



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

SECOND SECTION

CASE OF VENEMA v. THE NETHERLANDS

(Application no. 35731/97)

JUDGMENT

STRASBOURG

17 December 2002

FINAL

17/03/2003

In the case of Venema v. the Netherlands,

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

Mr J.-P. COSTA, *President*,

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 29 January and 26 November 2002,

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

PROCEDURE

1. The case originated in an application (no. 35731/97) against the Kingdom of the Netherlands 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 three Netherlands nationals, Mr Dirk Venema, Mrs Wubbechien Janny Venema-Huizing and Ms Kimberly Venema (“the applicants”), on 24 July 1996.

2. The applicants were represented by Mr A.W.M. Willems, a lawyer practising in Amsterdam. The Netherlands Government (“the Government”) were represented by their Agents, Mr R.A.A. Böcker and Ms J. Schukking of the Netherlands Ministry of Foreign Affairs. Having been designated before the Commission by the initials D.V., W.V. and K.V., the applicants subsequently agreed to the disclosure of their names.

3. The applicants alleged, in particular, that their rights under Articles 8 and 6 of the Convention had been violated through the separation of the third applicant from the first and second applicants, her parents, which was not justified on medical grounds and was not discontinued as soon as this became apparent, and in that the first and second applicants were not involved in the decision-making process that led to the separation.

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 initially allocated to the First 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.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section.

7. By a decision of 29 January 2002 the Court declared the application partly admissible.

8. The Government, but not the applicants, filed observations on the merits (Rule 59 § 1). The applicants confined themselves to filing claims under Article 41 of the Convention. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the Government replied in writing to these claims. The applicants then submitted a further document, which was admitted to the case file with the leave of the President of the Chamber (Rule 38 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Introduction

9. The applicants, Dirk Venema, Wubbechien Venema-Huiting and Kimberly Venema, are Netherlands nationals and live in Alphen aan den Rijn, in the Netherlands.

10. Mr Dirk Venema and Mrs Wubbechien Venema-Huiting, who were born in 1964 and 1967 respectively, are the parents of Kimberly Venema. Kimberly was born on 14 February 1994.

B. Events leading up to the juvenile judge's orders of 4 January 1995

11. From May 1994 onwards Mr and Mrs Venema became aware that Kimberly's breathing sometimes stopped and her heart raced. This led them to seek medical advice from, *inter alios*, doctors practising at Leiden University Hospital. Kimberly was taken into hospital for two periods, of fourteen days and six days respectively, in the course of July and August 1994.

12. The doctors found nothing physically wrong with Kimberly. They began to suspect that Kimberly was healthy but that Mrs Venema might be suffering from a psychological disturbance known as the Munchausen syndrome by proxy.

13. The Munchausen syndrome by proxy is a condition in which a parent of a young child, nearly always the mother, driven by a need of her own for attention, seeks superfluous medical assistance for her child. The parent may invent a disease or even cause the symptoms. In certain cases, for example if the child's breathing is interfered with, the child's life may be in danger.

14. At around this time Kimberly was referred to Curium, a children's psychiatric clinic in Oegstgeest, near Leiden.

15. In August 1994 the Leiden University Hospital doctors made their fears known to the Child Welfare Board (*Raad voor de Kinderbescherming*). The Government state that the identity of the applicants was not revealed to the Child Welfare Board at this time. The Child Welfare Board advised the doctors to provide adequate medical care and discuss their fears with the child's parents. The Venema family was kept under medical observation but the doctors did not discuss their suspicions with Mr and Mrs Venema.

16. On 1 December 1994 the Child Abuse Medical Counselling Centre (*Bureau Vertrouwensarts inzake Kindermishandeling*) in The Hague telephoned the Child Welfare Board. A doctor connected with this centre stated – according to the Government, still without naming the applicants – that it was suspected that Mrs Venema was suffering from the Munchausen syndrome by proxy. In spite of the medical care provided, the situation had not improved. The question arose whether to intervene. It was agreed that the Child Abuse Medical Counselling Centre doctor would obtain more information with a view to informing the Child Welfare Board. It is not recorded that the doctor did so.

17. Kimberly was again taken into hospital on 14 December 1994, following an incident two days earlier.

18. A meeting took place on 20 December 1994 to discuss the case of Kimberly. Those taking part included the director of Curium, four doctors and two nurses connected with Leiden University Hospital, the doctor connected with the Child Abuse Medical Counselling Centre, the Venema family's general practitioner, the deputy unit head of the Child Welfare Board and a specialised family help worker (*gezinsverzorger*). It was decided that Leiden University Hospital and Curium would jointly submit a report to the Child Welfare Board. Mr and Mrs Venema were neither involved nor informed.

19. It would appear that it was only during this meeting that the identity of the applicants was communicated to the Child Welfare Board.

20. On 2 January 1995 the Child Welfare Board was provided by Curium with a first version of this report (hereinafter “the Curium/Leiden University Hospital report”). In response to questions received from the Child Welfare Board, the reporting parties made additions to it.

21. On 3 January 1995 Curium sent the revised version of the report to the Child Welfare Board. The report stated that they believed Kimberly's life to be at risk and that urgent action was required. It expressed the opinion that it was not possible to discuss the matter with Mr and Mrs Venema, there being a danger that they might react unpredictably. According to the Government, the Child Welfare Board received the report on the following day.

