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

FOURTH SECTION

CASE OF H.K. v. FINLAND

(Application no. 36065/97)

JUDGMENT

STRASBOURG

26 September 2006

FINAL

26/12/2006

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

In the case of H.K. v. Finland,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 27 September 2005 and on 5 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 36065/97) against the Republic of Finland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national ("the applicant"), on 7 May 1997. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented initially by Mr Sami Heikinheimo and subsequently by Mr Juhani Kortteinen, both lawyers practising in Helsinki. The applicant was also represented by Ms Anu Suomela, a family adviser practising in Helsinki. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicant alleged various breaches of Articles 6 § 1 and 8 of the Convention.

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. By a decision of 27 September 2005, the Court declared the application partly admissible.

6. The applicant and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1968.

A. Background

8. The applicant is the father of two children, K. born in 1988 and H. born in October 1990. He and the mother of the children divorced in January 1992, having lived apart since November 1990 and K. having lived with his mother and H. with the applicant. The applicant assumed the care of H. some ten days after her birth. According to an agreement reached in connection with the separation and confirmed by the Social Welfare Board, K. was to remain with the mother and H. with the applicant. The parents had joint custody of the children.

9. M. cohabited with the applicant from March to October 1994. Following their separation, she contacted the social welfare authorities, alleging that H. had been sexually abused by the applicant. The child's stories and behaviour had attracted M.'s attention and she had observed H. frequently touching her genitals and masturbating when going to sleep. M. also reported her suspicions to the family day care nurse. The applicant was not informed of the reports.

B. Social welfare authorities' initial measures

10. On 16 November 1994 during a visit to the day carer's, social welfare officials requested her to monitor H.'s behaviour, which according to her was deviant in that she masturbated before going to sleep. The officials witnessed the same during their visit. On 17 January 1995 they again visited the day carer, who now had kept records of H.'s behaviour. Based on these notes and their own observations, the officials consulted the Family Advice Centre (*perheneuvola, familjerådgivningen*) and decided to organise H.'s interviews and other examinations owing to a suspicion that she had been sexually abused. The applicant was not informed of those visits.

11. On 27 January 1995 when arriving to pick H. up from day care, the applicant was directed to the Family Advice Centre, where he was informed of the suspicion of sexual abuse. While denying the suspected abuse, he consented to an examination of H. but he did not accept that her place of residence should change for the period of examination.

12. The applicant was then informed that H. was to stay with her mother, who was her other legal custodian. According to the Government, he commented on H.'s placement by saying that if H. could not stay with him, the best place for her was with her mother. He was also told that if he agreed on H.'s placement with her mother, the social welfare authorities would not issue a public care order. According to the Government, he consented to H.'s placement with her mother. This was contested by the applicant.

13. On 2 February 1995 the social welfare authorities were contacted by the applicant's counsel who was told that if the applicant opposed H.'s placement with her mother during the examinations, the alternative was to issue an emergency care order. On the same day counsel withdrew the applicant's alleged consent to H.'s placement with her mother, following which a meeting with the parents was held at the Family Advice Centre on 3 February 1995.

14. It is undisputed that from 3 February 1995 there was no consent by the applicant to H.'s placement outside his home. The parties disagree as to whether the applicant consented to H.'s placement with her mother for the period 27 January and 2 February 1995.

C. Taking into public care through an emergency care order

15. By an emergency order issued on 8 February 1995 the senior social welfare official placed H. in public care with her mother, pursuant to section 18 of the Child Welfare Act (*lastensuojelulaki, barnskyddslagen;* Act no. 683/1983). The further consideration of the matter was referred to the Tampere Social Welfare and Health Care Board (hereinafter "the Board"; *sosiaali- ja terveyslautakunta, social- och hälsovårdsnämnden*), pursuant to section 17 of the said Act. The emergency care order referred to the need to conduct the necessary examinations in the Family Advice Centre in the light of the suspicion that H. had been sexually abused. The decision had not been written on the form approved by the Ministry for Social Welfare and Health Affairs in pursuance of section 14 of the Child Welfare Decree (*lastensuojeluasetus, barnskyddsförordningen*; Act no. 1010/1983). According to the notice of appeal incorporated into the decision, an appeal could be filed with the Board within fourteen days.

16. In its decision of 24 February 1995 the Board ordered that the emergency care should continue until 27 March 1995 for the purpose of concluding the examinations. According to the notice of appeal attached to the decision, an appeal could be addressed to the County Administrative Court within thirty days.

17. The Family Advice Centre's examinations commenced on 7 February 1995 and were completed on 24 March 1995. Two psychologists, J.K. and M.R., and a child psychiatrist, Dr A-K.R., stated in

their written opinion of 24 March 1995 that it was highly likely that H. had been sexually abused by the applicant. He was informed of the results of the examination in a meeting on the same day during which J.K., H.'s mother and a friend of the applicant's were also present. The examinations resulted in a conclusion that H. should be placed in public care away from the applicant.

D. Normal care order

18. On 24 and 27 March 1995 the Board heard the parents and the paternal grandmother. The applicant again denied having abused H., whereas the paternal grandmother had not noticed anything exceptional in H.'s behaviour. Following the emergency care, she had repeatedly inquired into H.'s "unusual talking" and had come to the conclusion that it had been triggered by something which had occurred in day care. She agreed to assume the care of H. in her home, as did the mother, who further stated that she had never accepted that H. should live with the applicant and that she had tried to avoid any contact with the applicant and his family. He again did not agree that H. would be staying with her mother. On 27 March 1995 the Board confirmed the care order in accordance with section 17 (2) of the Child Welfare Act. It reasoned:

> "The examination of [H.] in the Family Advice Centre has come to an end ... . The examination results confirm the impression that the child has been sexually abused and that her development would be seriously jeopardised if she continued living with her father. In its opinion the Family Advice Centre recommends that the child be placed in public care in order to ensure her healthy development (appendix no. 5).
>
> It is not possible to exclude possible abuse by providing open-care support measures.
>
> Placing the child in public care is a precondition for ensuring that she receives care corresponding to her stage of development."

19. The Board referred its decision to the Häme County Administrative Court (*lääninoikeus, länsrätten*) and the applicant filed an appeal, to which he attached two medical opinions. The first opinion was issued by a general practitioner, Dr A.H., on 3 March 1995, who had seen H. four times at a child welfare clinic, the last occasion being in December 1993. The other opinion was given by a nurse, I.L., of the same clinic on 7 March 1995. She had seen H. last in October 1994. The opinions found nothing exceptional in the child's development and no failure on the part of the applicant in providing her with proper care. Given that H. had been staying with her mother during the period of examination, the applicant argued that it could not be excluded that the latter had influenced the child's behaviour. He reiterated that although H. had been monitored while in day care, he had not been informed of the suspicions until January 1995. He furthermore argued

that he had not been heard in accordance with section 15 of the Administrative Procedure Act (*hallintomenettelylaki, lagen om förvaltningsförfarande;* Act no. 598/1982). When invited to the meeting on 27 January 1995, he had not been informed of its real purpose, namely the plan to take the child into public care. He had allegedly received a copy of the emergency care order of 8 February 1995 only after repeated requests and the paragraph indicating the possibility for him to have it reviewed by the Board had allegedly been crossed out.

