



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 18712/03
by Werner Hermann THIERMANN and Others
against Norway

The European Court of Human Rights (First Section), sitting on 8 March 2007 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 10 June 2003,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having regard to the parties' oral submissions at the hearing on 8 March 2007,

Having deliberated, decides as follows:

THE FACTS

The application was introduced on 10 June 2003 by three groups of applicants.

The first group included seven applicants who were parties to the first set of proceedings instituted before the domestic courts: (1) Mr Werner Hermann Thiermann (Farstad, Norway), (2) Mrs Harriet von Nickel

(Al Made, Portugal), (3) Mrs Anne-Marie Grøbe (Sarpsborg, Norway), (4) Mrs Gerd Synnøve Andersen (Sarpsborg); (5) Mr Karl Otto Zinken (Ski, Norway); (6) Mrs Tove Laila Strand (Oslo, Norway); (7) Mr Paul Hansen (Oslo). They are all Norwegian nationals.

The second group consisted of 48 persons whose names are listed in the Appendix hereto and in respect of whom a second summons was issued before the national courts (this summons had concerned altogether 50 litigants). They are all Norwegian nationals.

The third group comprises 60 persons whose names are listed in the Appendix and in respect of whom a third such summons was issued (this summons had concerned altogether 64 litigants). Two of these persons are citizens of Sweden, the remainder are Norwegian nationals.

As the parties of both the second and third group were not allowed to join the case of the first group, they filed a separate action, which was stayed pending the outcome of that brought by the first group. In the light of the result they considered it futile to pursue their action.

On 12 December 2003 a fourth group of 44 persons, whose names are listed in the Appendix (two of whom are citizens of Sweden, one of Germany and the remaining are Norwegian nationals), joined the above-mentioned application introduced on 10 June 2003. Because of the outcome in the case pursued by the first seven applicants, they considered bringing any proceedings themselves before the national courts to be devoid of any purpose.

The applicants are represented before the Court by Mrs R.H. Spydevold, a lawyer practising in Oslo. The Government are represented by their Agent, Mr Thomas G. Naalsund, Attorney General's Office (Civil Affairs).

The facts of the case, as submitted by the parties, may be summarised as follows.

A. Particular circumstances of the case

1. General background to the case

The applicants have in common that they have a Norwegian mother and a German father and were born during the Second World War. A number of them were registered as children of "*Lebensborn*" (which means "spring of life").

The "*Lebensborn*" was a Nazi project created by Heinrich Himmler in 1935, with the aim of taking care of mothers and children who were deemed valuable from "a racial and genetic" point of view. Young girls considered "racially pure" were to be offered the possibility to give birth to a child in secret. The child was then to be given to the SS organisation which was to look after his or her education and adoption. A Norwegian centre was established in 1941. During the period between late 1940 and 8 May 1945,

between 10,000 and 12,000 children were born in Norway from a Norwegian mother and a German father. They were referred to as “*war children*” (*krigsbarn*).

A large number of mothers to *war children* were marginalised, had great difficulties in obtaining gainful employment and were incapable of providing for the upbringing of their offspring. In many instances their children were placed for adoption, in foster homes or in institutions.

Towards the end of the War and thereafter, various public officials, notably clergymen and medical doctors, expressed publicly negative opinions about the *war children*. This included allegations to the effect that the latter were defective individuals and potential fifth colonists.

On 9 July 1945 the Ministry of Social Affairs appointed a War Children Committee (*krigsbarnutvlaget*) to review whether it was desirable to deport the *war children* and their mothers to Germany and, in any event, what special measures could be taken to integrate the children as ordinary citizens in Norway.

The Commission's report, which was completed in the autumn of 1945, advised against deportation and recommended the launching of an extensive and carefully prepared information campaign in order to influence public opinion to become favourable towards the *war children* and to extend that concept to cover not only those children whose fathers were German but also those whose fathers were of other foreign nationalities.

According to information supplied by the Government, the authorities concluded that in the circumstances at the time such a campaign was neither necessary nor desirable. In this connection the Government referred to the minutes of the Sixth Nordic Child Protection Congress in 1948, according to which the Norwegian representative, and secretary-general of the Norwegian Child Protection Council, Mr Oscar Lyngstad, stated:

“The authorities have accepted the consequences of the fact that under Norwegian law the children are Norwegian citizens with the same legal position as other children. It is now generally recognised that the *war children* should fit into society among other children without attention being specially drawn to them.”

The Government further referred to a Bill to Parliament (*Odelstingsproposisjon* No. 37 (1949), page 2, which stated:

“The War Children Committee made its report in November 1945 and here proposed a number of measures with a view to solving the different problems that were expected to arise. The Commission also proposed a special War Children Act. None of these measures were implemented, as it was found that the children were quite quickly absorbed by society. Most were taken in by relatives or put up for adoption. It has not been necessary in the interests of either the children or their mothers to take special protective measures.”