C. Judicial proceedings

22. On 4 January 1995 the Child Welfare Board applied by fax to the juvenile judge (*Kinderrechter*) of the Regional Court (*arrondissementsrechtbank*) of The Hague for a supervision order (*ondertoezichtstelling*) and an order for Kimberly to be placed away from her family (*uithuisplaatsing*). The same day the juvenile judge issued a provisional supervision order (*voorlopige ondertoezichtstelling*), valid until 11 January 1995, pending a decision of a more permanent nature, at the same time ordering Kimberly to be placed away from her family. The juvenile judge did not hear Mr and Mrs Venema before coming to this decision. She scheduled a hearing for 10 January 1995.

23. The Government state that the Child Welfare Board wrote to Mr and Mrs Venema on 5 January 1995, enclosing with their letter the application for a provisional supervision order, the Curium/Leiden University Hospital report and several articles on the Munchausen syndrome by proxy.

24. The applicants state that they did not at any time receive either the letter of 5 January 1995 or any of the other documents mentioned. The Government appear to dispute this.

25. On 6 January 1995 Mr and Mrs Venema arrived at Leiden University Hospital intending to collect Kimberly and take her home with them. It was then that they learnt of the juvenile judge's decisions of 4 January 1995. They were not allowed to see Kimberly.

26. Also on 6 January 1995 the juvenile judge issued an order, again without hearing Mr and Mrs Venema, for Kimberly to be taken to a foster home, the name and address of which was withheld from Mr and Mrs Venema. This order was carried out the same day.

27. Again on 6 January 1995 two of the doctors from Leiden University Hospital – a paediatrician and a child psychiatrist – and the investigating officer of the Child Welfare Board met with Mr and Mrs Venema to discuss the Curium/Leiden University Hospital report, the implications of a provisional supervision order and Kimberly's placement away from her family.

28. On 10 January 1995 the juvenile judge heard Mr and Mrs Venema *in camera*. Mr and Mrs Venema were assisted by a lawyer. A representative of the Child Welfare Board was also present. At the close of the hearing the

juvenile judge decided that, given the expert opinions to the effect that Kimberly's life appeared to be in danger, the provisional supervision order would have to remain in force but that a second opinion would be obtained as soon as possible from a psychiatrist and a child psychiatrist.

29. It can be inferred from the case file that Mr and Mrs Venema were allowed to see Kimberly once every two weeks under an access arrangement, but no copy of the access order has been submitted.

30. The order of 6 January 1995 was transmitted to Mr and Mrs Venema on 20 January 1995.

31. The psychiatrist's report was dated 27 January 1995. It concluded that there were no indications that Mr and Mrs Venema posed any danger to Kimberly. However, a paragraph which the psychiatrist added to this report on 3 February 1995, after discussions by telephone with the Child Welfare Board, stated that it "[could] not be entirely ruled out" that Mrs Venema was suffering from the Munchausen syndrome by proxy, and recommended further examination.

32. The Child Welfare Board sent the psychiatrist's report to Curium and Leiden University Hospital. Curium let it be known in response that it saw no reason to reconsider its point of view.

33. Mr and Mrs Venema appealed to the Court of Appeal (*gerechtshof*) of The Hague on 9 February 1995 against the placement order.

34. Mr and Mrs Venema submitted written statements made by their general practitioner (dated 8 February 1995) and Mrs Venema's gynaecologist (dated 9 February 1995). These criticised the quality of the reporting by Curium and the Leiden University Hospital doctors and expressed doubts as to the validity of their diagnosis. They also noted that Mrs Venema had not shown any tendency to seek superfluous or clearly unnecessary medical attention.

35. Mr and Mrs Venema also submitted separate statements of three different psychiatrists (dated 17, 21 and 22 February 1995), including two university professors, who had examined them at their request. All were extremely critical of the diagnosis made by the Leiden University Hospital doctors. They concluded that Kimberly would be in no apparent danger if she were returned to her parents and recommended that this be done.

36. The child psychiatrist, from whom an opinion was to be obtained pursuant to the order made by the juvenile judge on 10 January 1995, was approached by the Child Welfare Board on 16 February 1995.

37. On 25 February 1995 the Leiden University Hospital doctors elaborated on the reasons for their suspicions as set out in their report of 3 January to the Child Welfare Board.

38. A second child, Jonathan, was born to Mr and Mrs Venema on 28 February 1995. The Child Welfare Board, aware that Mrs Venema was due to give birth, had on 14 February 1995 applied for a provisional

supervision order aimed at the protection of the second child immediately after the birth, but had withdrawn this application on 16 February 1995.

39. The Court of Appeal held a hearing on 1 March 1995.

40. On 15 March 1995 the Court of Appeal dismissed the appeal. It found that the Child Welfare Board had had sufficient reason to approach the juvenile judge as it had done, and that the juvenile judge had had sufficient reason to make the orders in question. It would have been preferable, even so, to have involved the parents in the decision-making process beforehand, or at least at an earlier stage. As matters stood, the experts disagreed amongst themselves. Given the likelihood that the examinations ordered by the juvenile judge would be brought to a conclusion shortly and that the juvenile judge would rescind the placement order immediately if the outcome was favourable to Mr and Mrs Venema, the Court of Appeal decided to confirm the decision of the juvenile judge.

41. On 30 March 1995 the juvenile judge gave a decision prolonging Kimberly's placement away from her family until 6 May 1995. Mr and Mrs Venema appealed.

42. It appears that around 10 April 1995 the access arrangement was modified in that Mr and Mrs Venema were then allowed to see Kimberly once every week instead of once a fortnight. The Government state that the initiative for this change was taken by the juvenile judge.