20. On 29 June 1995 social welfare officials and H.'s mother agreed that H. would stay with her paternal grandfather and his partner for two weeks in July 1995 owing to the mother's fatigue. On 18 July 1995 H.'s maternal grandmother informed the social welfare authorities that H. had not returned home the day before. They unsuccessfully tried to contact the mother, following which on 25 July 1995 they agreed with the paternal grandfather that H. would stay with him until the mother could be reached or until the situation could be evaluated. On 17 August 1995 the mother informed the authorities that H. could not stay with her as the situation had drained her strength. She suggested that H. should stay with her paternal grandfather. The same day social welfare officials visited H.'s paternal grandfather and his partner, a family day care nurse by profession, who informed the officials that they could not take care of H. in the long term. It was agreed, however, that H. would stay with them until the County Administrative Court had reached its decision.

21. On 21 August 1995 the applicant informed the social welfare authorities that he did not approve of the public care. In an opinion of the same day a senior physician, Dr A.L., found H. to be normally developed both physically and mentally.

22. In a hearing on 31 August 1995 the County Administrative Court examined six witnesses. The psychologist M.R. testified to having met once with H., following which the examination had been continued by the psychologist J.K., who had met her on a few occasions. As the child had appeared to shy away from male interviewers, Dr A-K.R. had eventually taken over the investigation. He further testified that the child's statements to Dr A-K.R., who had recorded the interviews on audio tape, had been consistent with her earlier statements to the day carer.

23. The paternal grandmother testified that from March 1995 H. had started behaving in an explicitly sexual manner, referring to games played with another child in day care. H. had also referred to the day carer's husband, who had been tickling her. She also testified that the former girlfriend M. at the time of the separation in October 1994 had threatened to "seek revenge" on the applicant.

24. The day carer testified that H. had continued to masturbate after having been removed from the applicant's home. She denied ever having left H. alone with her husband, which was contested by the applicant.

25. The applicant requested that the court refer H. to a child psychiatrist for examination. The Board did not object to such an examination as long as it was conducted by a public institution. The applicant contended that in the autumn of 1994 he had, of his own motion, discussed his daughter's behaviour with a social welfare official in another local office, following which he had requested the day carer to observe H. particularly in this respect. The day carer denied that such a conversation had taken place.

26. The County Administrative Court granted the applicant cost-free counsel retroactively from 27 March 1995. It however rejected his request for a further medical examination of H. By its decision of 29 September 1995 it upheld the care order, reiterating the contents of M.'s report of October 1994 and the observations made by the day carer. From the summer of 1994 the day carer had seen H. frequently masturbating during naps and when playing. According to her notes, such masturbation had lasted from fifteen minutes to one and a half hours at a time. H. had also repeatedly been saying that the applicant had been tickling her in her buttocks and kissing her with his tongue.

27. The County Administrative Court's reasons for upholding the care order read *in extenso* as follows:

> "According to the evidence available, the conditions in the home of [H.] have seriously jeopardised her health and development. Open-care support measures have not been possible. The public care of [H.] and her placement outside her original home must be considered to be in her interests."

28. The County Administrative Court's decision was notified to the Board on 5 October 1995. The following day social welfare officials presented themselves without giving any advance notice in the paternal grandfather's and his partner's home, removed H. and temporarily placed her in a substitute family.

29. The applicant appealed against the County Administrative Court's decision, requesting a hearing before the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) and a further examination of H.

30. In a meeting on 11 October 1995 between social welfare officials and the applicant, he was informed that H. had been transferred to a substitute family, to which he objected. The mother consented to the placement.

31. On 6 November 1995 the applicant removed H. from the venue of a supervised meeting and hid her during the following eleven months. On 1 December 1995 he and H. underwent an examination by a psychologist, H.H., who in a written opinion of 22 January 1996 found H. to be more developed than an average child of her age. She was balanced, very attached to her father and there was no indication of her having been sexually abused.

32. Two days after the abduction the Board decided that the public care should be implemented in the substitute family. The Board did not accept the paternal grandfather's and his partner's offer to care for H. It noted that the applicant had been heard in person on 11 October 1995. He had been invited to attend the Board's meeting, but he sent instead a letter that was read out at the meeting.

33. On 30 November 1995 the Board filed observations in reply to the applicant's appeal to the Supreme Administrative Court. On 19 January 1996 he submitted a rejoinder.

34. On 27 February 1996 the court invited the National Authority for Medicolegal Affairs (hereinafter "the Medicolegal Authority"; *terveydenhuollon oikeusturvakeskus, rättsskyddscentralen för hälsovården*) to submit a written opinion on the conduct of the examinations by the Family Advice Centre, which was subsequently communicated to the applicant for comments.

35. Meanwhile, and following the applicant's complaint as to the examinations by the Family Advice Centre, the Medicolegal Authority had obtained expert opinions from its standing experts, a professor in child psychiatry, Dr E.R., and a psychologist T.P., as well as a written opinion from Dr A-K.R. and J.K. In an opinion dated 30 January 1996 Dr E.R. noted *inter alia* the following:

> "The examinations carried out on H. were initiated on account of 'the sexual games' with the father, of which the child had spoken to the day care nurse, and on account of H.'s frequent masturbation in day care, especially before taking a nap. Although masturbation is relatively usual at that age, it can no longer be considered to merely relate to the age of the child when it is so extensive and intense as described by the day care nurse, especially not where the masturbation is placed in the context of the child's description of 'sexual games' at home. In this light I find the initiation of the examinations concerning sexual abuse a justified measure. .... [Dr A - K.R's] questions [that were put to H.] were not leading although they tended to have an element of pressure given that they were repeated several times as the girl was unable to answer them. ... Whether the girl has undergone psychological tests, either projective tests or tests measuring the child's abilities, remains unclear. Also the contents of [H.'s] playing remain unclear. Thus, I cannot assess the quality of psychologist [J.K.'s] examinations. Pyschologist [M.R.] has met both parents, but the documents I have received do not disclose any detailed description of the contents of the discussions, thus preventing me from assessing also the quality of these discussions. With the exception of the interview carried out by child psychiatrist [A-K.R.], which I find appropriate, I cannot take a position on the nature of the examinations. ...The decision to take the child into public care was made in an appropriate manner by the social welfare authorities, considering that the father had proved to be the likely abuser of the child..."

36. On 21 May 1996 the Medicolegal Authority gave the applicant permission to consult, during 24 hours, four tape recordings from the examination of H. at the Family Advice Centre. He was not allowed to copy the tapes but had them transcribed.

37. On 3 June 1996 the Supreme Administrative Court invited the applicant's further observations. In his observations of 19 June 1996 he submitted a written opinion by the psychologist H.H., issued following the abduction. He also requested a hearing including the taking of witness evidence from the former girlfriend M., Dr A-K.R., the psychologist H.H. and Dr G.A., a child psychiatrist and consultant to the Ministry for Social and Health Affairs. Moreover, he objected to not having been provided with the full documentation underlying the Medicolegal Authority's opinion such as Dr A-K.R.'s and the psychologist J.K.'s observations. Lastly, he relied on a written opinion, dated 17 June 1996, by Dr G.A., who considered that the examination by the Family Advice Centre had not shown that H. had been sexually abused by the applicant. On the contrary, it transpired from the transcripts of the interviews that she had been led and pressurised by Dr A-K.R., the clear goal being to detect sexual abuse. Not all interviews had been recorded. Clinical annotations were missing from the records, which rendered it impossible for Dr G.A. to assess the credibility of the Family Advice Centre's examinations.