According to the applicants, the authorities were responsible for having actively and passively contributed to *war children* having been treated as “free for all”. This failure had occurred despite the authorities' having been

aware, as it emerged from the War Children Committee's report, of widespread public opinion that the *war children* were potential fifth colonists, mentally retarded and carriers of poor genes. As a result, a number of *war children* had been placed in psychiatric institutions without adequate prior expert assessment. Many had been subjected to discrimination, harassment and ill-treatment in children's homes, educational establishments, adoptive homes and foster homes and to derogatory treatment in their close social environment.

In his New Year speech to the Norwegian people on 1 January 2000 the Prime Minister, Kjell Magne Bondevik stated:

“... [W]e cannot let the turn of the century pass without taking in the injustice suffered by many *war children* in the Post War area. On behalf of the State of Norway I should like to apologise for the discrimination and injustice to which they had been subjected.”

The first, second and third groups of applicants, but not the fourth group, submitted briefs about their individual story with their initial application. In connection with the Court's oral hearing on 8 March 2007 most of the applicants in the fourth group submitted such information. On that occasion the applicants in the first group submitted various medical statements and other documents regarding their personal health that were submitted in the domestic proceedings, notably before the High Court. Also a number of the applicants in the second group and a few of the applicants in the third and fourth groups submitted such statements, mostly of more recent dates. The documents provided information on their health status and variously also on the applicant's accounts about their past as *war children*. For the purposes of the present decision, the Court considers it sufficient to reiterate the accounts of the first seven applicants.

The first seven applicants are members of the *Krigsbarnforbundet Lebensborn* (Association of War Children of *Lebensborn*), which was created in 1999 and has approximately 80 members. There is also *Norges Krigsbarnforbund* (the Norwegian War Children Association), set up in 1986 and comprising around 700 members.

1. The first seven applicants' individual accounts

(i) The first applicant

The first applicant, Mr Werner Hermann Thiermann, was born in 1941. During the War he lived in a children's home established by the Germans. Thereafter he was placed successively in about 20 different homes. For a few years he lived with his grandmother, before being placed with foster parents.

The first applicant submits that while he was living in one of the children's homes, he and a little girl were locked up in a pig house for a whole day because, so they were told, they stank. It was scorching hot and

when they were released at night they were almost unconscious. They were scrubbed with a piassava brush, water and ammoniac. During this treatment they were made to understand that it was due to the fact that they were *war children*.

Because he was a war child, the first applicant was harassed at school and in his close environment, without anybody trying to stop it. As a nine-year old he was, with his teacher's blessing, raped by some older boys at school.

After having finished school at the age of 17 he went off shore. He spent a few years in Germany and then returned to Norway in order to serve his military service. He wished to pursue further education within the Army, but was dissuaded from doing so because of his background.

When he was 16 or 17 years old he took for the first time formal steps to look into his background, with the assistance of the Red Cross.

During most of his professional life, the first applicant had worked as a driver. From 1981 to 1985 he ran his own business as a lorry driver. In 1986 he went bankrupt and in 1987 he was granted a disability pension on account of psychological problems and back pain. In 1999 he resumed working as a driver, part time.

(ii) The second applicant

Born in March 1942, the second applicant, Mrs Harriet von Nickel, lived during her first 17 months with her grandmother, until she was placed with foster parents who had initially asked for a boy. Love and care were totally lacking in the foster home, where she was told that she was ugly, bad, stupid and had heinous genes. She was regularly locked up in a utility room near the hall to wait for her foster father to come home and hit her. On some occasions, in order to prevent her from escaping, she was attached by a dog chain. She was spanked extensively both at home and at school. Once during a geography lesson she was asked to stand up so that the whole class could see what a "German kid" (*tyskerunge*) looked like. When she was seven or eight years old a dentist purposely drilled her gum. At the age of nine or ten some alcoholics in her neighbourhood marked a swastika with a nail on her forehead and verbally abused her. She fled from her foster parents and went to Germany to see her father, but there she was arrested as an illegal immigrant and was returned to Norway. For a short period she went to secondary modern school, but had to leave. In 1989 she applied for a disability pension, which she was granted with effect from 1 June 1988. In 1990 she published a book about her background.

(iii) The third applicant

The third applicant, Mrs Anne-Marie Grube, was born in April 1944. After the war her mother worked and left her at home all day unattended, until she was moved to her grandmother's home in Moss. There she was

beaten a lot by her grandmother and her aunts. One of her aunts told her that if her mother had stayed away from the Germans her grandmother would not have had to take care of her. It did happen that she was given presents, but she experienced that these could be taken away from her after a few days. Frequently house arrest was imposed upon her. Love and care were missing in her home.

She started at ordinary school but was moved to a class for children needing special attention. She was harassed at school. In her local environment people shouted words like "German kid" or "*løsunge*". Over the years she has had great psychological and physical problems. She started to receive a disability pension in 1974. The medical certificate supporting her pension application referred to her traumatic childhood.