43. Mr and Mrs Venema lodged an appeal on points of law (*cassatieberoep*) against the Court of Appeal's decision of 15 March 1995 with the Supreme Court (*Hoge Raad*) on 24 April 1995.

44. On 2 May 1995 the juvenile judge made an order prolonging Kimberly's placement away from her family until 23 May 1995. Mr and Mrs Venema appealed, complaining among other things that the juvenile judge had not heard them before reaching this decision. On 12 May 1995, after holding a hearing, the Court of Appeal gave a decision confirming the juvenile judge's order. It held that although the juvenile judge had erred in not hearing Mr and Mrs Venema, this error was sufficiently remedied by the appeal hearing. As to the merits of the case, the Court of Appeal agreed that the opinion of the child psychiatrist appointed as an expert pursuant to the order of the juvenile judge was slow in coming but considered nonetheless that the potential danger to Kimberly's life outweighed any disadvantages of Kimberly's placement away from her family. On the same day the Court of Appeal, by a separate decision, declared Mr and Mrs Venema's appeal against the decision of 30 March 1995, which had prolonged the placement order until 6 May, inadmissible because by then it had become devoid of purpose.

45. The child psychiatrist submitted his opinion on 19 May 1995. It contained extensive reports of medical and other examinations and discussions with the applicants, character witnesses and doctors who had treated Kimberly on several occasions after she had stopped breathing.

Appended to the opinion were psychiatric reports in standard form on Mr and Mrs Venema, finding no sign of any psychiatric disorder, and a report by two Rotterdam University Hospital paediatricians finding a physical explanation for Kimberly's arrested breathing but no sign of maltreatment. The opinion noted that Kimberly's normal development had been impaired by the proceedings and that Mr and Mrs Venema had found the entire sequence of events profoundly distressing. It concluded without reservation that Kimberly should be handed back to her parents.

46. On 22 May 1995, following a hearing in camera, the juvenile judge rescinded the provisional supervision order and the placement order, at the same time refusing to replace the provisional supervision order with a permanent one. Kimberly was handed back to Mr and Mrs Venema.

47. The Supreme Court not yet having given judgment, Mr and Mrs Venema submitted on 29 August 1995 that they nonetheless had a continued interest in obtaining a decision of that court as to the legality of the measures in question. They stated, in particular, that a finding in their favour would provide them with some form of moral satisfaction; would enable them to take action in tort for damages against the State, Leiden University Hospital and Curium; would prevent further interference with their family life; and would obviate the need for the applicants to take further civil proceedings.

48. The Advocate-General (*advocaat-generaal*) at the Supreme Court submitted an advisory opinion on 20 December 1995. He expressed the view that the appeal was inadmissible as Mr and Mrs Venema no longer had any legal interest in the outcome of the proceedings. The possible satisfaction of being found in the right was not in itself a sufficient interest. Nor was the possibility of a further civil action for damages, it being by no means obvious that such an action would in fact be made possible by a decision of the Supreme Court. The possibility of further interference with the applicants' family life in the future was not relevant to the case before the Supreme Court. The question whether the State, Leiden University Hospital or Curium had committed a tort against the applicants was outside the scope of the case before the Supreme Court, so that the need, if any, for further civil proceedings could not be considered relevant either. Turning to the merits of the case, the Advocate-General expressed the opinion that the decision of the Court of Appeal was based on adequate legal grounds and sufficiently reasoned.

49. On 26 January 1996 the Supreme Court gave judgment declaring Mr and Mrs Venema's appeal on points of law inadmissible for lack of interest. It was held that the interests stated were insufficient.

D. Complaint proceedings

50. In the meantime, on 10 May 1995, a discussion took place between a representative of the Legal Proceedings Monitoring Group (*Vereniging Voor Nader Onderzoek Rechtspleging* – “VVNOR”), a non-governmental organisation that had taken up Mr and Mrs Venema's case, and the Director of the Child Welfare Board. It would appear that the Legal Proceedings Monitoring Group representative showed the Director documents taken from Kimberly's medical records, which had been obtained from Leiden University Hospital and which had been in Mr and Mrs Venema's possession for five weeks.

51. On the same day, 10 May 1995, the Legal Proceedings Monitoring Group transmitted a written statement of complaint on Mr and Mrs Venema's behalf to the Child Welfare Board.

52. On 1 June 1995 the Deputy Director of the Child Welfare Board gave a written decision declaring the complaint partly well-founded and partly ill-founded. Complaints considered well-founded related to the failure to give Mr and Mrs Venema access to certain documents – due to the absence from the file, at the relevant time, of certain meeting reports, and in the case of a list of contacts, due to an omission – and to the application for a provisional supervision order lodged on 14 February 1995 in respect of the second child Mr and Mrs Venema were then expecting. As to the latter issue, it was stated that the said application had been withdrawn on 16 February 1995 because it appeared not to be legally possible to seek a supervision order in respect of an as yet unborn child; the application had therefore been precipitate. The Deputy Director expressed regret for the lapse of time involved.

53. The Legal Proceedings Monitoring Group, on behalf of Mr and Mrs Venema, lodged an appeal with the Child Welfare Boards Complaints Committee no. IV (*Klachtencommissie IV bij de raden voor de kinderbescherming*), which was received by that body on 23 June 1995.