38. Following the Medicolegal Authority's request for an additional opinion, Dr E.R. and the psychologist T.P., in their joint opinion of 8 July 1996, expressed the view that the decision to take H. into care and place her first with her mother and later in a substitute family, had been justified and appropriate, considering both H.'s own words and her behaviour. They also took the view that the Family Advice Centre should have considered more thoroughly the conditions for an additional examination of H. given the fact that the psychological examination and the interviews with the parents had been insufficient. Further, they took a stand regarding the examinations carried out on the applicant's request during H.'s abduction by the psychologist H.H. As noted above, the applicant relied on a written opinion of H.H in the Supreme Administrative Court.

> "... Psychologist H.H. has carried out psychological examinations on both H. and her father. A written opinion has been given on account of these examinations. It indicates that H.H. had examined the father on two occasions and the child on one occasion. It is questionable especially in the context of suspected sexual abuse that the same psychologist tests both the suspect and the abused child. .... The examinations were carried out without consultation with those involved in the earlier examination, which in our opinion shows professionally unethical and inconsiderate conduct on the part of the examining psychologist. ...."

39. In its further opinion of 29 July 1996 to the Supreme Administrative Court the Medicolegal Authority deemed the Family Advice Centre's examinations in 1995 to have been necessary and based on a reasonable suspicion of sexual abuse. The Medicolegal Authority had obtained the audio tapes and documents produced by the Family Advice Centre and had heard the psychologist J.K., Dr A-K.R. and the psychologist M.R. in writing. It had also obtained the above joint opinion of its standing experts.

40. On 1 August 1996 the Supreme Administrative Court invited the applicant's further observations. In his observations of 19 August 1996 he noted that he had not been provided with copies of the above supplementary opinion by Dr A-K.R and the psychologist M.R.

41. H. was missing from the authorities until 6 October 1996 when the police fetched her from the applicant's work place. She was placed in a family support centre (*perhetukikeskus, familjestödscenter*). The applicant was informed of her whereabouts on 22 October 1996.

42. On 8 October 1996 H. underwent an examination in a university hospital. A paediatrician, Dr H.L., stated in her written opinion of 21 November 1996 that she had not found any signs of sexual abuse in her examinations and found H.'s behaviour to be normal for her age. Dr H.L. did not, however, take any stand regarding the earlier medical opinions.

43. In a meeting on 21 October 1996 between social welfare officials and staff of the university hospital hesitation was expressed about undertaking new examinations concerning the alleged sexual abuse.

44. From 8 October 1996 to 16 July 1997 H. underwent child psychiatric examinations at the Tampere university hospital on the basis of a referral dating back to December 1995. During that period the applicant was heard at the surgery on 16 December 1996 and 28 April 1997 and he was consulted over the telephone on 20 February and 1 April 1997. In her written opinion of 15 September 1997 a child psychiatrist, Dr M.R., described H. as a very lonely 6 year old girl, whose basic human relationships with her parents and her brother and other persons close to her were coloured by argument and conflict. The examinations did not concern the sexual abuse suspicion as such an examination would have damaged the child's mental health. H. was considered to suffer from a severe stress reaction and to have adjustment difficulties and she was in need of possibly long-lasting child psychiatric treatment. The opinion recommended child welfare measures with a view to protecting the child.

45. On 7 November 1996 the Supreme Administrative Court dismissed the applicant's request for an oral hearing and a further examination of H., and upheld the County Administrative Court's decision with the following reasons:

> “Since an oral hearing was held before the County Administrative Court, there is no reason to hold one before the Supreme Administrative Court.
>
> In view of the opinions already obtained there is no need to obtain an additional opinion.
>
> For the reasons given in the County Administrative Court's decision and considering, moreover, the disturbed behaviour of [H.], the Supreme Administrative Court considers that the conditions stated in section 16 of the Child Welfare Act have been met as regards the public care order issued on 27 March 1995. Accordingly, and in view of the requests in the matter, the evidence obtained, and the legal provisions

invoked by the County Administrative Court, there is no reason to amend its decision.”

E. Further changes in care providers and termination of public care

46. In a meeting with social welfare officials on 17 December 1996 the applicant was informed that H., who was diagnosed as suffering from post-traumatic stress, would be moved out of the family support centre within six months.

47. On 24 April 1997 in a meeting with social welfare officials, the applicant was informed that a substitute family home had been found and he was invited to comment in writing on the intention to transfer H. there.

48. On the same day he requested the Board to terminate the public care as being no longer justified. He submitted that H.'s initial examination in the Family Advice Centre had been conducted on the basis of the preconceived idea that sexual abuse had taken place. This suspicion had been categorically refuted in the written opinions of Dr G.A. and the psychologist H.H. H.'s behavioural disturbance had not been shown to result from the conditions in the applicant's home. Before the taking into care she had not displayed any signs of being disturbed. Moreover, her wish to continue living with him had been recorded repeatedly.

49. On 13 May 1997 the senior social welfare official refused the applicant's request that the public care be terminated, being of the view that no alternative care solution existed. Open-care assistance would be insufficient for ensuring the child's healthy physical and mental development. By placing H. in substitute care, the authorities were seeking to provide her with a secure and home-like growing environment and to ensure her mental rehabilitation as well as a healthy development corresponding to her age. Having received the decision, the applicant pursued his request before the Board.

50. In his submission of 19 May 1997 he objected to the intended transfer of H. to a substitute family home and proposed that she be placed in the family of her former day care nurse, who had consented to receiving her. H.'s mother again consented to the transfer to a substitute family home.

51. On 21 May 1997 the Board decided to transfer H. to the substitute family home. Her removal took place on the following day. The Board's decision stated, *inter alia*, that:

“According to M.R., the examining doctor of the Tampere university hospital, H. suffered from post-traumatic stress, *inter alia*, because of the abduction, and for the purpose of rehabilitation H. should be provided with a safe home-like growing environment. No suitable substitute family was found that could have taken the child, *inter alia*, because of the abduction threat by the father. A family home was found which has a home-like atmosphere and has long experience of the care of different children taken into public care. In the family both parents are at home, looking after the children.”

52. On 26 June 1997 the Board also confirmed the official's refusal to terminate the public care, relying on the reasons given in the official's decision. It further noted that the care order had been triggered by the disturbed behaviour which H. had been repeatedly displaying during 1994. From the sexual point of view her symptoms had differed from those of other children of her age. She had been placed in public care on the basis of the Family Advice Centre's examinations. Her growing environment had been jeopardising her healthy development and open-care assistance had been considered insufficient.

53. The applicant appealed against the Board's decisions of 21 May and 26 June 1997, arguing that it had failed to hear H. and the other interested parties. In considering that there was no alternative to the public care and in finding open-care assistance insufficient the Board had based itself on events which had occurred two years ago, without obtaining any fresh evidence as to the justification for its decisions. He furthermore recalled that, when H. had been removed from him in October 1996, the social welfare officials had requested her fresh examination in the clinic in view of the expert opinions submitted by him. However, after the Supreme Administrative Court had rejected his final appeal against the care order, social welfare officials had allegedly amended their request to the clinic, asking instead that H. receive treatment according to their instructions.

