility of correcting this error.

83. The Court notes in this regard that the court issued the order in the terms requested by the applicant. It is not persuaded that the applicant can lay the responsibility for this entirely on the Scottish court. Further, there was no legal or procedural reason why the applicant could not have made a fresh application to the Scottish court for an order to be made in the terms within its jurisdiction, i.e. identical to the terms of the original contact order. The applicant himself admitted however that at this stage, more than two years after the original contact order, he had had to accept that this order could no longer be enforced, as circumstances had changed and any access would have to be re-introduced more gradually. The applicant cannot therefore complain that it was a fault of the system or the court that at this point no steps were taken to enforce the original order. Nor can he complain that the time which elapsed after this date prejudiced the enforcement of this order.

84. Indeed, both the applicant and the mother returned to the English courts to have new orders made to cover the present situation. In the event, on 31 January 1996, the High Court denied the applicant's application for contact or residence and agreed to the mother's application for primary jurisdiction to be transferred under Family Law Act 1986 to the Scottish courts for them to make any necessary orders. Mr Justice Singer had regard to the applicant's objections concerning the cost and inconvenience to him but considered that as the mother and children were firmly settled in Scotland, it would be more efficient and procedures could be more speedily dealt with if the Scottish courts had full jurisdiction. The applicant did not

appeal this decision. The Court considers that the High Court gave relevant and sufficient reasons for the transfer of jurisdiction.

f) The period 1 February 1996 to 27 May 1997 - the proceedings in the Scottish court concerning contact

85. The proceedings in the Scottish court were commenced by the mother and culminated on 27 May 1997 with an order to which the applicant consented that contact would be as agreed with the mother and in accordance with the children's wishes. The hearing was originally set for November 1996 but was deferred with consent of all the parties. In the circumstances, the Court does not consider that the applicant can complain either of the content of the Scottish order for contact or of the time taken for it to be made.

g) Overall assessment

86. The Court has considered whether, notwithstanding its findings above, the overall length or course of proceedings discloses a failure to respect the applicant's rights. It accepts that the applicant faced significant difficulties in enforcing his rights to contact, which involved courts in two jurisdictions, but would note that these flowed inevitably from the unilateral actions of the mother, and her determination to avoid complying with the court order. Once a certain amount of time had elapsed, it was unlikely that the original contact order could be enforced, which point the applicant acknowledged himself. As found above, however, the Court does not find that the authorities failed in taking the reasonable steps available to them in either locating the family or dealing with the applicant's requests for enforcement, or that there was any lack of expedition on their part which prevented the applicant's claims being properly considered on their merits.

It does not find that the courts could have reasonably undertaken any more coercive step at any point, such as committing the mother to prison or changing the children's residence. The former step could have been pursued by the applicant if he had thought it would have been effective. He only commenced such a proceeding once and abandoned it. As regards the second step, the material before the Court indicates that a change of residence was not a course which the children would have supported and would have affected their security and stability, risking further damage to them.

87. The Court concludes that in this very difficult situation the authorities struck a fair balance between the competing interests and did not fail in their responsibilities to protect the applicant's right to respect for family life. Accordingly there has in the circumstances of this case been no violation of Article 8 of the Convention.

II. ARTICLE 6 § 1 OF THE CONVENTION

88. The applicant complains of unreasonable delay in the proceedings concerning the enforcement of contact with his children, as well as his ineligibility for legal aid and alleged unfairness disclosed by the judge's criticisms and interventions in the County Court.

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by [a] ... tribunal established by law..."

A. Concerning the length of proceedings

1. The parties' submissions

89. The applicant submitted that time was of considerable importance in the proceedings as the children were growing older, into their teenage years, under the influence of their mother who had already denied access for some time. This should have been taken into account by the courts in assessing the urgency of action required. He referred, as in his submissions under Article 8 above, to the time wasted by the Scottish court in obtaining a report on the children and the failure of that court to implement effective measures promptly in face of the mother's continued defiance. The procedures should have taken months, rather than years, and the failure of the courts to control the time over which the proceedings lasted disclosed a violation of Article 6 § 1 of the Convention.

90. The Government pointed out that contact issues evolve and change with time, and that proceedings may involve a number of different applications which should not be looked at globally. They submitted that those applications which were brought by the applicant were dealt with expeditiously and that periods of delay relied on by the applicant were due to a lack of diligence by himself or his representatives.

2. The Court's assessment

91. The Court finds that the proceedings in issue before the English and Scottish courts related to the applicant's rights of contact with his children. His complaint accordingly falls within the scope of Article 6 § 1 as concerning the determination of his civil rights.