54. The Complaints Committee held a hearing on 22 August 1995 and gave its decision on the same day. It was considered reasonable that the Child Welfare Board had accepted the assessment of the Leiden University Hospital and Curium doctors that Kimberly's life was in danger; given the apparent urgency of the situation, the Board could not be faulted for not ensuring that the Leiden University Hospital and Curium doctors had obtained Mr and Mrs Venema's prior permission for the transmission to it of medical information. The Board ought, however, to have informed Mr and Mrs Venema in good time that it did not intend to make use of witnesses named by them but intended to rely solely on the court-appointed experts. The Complaints Committee further accepted the Board's statement that the psychiatrist had added to his report of 27 January 1995 a reservation to the effect that it could not be ruled out that Mrs Venema was suffering from the

Munchausen syndrome by proxy, not at the bidding of the Child Welfare Board, but in response to a reminder that the report did not contain corroborating information from third-party sources (hetero-anamnesis).

E. Subsequent events

55. The case received a measure of publicity. Questions in Parliament and a complaint to the Deputy Minister of Justice (*Staatssecretaris van Justitie*), lodged on behalf of Mr and Mrs Venema by the Legal Proceedings Monitoring Group, led the Deputy Minister to order an official inquiry into the way the Child Welfare Board had handled the affair.

56. The report of the official inquiry was published on 25 July 1996. Its conclusions, in so far as relevant, may be summarised as follows.

- In deciding to intervene without the prior involvement of Mr and Mrs Venema, the Child Welfare Board had no doubt sought in good faith to protect Kimberly's interests, but it might with advantage “have displayed more creativity in seeking a solution that did more justice to the parents' interests”.

- Given the Child Welfare Board's own lack of psychiatric expertise and the fact that the Munchausen syndrome by proxy is difficult to diagnose, the use which the Child Welfare Board made of a variety of contradictory reports had not been “unacceptable” although it might have assessed them in a more critical fashion.

- A lack of coordination within the Child Welfare Board had delayed the involvement of the child psychiatrist, who was only approached on 16 February 1995. This was regrettable because otherwise the reports might have been complete by the time of the birth of Jonathan.

- The Child Welfare Board's advice to the juvenile judge might have been more complete. As a minimum, the Child Welfare Board could reasonably have been expected to justify the absence of any inquiry of its own and to give more extensive reasons for the choices it made.

- The Child Welfare Board's case-file management and internal reporting were deficient: documents explaining the background to its decisions were not contained in the file.

- The transmission of the report of the psychiatrist to the Leiden University Hospital doctors and Curium had constituted a breach of confidence *vis-à-vis* Mr and Mrs Venema since, after they had first reported Kimberly's case to the Child Welfare Board, their involvement had ended. Curium in particular had been treated virtually as an external expert body.

- It appeared that Mr and Mrs Venema had not been summoned in writing to the hearing of the juvenile judge on 10 January 1995, notwithstanding the Child Welfare Board's statement to the contrary, but that this was due to a misunderstanding between the registry of the Regional Court and the Board and could not be blamed on the latter.

57. The report went on to formulate recommendations aimed at preventing the recurrence of cases such as the present.

58. According to the Government, the report led the Deputy Minister to conclude that the Child Welfare Board had “acted lawfully and fulfilled its statutory responsibility”, although its internal working procedures deserved some criticism. It had been right for the Board to take firm action and, in view of the nature and seriousness of the complaint, to rely on the expertise of third parties.

II. RELEVANT DOMESTIC LAW

A. Child welfare boards

59. At the time of the events complained of, there was a child welfare board in the judicial district of each regional court (Article 1:238 § 1 of the Civil Code (*Burgerlijk Wetboek* – “the CC”), as in force at the time). Their duties included keeping themselves informed of developments affecting child welfare within their area, promoting cooperation between institutions concerned with child welfare and giving advice, upon request or of their own motion, to authorities and institutions (Article 238 § 3 of the CC).

60. Each of the child welfare boards had competence to take action in the interests of the under-aged persons resident in its area (Article 239 § 1 of the CC).

B. Supervision orders and provisional supervision orders

61. At the relevant time, Article 1:254 of the CC provided as follows:

“1. If a child is growing up under such conditions that it is threatened with moral or physical destruction [*zedelijke of lichamelijke ondergang*], the juvenile judge may order the child to be placed under supervision.

2. He may do so on the application of one of the parents, one of the relatives by marriage or blood up to and including the fourth degree of consanguinity, the child welfare board or the public prosecution service [*openbaar ministerie*].”

62. Article 1:257 of the CC provided as follows:

“The juvenile judge may place the child under supervision provisionally pending an investigation. A provisional supervision order shall remain in force until a final and binding decision [*gewijsde*] on supervision is made.”

The relevant part of Article 258 of the CC provided as follows:

“2. The juvenile judge may lift the supervision order at any time. ...”

C. Placement of a child away from its family

63. At the material time, Article 1:260 of the CC provided, in its relevant part, as follows:

“4. A child shall only be placed away from its family under ... [Article] 1:263 [of this Code] ...”

64. Article 1:263 of the CC provided, in its relevant part, as follows:

“1. If necessary in the interest of the child's care and upbringing, the juvenile judge shall order the child to be taken into an institution that qualifies for funding under the Juveniles (Assistance) Act [*Wet op de Jeugdhulpverlening*] or elsewhere. ...”

D. Procedure as regards supervision orders, provisional supervision orders and the placement of a child away from its family

65. At the relevant time, Article 940 of the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering* – “the CCP”) provided as follows:

“1. No appeal or objection [*geenerlei voorziening*] is allowed against a provisional supervision order under Article 1:257 of the CC.

2. Such a decision can be given without any prior hearing.”

66. Article 945 of the CCP, in its relevant part, provided as follows:

“3. Each of the parents may appeal against the decisions referred to in this Article [namely decisions under Article 1:263 of the CC].”