54. On 16 July 1997 in a meeting involving social welfare officials, the substitute parents and medical staff, it was observed that according to the patient records of the clinic H.'s symptoms, which had already abated in the family support centre, had continued to diminish in the substitute family home.

55. On 30 October 1997 the County Administrative Court heard thirteen witnesses. It had at its disposal, *inter alia*, a written opinion of a psychologist, E.S., whom the personnel of the family home had consulted. On 5 December 1997 it rejected the applicant's appeal against the decision to transfer H. to the substitute family home. It gave the following reasons:

> "... Having been taken into public care, [H.] was officially placed in a substitute family from 6 October 1995 to 6 October 1996. In reality she was a fugitive with her father from 6 November 1995 to 6 October 1996, when she was placed in a family support centre.
>
> A doctor of the university hospital who examined [H.] after her escape journey considered that she should be provided with secure conditions resembling a home. Her individual nurse at the family support centre has considered the placing of H. in a substitute family to be in her best interests.
>
> On the basis of the aforementioned and, in particular, given [H.'s] age and the fact that she will be beginning school, the decision to change the premises for implementing the public care ... has been in her best interests."

56. The County Administrative Court also rejected the appeal against the decision not to terminate the public care. It reasoned as follows:

> "On 6 November 1995 [the applicant] abducted [H.], who had been placed in the care of the Board, and was hiding her at different locations until 6 October 1996. After the escape journey [H.] was diagnosed as suffering from various behavioural disturbances, a serious post-traumatic stress syndrome and adjustment difficulties. Throughout her public care it has been difficult to initiate cooperation between the social authorities and [the applicant]. According to the evidence presented, [H.] has adjusted well to the substitute home. In this situation the decision to maintain the public care has been in her best interests."

57. The applicant appealed further, requesting an oral hearing before the Supreme Administrative Court. He argued, *inter alia*, that H. should have been heard prior to the Board's decisions.

58. In response to the applicant's further query as to when the public care would be terminated, it was noted in the care plan of 24 April 1998 that H. was in the process of settling into the substitute family home. She was doing well in school and she would be able to stay in the family home as long as she needed to. It was also stated in the care plan that the social welfare authorities would consult child psychiatric experts in order to determine H.'s long-term needs as to whether she needed a long-term placement or whether the care could be terminated.

59. In the spring of 1998 social welfare officials inspected the home of the applicant and his then common-law spouse. It appears that no report was made.

60. In a meeting on 12 June 1998, which the applicant had not been invited to attend, social welfare officials and staff of the hospital and the Family Advice Centre agreed that the symptoms displayed by H. "more than likely" resulted from her having been subjected to sexual abuse. By now the substitute care had provided H. with sufficient security and in the prevailing circumstances she would be able to develop into a balanced young person and adult. A termination of her public care could have unforeseeable consequences. Her meetings with the applicant would be supported also in the future.

61. On 11 January 1999 the Supreme Administrative Court, without having held an oral hearing, rejected the applicant's appeal against the County Administrative Court's decision of 5 December 1997. The court found the various documentary evidence and the evidence taken at the lower court's hearing sufficient for a ruling as follows:

> "Section 17, subsection 1 of the Child Welfare Act provides that the Social Welfare Board must, whenever possible in view of the child's age and level of development, clarify his or her own wishes and opinion, and afford a child who has reached the age of twelve as well as his or her parents the opportunity to be heard, before a decision as to the child's placement in public care outside his or her home or as to whether to terminate such care. Considering that [H.] underwent examinations at the child psychiatric clinic of a university hospital and that, according to the results, she was

suffering from a serious stress reaction and an adjustment difficulty, and considering that, according to [the Board's] decision of 21 May 1997 she had stated, after an introductory visit, that she was willing to move to the family home, although her opinion has later varied, her opinion has been clarified in accordance with the requirements of the aforementioned provision of the law.

Before the challenged decisions were reached the parties were afforded an opportunity to be heard. In the County Administrative Court an opportunity to be heard was provided and an oral hearing was held. The Supreme Administrative Court has further afforded the applicant an opportunity to consult all documents in the case. Accordingly, he has been provided with the material which has affected the decision.

Section 1 of the Child Welfare Act provides that a child is entitled to a secure and stimulating growth environment as well as to a harmonious and well-balanced development, and has a priority right to protection. Considering the evidence presented in respect of the reasons leading to the public care order, [H.'s] mental symptoms and the changes which have occurred in her life, the conditions for maintaining her public care and changing the premises of the care outside her home, as stipulated in sections 16 and 20 of the Child Welfare Act, existed at that stage. On these grounds and considering the reasons and legal provisions relied upon in the County Administrative Court's decision, there is no reason to amend the outcome of that decision."

62. In the care plan meeting on 15 January 1999 and following the applicant's request that the public care be terminated, it was agreed that the social welfare authorities would hold a meeting with child psychiatric experts to assess when it would be best to carry out the examinations in the child psychiatric family ward at the university hospital.

63. On 28 January 1999 the social welfare authorities remitted the applicant and H. for an examination at the ward. The examination with regard to the applicant's parenting skills, his interaction with H. and H.'s psychological state and need for treatment took place in December 1999. In their opinion of 3 February 2000 Drs P.P-A. and E.K. considered, *inter alia*, that H.'s mental state had clearly improved during her placement in public care to which she seemed to have adjusted well. She was still suffering from a serious emotional disturbance which would require at least one or two psychotherapy sessions a week during the next two or three years. The relationship between her and the applicant displayed a certain inhibition and distance but the conditions for their bonding to improve were present. H. would need long-term individual therapy and long-lasting cooperation between the family, the carers and the child welfare authorities. They considered that the applicant and H. should have their new joint treatment sessions in June and August 2000.

64. In a meeting on 13 March 2000 social welfare officials and the parents agreed that H.'s and the applicant's relationship would be observed by the child psychiatric family ward in June and August 2000 with a view to issuing an opinion on the conditions for the termination of the public care. It

was further agreed that H. would begin receiving therapy. The therapy sessions began in April 2000.

65. In her opinion of 28 September 2000 Dr P-P.A stated the following:

> “It has been difficult to achieve cooperation and a treatment relationship at the ward, and no functioning cooperation relationship has emerged. ... The father has difficulties in processing H.'s situation at an emotional level and in seeing the burdening effects of the continuous ... trials on the child. He has repeatedly voiced mistrust towards the authorities and concerning the aims of and grounds for the treatment. Also his attitude towards H.'s individual therapy has changed from having been positive to being negative. Owing to this his acceptance of H.'s treatment has remained problematic ... H. needs long-term individual child psychiatric treatment and long-term cooperation between the family, medical staff and child welfare. ... The father's willingness to ensure the management of H.'s individual therapy has remained uncertain. Having regard to the above and to the evasive and distant nature of their interaction ... there are no preconditions for terminating the public care. ... The treatment will now be focusing on H.'s individual therapy. ... Interaction treatment at the ward will not be recommended for now. ...”