92. The proceedings of which he complains concern the period from 15 June 1993, when he obtained a contact order from the English court, until 27 May 1997, when the Scottish court issued a new contact order - a period of three years, 11 months and 13 days.

93. 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 also to be taken into account. It is, in particular, essential that custody and contact cases be dealt with speedily (see e.g. Hokkanen v. Finland judgment, cited above, § 69).

94. The Court finds that the case presented considerable complexity. The history of the family showed that the children's welfare required that further undue stress be avoided and that, while the applicant had rights of contact, there was work to be done in rebuilding their trust and confidence in him. There was also the seriously complicating factor of the mother's emphatic belief that contact harmed the children and her determination to avoid contact. It is clear that the authorities would have been irresponsible in imposing stringent coercive measures on the mother without proper and careful investigation of the requirements of the children's welfare.

95. As for the conduct of the authorities, the Court has found above, under Article 8 of the Convention, that the courts examined with reasonable expedition the applications which the applicant put before them and did not omit any measures which might reasonably have been expected from them. While there was a delay of some five months in presenting a report, this was a necessary step in establishing the circumstances of the children. Though it might have perhaps proceeded more quickly, the time taken was not outside reasonable bounds. Similarly, the delay of two and a half months in the High Court transmitting the mother's address to the applicant to enable proceedings to commence was not unreasonable in the circumstances.

96. It is also apparent that the applicant's own conduct contributed in some degree to the length of the proceedings. While the advocate's report was lodged with the Scottish court on 31 January 1995, he did not apply for the matter to be brought back before the court until 11 May 1995. Furthermore, while the hearing on the merits of the contact dispute was originally fixed for November 1996, the applicant consented to it being adjourned until 27 May 1997. The difficulty which arose with enforcing the Scottish order of 22 June 1995 also derived from the applicant's mistake in requesting it in terms amending the English order which was beyond the Scottish court's competence and permitted the mother to apply to have it set aside.

97. Consequently, in the light of the criteria laid down in its case-law and having regard to the particular circumstances of the case, the Court concludes that the length of the overall proceedings did not exceed a "reasonable time". Accordingly, there has been no violation of Article 6 § 1 of the Convention in this respect.

B. Concerning the applicant's remaining complaints

98. The applicant complained, in addition, of the lack of legal aid and the unfair way in which he alleges the County Court judge criticised him and intervened during the hearing on 15 June 1993.

99. As regards the lack of legal aid, the Court observes that the applicant fell outside the legal aid scheme as his income exceeded the financial criteria. There is no right as such to receive legal aid in civil proceedings guaranteed under the Convention. However, a lack of legal aid may, in certain circumstances, deprive an applicant of effective access to court (see Airey v. Ireland judgment of 9 October 1979, Series A no. 32, pp. 15-16, § 26). In this case, however, it appears that the applicant was represented during a substantial part of the proceedings. While he complains of the cost to him of obtaining representation, this by itself is not a relevant factor under Article 6 § 1 of the Convention. Further, it does not appear that, where the applicant did appear on his own behalf, that he was unable to put forward his claims effectively.

100. As regards the alleged unfair conduct of the judge in the County Court proceedings, the Court observes that these culminated in the order of 15 June 1993 which awarded the applicant extended contact rights. The applicant has not complained that this decision was in any way faulty or irregular or failed to accord him fair access. In these circumstances, the Court does not consider that the alleged interventions of the judge, who had responsibility for the conduct of the proceedings before him and had the power, if necessary, to cut short irrelevant or overly lengthy submissions, can be regarded as rendering those proceedings unfair.

101. The Court finds that there has been no violation of Article 6 § 1 of the Convention concerning these aspects.

III. ARTICLE 9 OF THE CONVENTION

102. The applicant invoked Article 9 of the Convention, which protects, *inter alia*, freedom of religion and conscience, complaining that the proceedings failed to give due regard to his freedom of religion, in particular as he claimed that the courts openly criticised his Catholic beliefs which rejected divorce and took the view that his refusal to accept divorce was a factor which contributed to his former wife's opposition to allow the children to see him.

103. The Court finds on the material before it that the applicant's complaints are unsubstantiated and that there is no basis on which to find that the courts in these proceedings took any step which infringed the applicant's freedom of religion or showed any lack of respect for his rights in that regard. There has, accordingly, been no violation of Article 9 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 8 of the Convention;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been no violation of Article 9 of the Convention.

Done in English and notified in writing on 19 September 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLE
Registrar

J.-P. COSTA
President