E. Complaints procedure

67. Complaints about the actions of an agent of a child welfare board could be made to the director of the child welfare board concerned by a person with an interest in a case or an informant who had been affected by those actions. Such complaints could be submitted orally or in writing. The time-limit was two months. If the matter on which the complaint was based was pending before a court, the director had to inform that court of the complaint (section 35 of the 1982 Child Welfare Boards (Organisation) Ordinance – *Organisatiebesluit raden voor de kindbescherming 1982* – which was in force at the relevant time; “the 1982 Ordinance”).

68. The director had to try to reach a solution that was acceptable for the complainant. If that was not possible and the complainant wished to pursue the complaint before the Child Welfare Boards Complaints Committee, the director had to give a decision within four weeks after hearing the complainant and the agent involved (section 36 of the 1982 Ordinance).

69. The complainant had three weeks to refer the complaint to the Child Welfare Boards Complaints Committee (section 37 of the 1982 Ordinance). Unless this committee considered the matter a simple one or the complaint manifestly ill-founded (in which case the matter was dealt with by the Complaints Committee's chairman), it would hear the complainant and the director of the child welfare board and give a reasoned opinion, normally within six weeks after receiving the complaint. It could declare the complaint well-founded or ill-founded. The opinion was sent to the Minister of Justice (sections 37a and 38 of the 1982 Ordinance).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

70. The applicants alleged a violation of this provision in that the separation of Kimberly from her parents was not justified on medical grounds and was not discontinued as soon as this became apparent, and in that Kimberly's parents were not involved in the decision-making process that led to the separation. The Government dispute this.

Article 8 of the Convention provides as follows:

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

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

A. Whether Article 8 is applicable

71. The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention. Any such interference constitutes a violation of this Article unless it is “in accordance with the law”, pursues an aim or aims that are legitimate under paragraph 2 of Article 8 and can be regarded as “necessary in a democratic society” (see, as a recent authority, *P., C. and S. v. the United Kingdom*, no. 56547/00, § 113, ECHR 2002-VI).

72. It is not in dispute that the separation of Kimberly from her parents constituted an “interference” with the applicants' right to respect for their “family life”.

B. Whether Article 8 has been violated

73. It is not in dispute that the measure separating Kimberly from her parents was in accordance with domestic law and that it pursued the “legitimate aim” of protecting Kimberly's rights. It remains to be examined whether this measure could properly be considered “necessary in a democratic society”.

1. Arguments before the Court

(a) The applicants

74. The applicants submitted no argument after the application was declared admissible. In their observations submitted at the admissibility stage, they stated first of all that the relevant authorities had taken insufficient care to ensure that the information which led them to remove Kimberly from her parents was correct and complete, that they had failed to discontinue the measure as soon as it became apparent that the measure ordered was uncalled for, and that they had failed to involve the parents before arriving at a decision.

75. The applicants argued that the case had been known to the Child Welfare Board since early August 1994. The telephone conversation of 1 December 1994 between the Child Welfare Board and the doctor at the Child Abuse Medical Counselling Centre had not led to any further investigation. In these circumstances it was clear that the Child Welfare Board had long been aware of the need for a second opinion, and that the fact that the Child Welfare Board had found itself forced to act under pressure of time was entirely that Board's own fault.

76. There had been no immediate danger to Kimberly's life at the time the Board applied to the juvenile judge, for the simple reason that Kimberly was in hospital and thus out of her parents' immediate reach. In these circumstances it would have been quite possible for the Board itself and the juvenile judge to hear Kimberly's parents before any decision, even of a provisional nature, was reached.

77. Echoing the report of the official investigation ordered by the Deputy Minister of Justice, the applicants pointed to what they considered the Child Welfare Board's excessive reliance on information received from others – in particular, the Curium/Leiden University Hospital report – and its failure to make any investigations of its own. Such investigations would, in their submission, have clarified errors and inconsistencies in the

Curium/Leiden University Hospital report. Instead, the Child Welfare Board had given incomplete information to the juvenile judge.

78. The failings in the file management and internal reporting practices of the Child Welfare Board, noted in the report of the official investigation, also contributed to the lack of sufficient information and had thus prolonged Kimberly's placement away from her parental home.

79. The Child Welfare Board had improperly influenced the psychiatrist by inducing him, in a discussion by telephone, to add a caveat damaging to the applicants' interests to his report of 27 January 1995.

80. Finally, the retraction of the request for a similar measure in respect of Kimberly's unborn sibling Jonathan showed that already at that time the Child Welfare Board had realised that there was no danger to either child from the parents. Yet the Board had not sought to have the measure in respect of Kimberly terminated.

(b) The Government

81. The Government pointed out that the Child Welfare Board was consulted hundreds of times each year. The names of the persons involved were always withheld from the Child Welfare Board in order to protect the privacy of the individuals involved. In their contacts with that Board, the Leiden University Hospital doctors (in August 1994) and the doctor connected with the Child Abuse Medical Counselling Centre (on 1 December 1994) had kept the applicants' identity secret, such being the usual practice in order to maintain the privacy of the individuals involved. Only on 20 December 1994 had the Child Welfare Board been informed of the identity of the applicants, and only on 2 January 1995 had it received the first version of the Curium/Leiden University Hospital report. The final version of the report, dated 3 January 1995, was received by the Board only on 4 January. It was only then that the Child Welfare Board was in a position to take decisive action. Consequently, it was not the case that the Board could have sought a second opinion as early as August 1994.