F. Access restrictions

66. From 27 January to 8 February 1995 there was no formal decision concerning access.

67. The emergency care order of 8 February 1995 included an access restriction to the effect that the applicant and H. were allowed to meet twice a week under supervision. An agreement concerning access from 7 to 23 February 1995 was signed by the applicant. According to him, notwithstanding that he signed the agreement, he opposed restricting access. According to the Government, no access restriction was in force at the relevant time as the applicant had consented to the arrangement.

68. The Board's decision of 24 February 1995 to uphold the emergency care included an access restriction to the effect that the applicant and H. were allowed to meet once a week under supervision.

69. According to the Board's decision of 27 March 1995 following a meeting with the parents on 24 March 1995, H. would continue living with her mother while seeing the applicant under supervision. The decision did not specify the frequency of the meetings and it was to be reviewed at the end of 1995. The applicant accompanied by counsel took part in the Board's meeting on 27 March 1995. Following the meeting, the applicant was informed that he could visit H. at the family support centre once a week.

70. In a care plan of 26 October 1995 following a meeting with the applicant on 11 October 1995, contacts were reduced to one supervised three-hour visit once a month, starting on 6 November 1995 in the family support centre. This arrangement was to be in force until March 1996. The applicant objected to the restriction and was allegedly not provided with all relevant documentation. No formal decision was issued.

71. Following the abduction of 6 November 1995, the Board by its decision of 8 November 1995 prohibited access until 31 May 1996, pursuant to section 25 of the Child Welfare Act and section 9 of the Child Welfare Decree. The applicant had been invited to attend the Board's meeting, but he sent instead a letter that was read out at the meeting. As noted above, H. was found with the applicant on 6 October 1996.

72. On 22 October 1996 the director of the family support centre issued a formal decision, prohibiting all meetings between the applicant and H. until 21 November 1996 owing to the risk of abduction. The applicant was informed that despite the prohibition he would be allowed to see H. in connection with her therapeutic visits to the clinic. On 22 November 1996 the Board issued a decision, maintaining the access prohibition until 30 May 1997. It referred to the abduction following which the applicant had been hiding her from the authorities for eleven months. Referring to section 15, subsections 3 and 4, of the Administrative Procedure Act, the Board did not hear him, considering that such a hearing could jeopardise the purpose of the decision and that the decision could not be postponed. He appealed to the County Administrative Court. In its rejoinder of 21 January 1997 to the applicant's appeal the Board submitted that the applicant had allegedly said, during a visit to the clinic on 16 December 1996, that he intended to abduct H. again. Moreover, the abduction threat had not been the only reason for the access prohibition as H. had been diagnosed as suffering from post-traumatic stress syndrome for which she needed care.

73. In a letter of 11 February 1997 the senior social welfare official clarified the access prohibition ordered on 22 November 1996. Despite the prohibition, the applicant was allowed to meet H. during her therapeutic visits to the clinic and to write to and telephone her in the family support centre. It appears that, even though encouraged by social welfare officials to do so, he did not use this opportunity.

74. On 21 February 1997 the County Administrative Court quashed the access prohibition imposed on 22 November 1996 and remitted the matter for a re-examination by the Board, finding that the Board had not shown sufficient grounds for not hearing the applicant prior to its decision. The decision was notified to the social welfare authorities on 20 March 1997.

75. On 21 May 1997 the Board issued a formal decision restricting access which was to be in force until 31 December 1997. The frequency and implementation of the meetings were to be agreed upon in connection with the presentation of the care plan indicating where H. was going to live. The applicant had been heard on 24 April 1997.

76. From 1 September 1997 the social welfare authorities repeatedly tried to arrange meetings with the applicant to draw up a new care plan in order to arrange future visits between him and H. However, he never accepted the suggested dates nor did he make his own proposals.

77. In his letter of 5 January 1998 the applicant demanded that the family home be informed of his right to meet H., given that the last access restriction had ceased on 31 December 1997. In a letter of 16 January 1998 a social welfare official informed him that it was a normal practice concerning the arrangement of meetings with children placed in a substitute family to agree on the conditions at a meeting at which the social welfare authorities, the substitute parents and the parents were present. She further noted that:

> "....we have on several occasions tried to fix consultations for the purpose of arranging meetings between you and H. but no progress has been made. The situation at present is that we have not made any decision on the restriction of the right of access but have agreed with the family home that you will be able to meet H. there. The frequency of meetings would be one visit per month, and you can directly agree with the family home on the most convenient dates for the meetings. ...."

78. On 20 January 1998 the family home and the applicant agreed that the applicant and H. would meet in the paternal grandfather's home. The social welfare authorities informed the applicant in a letter dated 21 January 1998 that he could only visit H. in the substitute family home owing to the fact that H. had not seen him for a long time. Neither of the social welfare officials' letters of January 1998 constituted a formal decision.

79. The social welfare authorities tried to arrange meetings to draw up a care plan again in February 1998 but a meeting was not held until 9 March 1998. According to the care plan, the applicant was to visit H. two times in the substitute family home and once at the paternal grand father's. The leading social officer would also visit the applicant in his home on 7 April 1998. The social welfare officials did not accept the applicant's proposal that H. would visit his home every other weekend. No formal decision was made.

80. In a care plan meeting on 17 April 1998 social welfare officials did not accept the applicant's proposal that H. be allowed to stay with him and his common-law spouse every other weekend. According to the care plan of 24 April 1998, one visit a month would take place in the substitute family home and once a month the substitute parents would bring H. to the paternal grandfather's for the day. The applicant would be allowed to organise certain outings with H., as long as she would not be subjected to situations creating confusion in her as to which was really her permanent home at that particular moment. The access restriction was to be in force until 26 June 1998. No formal decision was made.

81. Since a care plan meeting on 26 June 1998 it appears that the visits have been fully agreed on. It was agreed that H. would visit the applicant every other weekend from Saturday to Sunday. She could also spend a week with her paternal grandfather during the summer. The care plan indicated that her public care remained justified in the light of the conclusions reached

in a meeting the same month. In a care plan meeting on 18 September 1998 it was agreed that H. would visit the applicant every other weekend from Friday until Sunday and spend the autumn holiday with him. The Christmas holiday would be agreed on between the substitute family home and the applicant. In a care plan meeting on 15 January 1999 it was agreed that the weekend visits were to be conducted as earlier. H. could also spend the winter holidays with the applicant. In a care plan meeting on 13 March 2000 it was agreed that H. would spend four weeks with the applicant in July 2000. It appears that H. has continued to visit the applicant's home every other week and to spend part of her summer holidays with him.

G. The custody proceedings and other events

82. Meanwhile, in civil proceedings initiated before the Tampere District Court (*käräjäoikeus, tingsrätten*) on 15 March 1995, H.'s mother requested, allegedly on the recommendation of social welfare officials, that she be granted sole custody of the children and that H. be ordered to live with her. In an interim decision of 15 June 1995 the District Court ordered that H. should live with her mother, following the termination of the public care. It adjourned the further consideration of the case.

83. In September 1996 the applicant started cohabiting with a woman, whom he married in 1999.

84. On 3 February 1998 the District Court confirmed an agreement between the applicant and H.'s mother to the effect that they would exercise joint custody of their son K., whereas the applicant would have sole custody of H. and she would live with him following the termination of her public care.

85. On 7 August 1998 the District Court, in response to the parents' joint request, awarded the applicant sole custody of K., who had moved into the home of the applicant and his common-law spouse in July 1998.

86. On 3 June 2003 H. was placed temporarily with the applicant and the public care was terminated on 2 February 2004.

87. On 9 November 2004 H. was again taken into emergency care on the applicant's request. On 4 May 2005 she returned to live with him.

H. The criminal proceedings

88. On 30 April 1996 the Board reported the applicant to the police, on suspicion of having sexually abused H. and having abducted her in violation of the public care order and the access restriction.

89. Further, on an unspecified date, the applicant was charged with having sexually abused H. He was further charged with having abducted her on 6 November 1995. On 28 May 1997 the Tampere District Court held its first hearing. It subsequently heard the applicant and nine witnesses,

including the paternal grandmother, the day carer, Drs A.R. and J.K., and received several written expert opinions.

90. In its judgment of 29 January 1998 the District Court, notwithstanding that it considered H.'s behaviour at the time of the initial care order not to have been normal for her age, found that the evidence did not show that the applicant had committed the sexual acts that he had been charged with. It thus rejected the charges. It declined to consider the charges relating to the abduction, as the Board had not attested that the bringing of charges was in the interests of the child. The court reasoned as follows:

> ... Taking into account the incriminating facts, the District Court does not find it established in a reliable manner that [the applicant] is guilty of aggravated sexual abuse of a child nor of sexually indecent behaviour towards a child. ...
>
> Witness A.K. [the day carer] had made notes about H.'s behaviour in day care between 16 November 1994 and 12 January 1995. When A.K. was heard as a witness, she explained that by “bottom” she had meant “the genitals”. The notes contain entries made in 35 different days. According to the notes of A.K., H. had “tickled” her genitals on all those days, which had lasted from 15 minutes to one and half hours. ....
>
> According to witness A-K.R., who is specialising in child psychiatry, ... a child's behaviour becomes sexually coloured after sexual abuse. Such children masturbate more than usual. The witness had earlier met only one child who had masturbated to the extent of the present one. Child psychiatric literature does not give for this extensive masturbation any explanations other than that the child has in some way been subjected to sexuality. The witness is of the view that the child has been subjected to behaviour which is inappropriate for a child, at least when she has clearly had pathological behaviour. .... The witness is not able to tell whether masturbation is something that the child has herself discovered, but it has clearly been indicated that it is something that she has in some way done together with the father. According to the witness, H. is a strong and determined child whose words are even more convincing than the words of children usually are. In the view of the witness, the most important report in the case are the notes made by the day care nurse. ....
>
> Witness J.K., who worked as a psychologist at the Family Advice Centre, has stated that a girl masturbating is not necessarily a sign of incest that she has experienced. However girls, who have had some kind of sexual experiences, often show disturbed or excessive sexual behaviour. Excessive masturbation could be a sign of experiences other than sexual abuse, for example other kind of mental instability. There may be hyper or overactive children, distressed children or children showing this kind of behaviour without any explanations thereto. ...

91. On 26 August 1999, the Turku Court of Appeal (*hovioikeus, hovrätten*) confirmed the acquittal. In addition to the reasons given by the District Court, it found, *inter alia*, that it could not be concluded from the Family Advice Centre's initial examination that H. had been sexually abused.

II. RELEVANT DOMESTIC LAW AND PRACTICE

92. The relevant legislation is outlined in the Court's judgments in *K. and T. v. Finland* [GC] (no. 25702/94, §§ 94-136, ECHR 2001-VII) and *R. v. Finland* (no. 34141/96, 30 May 2006).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 8 OF THE CONVENTION

93. The applicant made various complaints under Articles 6 § 1 and 8 of the Convention.

Article 6 § 1 reads in relevant part:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... ."

Article 8 reads insofar as relevant:

> "1. Everyone has the right to respect for his private and family life ... .
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society 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. The parties' submissions

1. The applicant

94. The applicant argued that H.'s placement from 27 January to 8 February 1995 had not been based on law. He had not consented to H.'s placement with her mother.

95. Further, the social welfare authorities and Dr A-K.R. had based themselves on the suspicion that H. had been sexually abused by her father and they had only been interested in finding evidence that supported that suspicion. The authorities had subsequently refused to acknowledge the fact that he had been acquitted and they had allegedly even informed the substitute family home that H. would continue living there regardless of any court decisions to the contrary.

96. He contested the Government's view that the right of access was only a right of the child, emphasising that the parents also enjoyed that right.

97. He had abducted H. owing to the fact that the authorities refused to have her properly examined. Psychologist H.H. for her part found no indication of abuse. The authorities had not been interested in negotiating with the applicant following the abduction, and had told him "to surrender without making any demands".

98. As for the fact that the applicant did not visit H. at the clinic, he explained that he had not received all relevant information pertaining to her care and his request that all examinations be recorded on tape had been refused. Accordingly, he could not in the prevailing atmosphere of mistrust risk his visits being used against him in the court proceedings.

99. In the public care proceedings the County Administrative Court based its decision on grounds not relied on by the Board in its decision, such as the abduction and the alleged stress that it had caused, thus preventing the applicant from preparing his case. The County Administrative Court further failed to acknowledge that the alleged stress that H. was under could have been caused by factors relating to her perpetual removals. As the applicant's mother and friend had been charged with aiding and abetting the abduction, they could not risk testifying about the circumstances in which H. lived following the flight.

100. The applicant argued that removing H. from his care without any foundation was not consonant with the notion of the child's best interests. He maintained that he had not been heard regarding the taking of H. into public care or the issuing of access restrictions. The authorities had taken the initial measures already in November 1994 but he had only been informed of the suspected abuse on 27 January 1995. The care plan meetings had been nothing but an act on the part of the social welfare officials, who had no intention of terminating the public care. Contrary to the Government's contention, he had asked for the audio-tapes already in October 1995, but his request had been refused.

2. The Government

101. The Government conceded that there was family life between H. and the applicant and that the impugned measures, namely H.'s placement with her mother between 2 and 7 February 1995, the emergency care order of 8 February 1995, the normal care order of 27 March 1995 and the access restrictions, amounted to interferences with the applicant's right to respect for his family life. However, on 27 January 1995 the applicant had agreed that H. would stay with her mother and at the beginning of H.'s placement and since 9 March 1998 there have been agreements concerning visits. In respect of these circumstances no interference could be considered to have taken place. The first agreement on access concerned the period 7 February

to 23 February 1995. Thereafter, there had been various access restrictions the last of which had expired on 31 December 1997. Since 9 March 1998 the meetings with a view to drawing up a care plan had been held frequently. During these meetings the visits and the date for the next care plan meeting had been agreed upon. From the meeting of 18 September 1998 the care plans had been in total conformity with the wishes of the applicant. Accordingly, there was no interference regarding the access mentioned above.

102. In the Government's view the emergency care order of 8 February 1995 had been justified owing to the need for examinations in the light of the suspicion that H. had been sexually abused. The emergency care order had to be made as, on 2 February 1995, the applicant had withdrawn his consent to H.'s placement with her mother. The measures in question had their basis in domestic law except for the period from 3 to 7 February 1995. That specific interference had not been in accordance with the law. The normal care order issued on 27 March 1995 had been based on child psychiatric examinations resulting in a finding that it was highly likely that the applicant had sexually abused H. As her development was seriously jeopardised when living with the applicant, public care had been imperative. The Government concluded that, with the exception of the non-existence of an emergency order between 3 and 7 February 1995, there had been no violation of Article 8.