82. The absence of a hearing before the juvenile judge who issued a provisional supervision order had been justified by the perceived danger to Kimberly's life. The Government referred to the Court's judgment in *K. and T. v. Finland* [GC], no. 25702/94, ECHR 2001-VII, in which it had been accepted that there might be a need in urgent cases to order emergency child-care measures without associating in the decision-making process those having custody of the child (*loc. cit.*, § 166).

83. The Government accepted that it was not impossible that Mr and Mrs Venema might not have received the letter of 6 January 1995 (the Court understands this to refer to the Child Welfare Board's letter of 5 January 1995). Whatever the truth of the matter, a copy of at least one of the documents enclosed with that letter – an article on the Munchausen syndrome by proxy – was also handed to Mr and Mrs Venema on 6 January

1995, so that it might be assumed that copies of the other documents enclosed with the said letter were handed to the applicants as well. Should it be the case that Mr and Mrs Venema never received any formal summons for the hearing on 10 January 1995, it was nonetheless true that they had turned up for that hearing and made their views known.

84. The Child Welfare Board had had little alternative to reliance on information from outside sources. The Munchausen syndrome by proxy was a medical-psychiatric condition which the Child Welfare Board was ill-equipped to investigate by its own means. Moreover, for reasons of privacy it was not possible for the Board to examine the applicants' medical records. In addition, the official report of 25 July 1996 relied upon by the applicants did not suggest either that the Child Welfare Board had not been well enough informed to take considered action or that the juvenile judge had been insufficiently informed.

85. Mr and Mrs Venema had shown information from Kimberly's medical records to the Child Welfare Board only on 10 May 1995, by which time it had been in their possession for five weeks. The Board could therefore not be blamed for not being in a position to take remedial action before mid-May. It should be pointed out in this connection that the Board could not examine medical records without the permission of the persons involved.

86. The Government denied that the Child Welfare Board had improperly persuaded the psychiatrist to add a caveat to his report of 27 January 1995, which would otherwise have been favourable to the applicants. It had emerged during the complaint proceedings that the psychiatrist, an independent expert, had done so after it had been pointed out to him that his report contained no corroboration from sources other than the applicants themselves.

87. Finally, the decision of the Child Welfare Board to withdraw its application for a supervision order in respect of Kimberly's brother Jonathan, who at the time had not yet been born, did not reflect any medical opinion that there was no danger to either child from Mr and Mrs Venema. It was grounded on a legal opinion that it was not possible to seek a supervision order for an as yet unborn child.

2. The Court's assessment

88. The Court considers that the applicants' complaints, firstly, that the failure of the Child Welfare Board to involve itself at an earlier stage in the proceedings led it to make a precipitate application to the juvenile judge and, secondly, that it acted on incomplete information with the result that it provided insufficient information to the juvenile judge, cannot be dissociated from the applicants' broader complaint concerning their own lack of involvement in the decision-making process which culminated in the making of the provisional order on 4 January 1995. Given their interrelation

it would be artificial to treat these various issues as distinct and unconnected.

89. For the Court, the essence of the applicants' case is that they were at no stage prior to the making of the provisional order consulted about the concerns being expressed about them by health professionals or offered an opportunity to contest the reliability, relevance or sufficiency of the information being compiled on them. Furthermore, although the Child Welfare Board only became actively involved in Kimberly's case on 20 December 1994, it cannot be overlooked that the possible need for urgent action was being considered by public health professionals already in August 1994 (see paragraphs 12-19 above) and that the Child Welfare Board had made recommendations in that month to the Leiden University Hospital doctors on how to proceed (see paragraph 15).

90. Against this background, the Court reiterates that its role is not to substitute itself for the domestic authorities in the exercise of their responsibilities in the field of the compulsory taking of children into public care, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation. The margin of appreciation so to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake. While national authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care, in particular where an emergency situation arises, the Court must still be satisfied in the circumstances of the case that there existed circumstances justifying such a measure. In this respect, it must have particular regard to whether, in the light of the case as a whole, the reasons adduced to justify the measure were relevant and sufficient such as to allow the conclusion to be drawn that it was "necessary in a democratic society" (see *P., C. and S. v. the United Kingdom*, cited above, §§ 114-16).

91. The Court reiterates that whilst Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8 of the Convention. The applicable principle has been stated as follows (see *B. v. the United Kingdom*, judgment of 8 July 1987, Series A no. 121, pp. 73-74, § 65):

"In the Court's view, what ... has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests. If they have not, there will have been a failure to respect their family life and the interference resulting from the decision will not be capable of being regarded as 'necessary' within the meaning of Article 8."

92. It is essential that a parent be placed in a position where he or she may obtain access to information which is relied on by the authorities in

taking measures of protective care or in taking decisions relevant to the care and custody of a child. Otherwise, the parent will be unable to participate effectively in the decision-making process or put forward in a fair or adequate manner those matters militating in favour of his or her ability to provide the child with proper care and protection (see *McMichael v. the United Kingdom*, judgment of 24 February 1995, Series A no. 307-B, p. 57, § 92, and *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 73, ECHR 2001-V).

93. The Court accepts that when action has to be taken to protect a child in an emergency, it may not always be possible, because of the urgency of the situation, to associate in the decision-making process those having custody of the child. Nor, as the Government point out, may it even be desirable, even if possible, to do so if those having custody of the child are seen as the source of an immediate threat to the child, since giving them prior warning would be liable to deprive the measure of its effectiveness. The Court must however be satisfied that the national authorities were entitled to consider that there existed circumstances justifying the abrupt removal of the child from the care of its parents without any prior contact or consultation. In particular, it is for the respondent State to establish that a careful assessment of the impact of the proposed care measure on the parents and the child, as well as of the possible alternatives to the removal of the child from its family, was carried out prior to the implementation of a care measure (see *K. and T. v. Finland*, cited above, § 166).

94. Turning to the facts of the instant case, the Court observes that, irrespective of the Child Welfare Board's allegedly tardy involvement in the procedure, the doctors at Leiden University Hospital had been monitoring Kimberly's situation as of August 1994 and were expressing real concern about Mrs Venema's mental condition (see paragraph 12 above). It cannot be overlooked that the Child Welfare Board advised the doctors at Leiden University Hospital to discuss their concerns with Mr and Mrs Venema (see paragraph 15 above). This advice was not followed. The Court finds it surprising that the Child Welfare Board's representative at the meeting held on 20 December 1994 to discuss Kimberly's case did not renew this advice or ascertain whether the applicants had been consulted about the concerns being expressed about them (see paragraph 18 above). In the event, the Board obtained a joint report of Leiden University Hospital and Curium on 2 January 1995. In response to questions put by the Board, a revised version was transmitted to it on 3 January 1995. This report concluded that Kimberly's life was at risk and that urgent action was required. On the basis of this report, the juvenile judge decided on 4 January 1995 to issue provisional orders, valid until 11 January 1995, ordering Kimberly's placement under supervision and away from her family. At no stage were the applicants asked to comment on the concerns about them or in any other way involved in the procedure.

95. It is to be further noted that on 20 December 1994 Kimberly was in hospital, where she remained until 6 January 1995. During this time she was thus in perfect safety. When the applicants came to collect Kimberly from the hospital on 6 January 1995, they were told that they were not allowed to take her home and that they were not allowed to see her. This must have come to them as a complete surprise as the hospital doctors, who had informed the Child Welfare Board of their analysis of Kimberly's health situation, had not discussed this with her parents.

96. It has not been explained to the Court's satisfaction why the doctors at Leiden University Hospital or the Child Welfare Board could not have made arrangements to discuss their concerns with the applicants and to afford them an opportunity to dispel those concerns, if need be with reference to their own medical experts' opinions. The Court is not persuaded by the opinion in the revised report sent by Curium to the Child Welfare Board on 3 January 1995 (see paragraph 21 above) that the applicants might have reacted unpredictably if the matter was discussed with them. In the Court's opinion, this justification, while it may be relevant, cannot of itself be considered sufficient to exclude Kimberly's parents from a procedure of immense personal importance to them, the less so having regard to the fact that Kimberly was in perfect safety in the days preceding the making of the provisional order. It would observe further that the failure in this case to involve the applicants in the investigative procedure before applying for the provisional order contrasts sharply with the procedure of consultation and information followed by the domestic authorities in *P., C. and S. v. the United Kingdom*, cited above, where arguably there was more evidence of a threat posed to the welfare of the child (*loc. cit.*, §§ 124-26).

97. It has been contended by the Government that, in view of the conclusions reached in the joint report of 3 January 1995 and in particular the perceived life-threatening situation for Kimberly and need for immediate urgent measures, the Child Welfare Board's reliance on this report or the juvenile judge's reaction in the form of provisional measures valid for eight days cannot be considered arbitrary or unreasonable or as overstepping the margin of appreciation enjoyed by them. However, it remains the case that the applicants were at no stage able to influence the outcome of the procedure by, for example, contesting the reliability of the information compiled in their case or adding information from their own sources to the file. It was not before 10 January 1995, when the hearing before the juvenile judge took place, that Kimberly's parents could express their views. This was six days after the juvenile judge, on the basis of the untested fears of the Child Welfare Board, had issued the provisional supervision order and an order for Kimberley to be placed away from her family and four days after the juvenile judge had issued an order to have Kimberly placed in a foster home. Before Kimberly's parents were heard and given a chance to dispute the validity of the Child Welfare Board's

fears, measures had already been taken which, because of their immediate impact and Kimberly's age, were difficult to redress.

98. For the Court, it was crucial for the parents to be able to put forward at some stage before the making of the provisional order their own point of view. It notes that the report of the official inquiry indicated that the Child Welfare Board could “have displayed more creativity in seeking a solution that did more justice to the parents' interests” and that the Child Welfare Board's advice to the juvenile judge might have been more complete (see paragraph 56 above). It further notes that the Court of Appeal observed that it would have been preferable to have involved the parents in the decision-making process at least at an earlier stage (see paragraph 40 above). The unjustified failure to allow them to participate in the decision-making process leading to the making of the provisional order denied them the requisite protection of their interests under Article 8 of the Convention, including their right to challenge the necessity for the measure sought by the Child Welfare Board. That measure, it is to be noted, formed the basis of the regrettable separation of the applicants and their daughter for a period of five months and eighteen days.

99. In summary, the competent authorities presented the applicants with *faits accomplis* without sufficient justification. This is enough for the Court to find that there has been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

100. The relevant part of Article 6 § 1 of the Convention provides as follows:

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

The applicants alleged a violation of this provision in that the juvenile judge had failed to hear Mr and Mrs Venema before issuing orders separating Kimberly from them. The Government disagreed.

101. The Court observes that the applicants' complaints under Article 6 (as declared admissible) largely coincide with their complaints under Article 8. The Court does not find it necessary to examine the facts also under Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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.”