103. As regards the Board's decision of 27 March 1995, which included an access restriction, the Government conceded that it had not been made in a procedure that was "in accordance with the law". There were no shortcomings in respect of the remaining access restrictions, which had also been justified. The right of access was not a right of the parent, but a right of the child and it could not be enforced against the child's best interests. The possibilities for the substitute carers to take responsibility for the care and upbringing of the child must also be taken into account. The access prohibition issued on 22 October 1996 and extended on 22 November 1996 until 30 May 1997 had been based on the applicant's threat to abduct H. again, a threat which he had repeated on 16 December 1996. Despite this prohibition the applicant was allowed to meet H. during her therapeutic visits to the hospital and to contact her by phone and mail while she was staying in the family support centre. However, the applicant did not visit the hospital to meet H. Also, the access restriction of 21 May 1997 had been based on the applicant's threat to abduct H. again.

104. As for the applicant's involvement in the decision-making process, the Government reiterated that H. had been interviewed for the first time on 27 January 1995 and the same day he had been informed of the need for examinations. On 3 February 1995 a meeting had been held at the Family Advice Centre with both parents before the decisions of 8 February 1995 were made. The applicant, represented by counsel, did not request to

acquaint himself with the audio-tapes from the examinations at the Family Advice Centre until they had been submitted to the Medicolegal Authority, from which he acquired the tapes for 24 hours. As regards the maintaining of the public care and the access restrictions, the Government considered that he had been sufficiently involved in the decision-making process. The Board's neglect to hear the applicant prior to its decision of 22 November 1996 had been corrected by the County Administrative Court. Further, he had the possibility of appealing against the decisions and the relevant documents had been available to him.

B. The Court's assessment

1. Relevant principles

105. The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (see, *inter alia*, *Johansen v. Norway*, judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-III, pp. 1001-02, § 52). 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 and can be regarded as "necessary in a democratic society".

106. In determining whether the impugned measures were "necessary in a democratic society", the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify these measures were relevant and sufficient for the purpose of paragraph 2 of Article 8 (see, *inter alia*, *Olsson v. Sweden (no. 1)*, judgment of 24 March 1988, Series A no 130, p. 32, § 68).

107. It must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned (see *Olsson v. Sweden (no. 2)*, judgment of 27 November 1992, Series A no. 250, pp. 35-36, § 90). It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for the regulation of the public care of children and the rights of parents whose children have been taken into care, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see, for instance, *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55; and Johansen, cited above, pp. 1003-04, § 64).

108. The margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake. While the 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 particular case that there existed circumstances justifying the removal of the child, and 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 taking the child into public care, was carried out prior to implementation of such a measure (see *K. and T. v. Finland* [GC], no. 25702/94, § 166, ECHR 2001-VII, and *Kutzner v. Germany*, no. 46544/99, § 67, ECHR 2002-I).

109. Following any removal into care, a stricter scrutiny is called for in respect of any further limitations by the authorities, for example on parental rights of access, as such further restrictions entail the danger that the family relations between the parents and a young child are effectively curtailed (see *Johansen*, pp. 1003-04, § 64, and *Kutzner*, § 67, both cited above). The taking into care of a child should normally be regarded as a temporary measure to be discontinued as soon as circumstances permit, and any measures of implementation of temporary care should be consistent with the ultimate aim of reuniting the natural parent and child (see *Olsson (no. 1)*, cited above, pp. 36-37, § 81; *Johansen*, cited above, pp. 1008-09, § 78; and *E.P. v. Italy*, no. 31127/96, § 69, 16 November 1999). In this regard a fair balance has to be struck between the interests of the child remaining in care and those of the parent in being reunited with the child (see *Olsson (no. 2)*, cited above, pp. 35-36, § 90, and *Hokkanen*, cited above, p. 20, § 55). In carrying out this balancing exercise, the Court will attach particular importance to the best interests of the child which, depending on their nature and seriousness, may override those of the parent (see *Johansen*, cited above, pp. 1008-09, § 78).

110. As regards the extreme step of severing all parental links with a child, the Court has taken the view that such a measure would cut a child from its roots and could only be justified in exceptional circumstances or by the overriding requirement of the child's best interests (see *Johansen*, cited above, p. 1010, § 84, and *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX). That approach, however, may not apply in all contexts, depending on the nature of the parent-child relationship (see *Söderbäck v. Sweden*, judgment of 28 October 1998, *Reports* 1998-VII, pp. 3095-96, §§ 31-34, where the severance of links between a child and father, who had never had care and custody of the child, was found to fall within the margin of appreciation of the courts which had made the assessment of the child's best interests).

111. The Court further 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 that Article:

> "[W]hat ... 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." (see *W. v. the United Kingdom*, judgment of 8 July 1987, Series A no. 121, pp. 28-29, §§ 62 and 64)

112. 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 to 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, where the authorities did not disclose to the applicant parents reports relating to their child, and *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, ECHR 2001-V, where the applicant mother was not afforded an early opportunity to view a video of an interview of her daughter, crucial to the assessment of abuse in the case; see also *Buchberger v. Austria*, no. 32899/96, 20 December 2001).

2. Application of these principles

(a) The taking into emergency care and normal public care

113. In the present case it is common ground that the placement of the applicant's daughter in emergency care and normal public care interfered with his right to respect for his family life. The parties disagree as to whether the applicant consented to H.'s placement outside his home for the period between 27 January and 2 February 1995. It is however undisputed that from 3 February 1995 there was no consent by the applicant to H.'s placement outside his home and that an emergency care order was not issued until 8 February 1995. The Government concede that there has been a violation as regards the non-existence of an emergency order between 3 and 7 February 1995.

114. Given the Government's concession as regards the period between 3 and 7 February 1995, the Court finds that it is not necessary to examine, as a possible separate source of violation, whether the applicant consented to H.'s placement outside his home for the period between 27 January and 2 February 1995. Accordingly, the Court finds that there has been a violation of Article 8 of the Convention in that H. was placed away from the applicant from 3 to 7 February 1995 in the absence of any formal decision by the social welfare authorities as required by the Child Welfare Act.

115. The Court finds no indication that the public care from 8 February 1995 and the transfer of H. to the various substitute carers were

not based on the Child Welfare Act. The measures were clearly aimed at protecting the health and rights of H.

116. The taking into emergency care stemmed from a suspicion that H. had been sexually abused. Given the fact that H. was showing signs of disturbance, the Court sees no reason to doubt that the authorities had good cause to be concerned about her health and safety and it is satisfied that a careful assessment of the impact of the emergency care measure on the applicant and H., as well as of the possible alternatives to taking her into public care, was carried out prior to the implementation of that measure. The reasons relied on by the national authorities were relevant and sufficient to justify the intervention in the family life of the applicant. The applicant was informed of the suspected sexual abuse and the need for H.'s removal from his care prior to the decision to take her into emergency care. The decision not to involve the applicant at the stage of the initial monitoring of the child was understandable in order not to provoke a crisis in the family and to allow the monitoring to be completed. In addition, the applicant was seen to present a possible immediate threat to H. Giving him prior warning would have been liable to deprive the monitoring of its effectiveness since there was a risk that the applicant could have sought, by a deliberate change of behaviour, to dissipate any suspicion that he was sexually abusing H.