103. The applicants claimed compensation for non-pecuniary and pecuniary damage and reimbursement of costs and expenses.

A. Damage

1. *Non-pecuniary damage*

104. The applicants claimed 60,000 euros (EUR) for non-pecuniary damage.

105. Firstly, the timing of the interference – shortly before the birth of Mr and Mrs Venema's second child, Kimberly's sibling Jonathan – coupled with the threat of a measure that might also separate Jonathan from his family had caused the applicants profound distress. The psychiatrist's report had in fact found that the events complained of had adversely affected Kimberly's development. They had also been very traumatic for Mr and Mrs Venema; it was not certain that they would ever get over them.

106. Secondly, Mr and Mrs Venema had lost all faith in the health care services and the medical profession. Moreover, the nationwide publicity given to the case had made their position in their local community difficult.

107. The Government considered the applicants' claim exorbitant. They accepted that if a violation of Article 8 were found, then an award in respect of non-pecuniary damage would be appropriate; an amount such as that awarded in the above-mentioned and largely similar case of *K. and T. v. Finland*, namely 80,000 Finnish markkas or EUR 13,455.03, would however be more suitable than the figure named by the applicants.

108. The Court observes that the applicants were reunited after five months and eighteen days. Although it cannot be asserted that they would have been reunited earlier if they had been involved in the initial decision-making process, the Court accepts that the three applicants suffered non-pecuniary damage through distress and anxiety as a result of feelings of frustration and injustice, which is not sufficiently compensated by the finding of a violation of the Convention. Deciding on an equitable basis, the Court awards the applicants jointly EUR 15,000.

2. *Pecuniary damage*

109. The applicants claimed the cost of home help in October and November 1994. They submitted that home help had been foisted on them by the authorities for the purpose of keeping an eye on them. They had had to pay 174 Netherlands guilders (NLG), or EUR 78.96.

110. The applicants also stated that the publicity given to the case had caused Mr Venema's employer to pass him over for a promotion that would have brought him NLG 1,000 a month more salary. They claimed compensation for this loss, to be set *ex aequo et bono* at an amount equivalent to the difference in salary for three years, that is NLG 36,000 (EUR 16,336.09).

111. The Government argued that the Child Welfare Board had not yet been involved in the applicant's case in October and November 1994, so that the claim in respect of home help was not related to the case before the Court. Nor did a causal link exist between the loss of income alleged and any violation that might be found.

112. The Court has found a violation of Article 8 of the Convention in that Mr and Mrs Venema were not involved in the proceedings before Kimberly was placed away from her family. The cost of home help which Mr and Mrs Venema may have had to bear in October and November 1994 is unrelated to this. The Court also finds that the decision of Mr Venema's employer, a private enterprise, to pass Mr Venema over for promotion is not imputable to the respondent State.

113. It follows that the applicants' claims under this head must be dismissed.

B. Costs and expenses

114. The applicants claimed the following sums for costs and expenses:

(a) NLG 8,323.10 (EUR 3,776.86) in respect of Messrs Wille & Donker, advocates practising in Alphen aan den Rijn, who had assisted Mr and Mrs Venema up to the end of March 1995;

(b) NLG 53,736.54 (EUR 24,384.54) in respect of Mr Willems, who assisted the applicants after March 1995, and subject to deduction of EUR 630 paid by the Council of Europe by way of legal aid;

(c) NLG 2,150 (EUR 975.63) for the assistance of the Legal Proceedings Monitoring Group; and

(d) NLG 6,761.89 (EUR 3,068.41) for the services of various specialists, telephone costs, travelling expenses and the purchase of a fax machine and video equipment.

115. The Government expressed the opinion that the sums claimed in respect of counsel fees were excessive and suggested a sum based on the legal-aid rates applying in the Netherlands. They further argued that the other expenses claimed had not been necessary.

116. As to the cost of legal assistance, the Court reiterates that it does not regard itself bound by domestic scales and practices, although it may derive some assistance from them (see, as a recent authority, *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 52, 3 March 2000).

117. According to the Court's consistent case-law, to be awarded costs and expenses the injured party must have incurred them in order to seek prevention or rectification of a violation of the Convention, to have the same established by the Court and to obtain redress therefor. It must also be shown that the costs were actually and necessarily incurred and that they are reasonable as to quantum (see, as a recent authority, *Meulendijks v. the Netherlands*, no. 34549/97, § 63, 14 May 2002).

118. The Court considers that the sums claimed in respect of the fees of Messrs Wille & Donker and Mr Willems are only recoverable in so far as they relate to the violation found; it will award EUR 3,240 under this head. In respect of the fees of Mr Willems, the Court will award EUR 18,995. Thus, the Court considers that the applicants should be awarded for costs of legal assistance a total sum of EUR 22,235 plus any tax that may be chargeable.

119. As to the remainder of the applicants' claim for costs and expenses, the Court agrees with the Government that the assistance of the Legal Proceedings Monitoring Group was obtained in the complaint proceedings which are not a "remedy" properly so-called for the purposes of the Convention. The costs incurred in this respect are unrelated to the violation found. Neither have the applicants shown that the costs set out under (d) were all necessary in order to obtain redress for the violation found. Making its own estimate, the Court is of the opinion that, in respect of these costs, the applicants should be awarded a sum of EUR 870.

120. The amounts that the Court will award in respect of costs and expenses thus total EUR 23,105, from which it will deduct the amounts paid and payable by the Council of Europe by way of legal aid namely EUR 630. The resulting sum is EUR 22,475, to which any tax that may be chargeable is to be added.

C. Default interest

121. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention;
2. *Holds* that there is no separate issue under Article 6 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 22,475 (twenty-two thousand four hundred and seventy-five euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 December 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President