117. As to the normal care order the Court sees no reason to doubt that the authorities could consider that placement in public care was called for rather than the use of open-care measures, bearing in mind that the authorities' primary task was to safeguard the interests of H., which inevitably entailed that she be placed away from the applicant, whom the social welfare authorities suspected of sexual abuse.

118. Nor can it be said that the emergency care or the normal care order were implemented in a harsh or exceptional way. Initially H. was placed with her mother, who was her other legal custodian at the time. In a situation where H. was displaying disturbed behaviour possibly resulting from sexual abuse and where the prospects for the healthy development of the child in foster care appeared far more positive than could be expected if she were to be entrusted to the applicant, the authorities could reasonably base the contested decisions on the assessment of what was in the best interests of the child. The Court is not persuaded that the social welfare authorities or the administrative courts overstepped their margin of appreciation in ordering and implementing those measures.

119. As to the procedural guarantee inherent in Article 8, the case file shows that the applicant was properly involved in the decision-making process and that he was provided with the requisite protection of his interests. The applicant could and did appeal on two court levels against the Board's decision concerning the normal public care. The County Administrative Court held a hearing. Although the Supreme Administrative Court rejected his request for a hearing as unnecessary, it gave him the

opportunity to file written observations on the submissions lodged by the Medicolegal Authority. In these circumstances the Court cannot conclude that the applicant was insufficiently involved in the decision-making procedure leading to the placing of H. in public care and the confirmation of the care order by the administrative courts.

120. As to the complaint about the failure to obtain a second medical opinion, the Court notes that H. was repeatedly examined and treated at the child psychiatric clinic following her taking into public care. She was examined and treated by both psychiatrists and psychologists. The Medicolegal Authority invited a professor of child psychiatry, E.R., to assess whether H. had been duly examined as regards the need for public care. The Court is satisfied from the information before it that proper steps were taken to obtain an adequate expert medical opinion for the purposes of the proceedings.

121. The Court finds therefore that the taking of the child into public care was based on reasons which were not only relevant but also sufficient for the purposes of Article 8 § 2 of the Convention and that the decision-making process satisfied the requirements of that provision. Accordingly, there has been no violation of Article 8 on this account.

(b) Access restrictions

122. The Court notes that the Government concede that there has been a violation of Article 8 as regards the access restriction issued on 27 March 1995 (see paragraph 103 above). The Court also notes that restrictions on access were imposed in the care plans of 11 October 1995, 9 March 1998 and 24 April 1998 although the applicant objected to them. However, having regard to the impact of these measures on the applicant's right to respect for family life, he should have been given an opportunity to contest them. No such opportunity was given and no sufficient justification for that shortcoming has been made out.

Accordingly, the Court finds that there has been a violation of Article 8 of the Convention in these respects.

123. As to the remaining restrictions on access, the Court notes the following. While it appears that no meetings could take place during certain periods of time, this seems to have resulted from the abduction and further abduction threats and unwillingness on the part of the applicant to discuss access arrangements (see paragraphs 71-72 and 76-77 above). In addition, there is no indication that the applicant was unable to keep in touch with H. by telephone. Given the suspicion that the child had been sexually abused by the applicant, the Court finds that the interferences with the applicant's rights can be considered proportionate to the legitimate aim pursued and that the Finnish authorities could reasonably consider it justified to restrict access. The case file shows that the social welfare officials were not unaware of the applicant's objections to the restriction on access or the

reason for his objections. Accordingly, the Court cannot find that he was excluded from putting forward his views or that he was otherwise insufficiently involved in the decision-making. The measures were thus justified under Article 8 § 2.

Accordingly, there has been no violation of Article 8 of the Convention as regards these measures.

(c) The complaints under Article 6

124. The Court considers that the complaints made by the applicant under Article 6 are a restatement of his complaints about the absence of procedural guarantees allowing him to be associated with the decision-making process. It has analysed those complaints under Article 8 of the Convention as regards both the taking into care proceedings and the restriction on access proceedings above and considers that, in the circumstances of this case, it is not required to examine them separately from the standpoint of Article 6.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

125. Article 41 of the Convention provides:

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

A. Damage

126. Under the head of pecuniary damage the applicant claimed 470 euros (EUR) for costs relating to the public care and EUR 8,000 relating to costs for his lay assistant. Under the head of non-pecuniary damage he claimed EUR 30,000 for anguish and pain caused by the nine-year separation from his daughter.

127. The Government submitted that there was no causal link between the alleged violation and the alleged pecuniary damage and that the claim relating to non-pecuniary damage was excessive as to *quantum*.

128. The Court has found that Article 8 has been violated in that the Finnish authorities failed to issue an emergency care order before the effective removal of the applicant's daughter from his care and as to the imposition of restrictions on access. However, it finds no sufficient causal link between those violations and the pecuniary damage allegedly suffered. These claims must therefore be rejected.

The Court has no doubt that the violations of the applicant's right to respect for his family life must have caused him suffering and distress.

Making an evaluation on an equitable basis, the Court therefore awards him EUR 5,000 as just satisfaction for non-pecuniary damage.

B. Costs and expenses

129. The applicant claimed reimbursement of the costs of counsel and an adviser in the domestic proceedings in the amount of EUR 29,157.90.

He also claimed reimbursement of the costs of counsel and an adviser in the Convention proceedings in the amount of EUR 12,300. The legal aid granted by the Council of Europe EUR 850 had not been deducted before arriving at that amount.

130. The Government submitted that the applicant had been granted cost-free counsel in the public care proceedings and that the formal defect of the Board's decision of 27 March 1995 had not resulted in any costs for the applicant. His costs in the criminal proceedings were irrelevant for the present application and should therefore be rejected. As to the Strasbourg proceedings, the claims were not fully substantiated and the hourly rate was somewhat excessive.

131. The Court reiterates that an award under this head may be made only in so far as the costs and expenses were actually and necessarily incurred in order to avoid, or obtain redress for, the violation found (see, among other authorities, *Hertel v. Switzerland*, judgment of 25 August 1998, *Reports* 1998-VI, p. 2334, § 63). Not only the costs and expenses incurred before the Strasbourg institutions but also those incurred before the national courts may be awarded. However, only those fees and expenses which relate to a complaint declared admissible can be awarded (see, for example, *Mats Jacobsson v. Sweden*, judgment of 28 June 1990, Series A no. 180-A, p. 16, § 46).

The Court finds that the claims for compensation have not been fully substantiated. It also reiterates that the application was declared only partly admissible. Having regard to all the circumstances and taking into account the sum received by way of legal aid from the Council of Europe, the Court awards the applicant EUR 13,000 (inclusive of value-added tax).

C. Default interest

132. 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 in respect of the fact that H. was placed away from the applicant in the absence of a formal decision to that effect;

2. *Holds* that there has been a violation of Article 8 of the Convention in respect of restrictions on access on four occasions;

3. *Holds* that there has been no violation of Article 8 of the Convention as regards the applicant's other complaints;

4. *Holds* that it is not necessary to examine whether there has been a violation of Article 6 § 1 of the Convention as regards the applicant's alleged lack of involvement in the decision-making process;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 13,000 (thirteen thousand 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President