(iv) The fourth applicant

The fourth applicant, Mrs Gerd Synnøve Andersen, was born in August 1944 in Sarpsborg. She believes that for the first two years of her life she was placed in a barracks. Thereafter she was placed in a children's home. She was washed with scalding hot water, being told by the headmistress that this was the best and only way of cleaning "German children" with greasy hair. The children's home deprived her of her liberty and prevented her from having normal social contacts as she was never allowed to receive visits from friends.

Throughout primary school she was placed in a class for children needing special attention. Due to lack of knowledge, she did not manage to complete secondary modern school. She was regularly exposed to violence. During her sixth school year a teacher sexually abused her. This was witnessed by the whole class and led to the teacher's dismissal. When she married at 18 years old the priest stated that he thought she should be sterilised. In 1995 she started to receive a disability pension.

(v) The fifth applicant

The fifth applicant, Mr Karl Otto Zinken, was born in August 1941. He stayed in a children's home in 1945. As a six year old he was returned to his mother. He went to ordinary primary school before he was placed in a special school for retarded persons, which he completed. It is clear that he should never have been sent to such a school and that the reason for sending him there was his status as a war child. In connection with a medical examination he was subjected to brain-washing by a psychiatrist together with other men who surrounded him in a circle. They told him what a scum of the earth he was and that he should not seek to multiply; otherwise he would go to hell. He should never assert himself, or else he would be killed. He was raped by two of the men.

The fifth applicant was rejected by his stepfather's family and was harassed by the latter's children. He was never cared for and had a terrible

childhood and youth. As an adult he had a normal life with a good job. The ill-treatment and his attempts to suppress the traumas he had experienced led him into a deep psychotic state in 1996 and incapacity to work. In the years that followed he was committed to a psychiatric hospital a number of times.

(vi) *The sixth applicant*

The sixth applicant, Mrs Tove Laila Strand, was born in November 1941 in Hønefoss. At the age of two she was taken from her mother and sent to Germany, where she lived with her grandparents until the age of six, when the Norwegian Red Cross returned her to her mother in Norway.

The sixth applicant's mother had previously been declared unsuited to assume the care for her, which was reflected in the manner she was treated by her mother. The latter continuously ill-treated her by hitting her, making burn marks with an iron, scratching her with needles and such like. From the age of six until she turned 15 her stepfather abused her sexually. She fled home. Her physical and psychological suffering gave her an ulcer.

Her grandparents in Germany were loving and caring persons and wished to keep her in their care. Had she been able to grow up with them she would most probably have had a normal life with a normal standard of living.

In Norway she felt it necessary to keep silent about her origins both in her social and her professional environment, due to the negative self-image that had been imposed on her. She is now so damaged from the ill-treatment that she is incapable of carrying out normal work.

(vii) *The seventh applicant*

The seventh applicant, Mr Paul Hansen, was born in April 1942 at Hurdal Verk. After a certain period he, together with 19 other children, was committed to the *Godthåb Lebensborn* Home in Bærum. In 1946 he was transferred to the Emma Hjort Psychiatric Hospital, where he stayed until 1950 when he was placed in an institution named Furuheim at Tjøme. After having spent periods at different homes under the mental healthcare services in the Vestfold County he returned to the Emma Hjort in 1960, where he stayed until 1965.

He submits that no expert assessment had been made as to the propriety of his being committed to these various institutions. His being wrongly placed had been a consequence of the authorities' decision to transfer the children at the *Lebensborn* Home to Emma Hjort. He was not exposed to any physical abuse, but the fact that he had been considered mentally retarded and had lived together with persons so considered during his entire upbringing had marked him considerably and constituted a great burden for him, substantially reducing his quality of life. He regularly had nightmares and has been suicidal. In 1984 he was granted NOK 80,000 in *ex gratia*

compensation (*billighetserstating*) from the State for having received a deficient education.

3. *Judicial proceedings brought by the applicants*

(i) *Proceedings before the City Court brought by the first seven applicants*

On 10 December 1999 the first seven applicants instituted proceedings before the Oslo City Court (*tingrett*). They argued that because of their origin they had been the victims of violations of Articles 3, 8 and 14 of the Convention. They considered that the Norwegian State was responsible for the violations, *inter alia* because public officials had expressed attitudes towards the *war children* which had contributed to people adopting a negative perception of them, which in turn had led to infringements having been committed against the children. The State had failed to take any action to prevent the abuse, amongst others the measures recommended by the War Children Committee. The first seven applicants sought (1) a ruling to the effect that the State was responsible for violations of their fundamental human rights and (2) ordering the State to pay each of them compensation in an amount not exceeding NOK 2,000,000.

The City Court gave a decision and a judgment (*kjennelse og dom*) on 16 November 2001 with a common reasoning. It observed from the outset that not only did the parties disagree about the manner of resolution of the legal disputes but they also disagreed on what questions the City Court should determine. It found that item (1) of the first seven applicants' requests could reasonably be viewed as one for a declaratory judgment (*fastsettelsesdom*), whereas item (2) ought to be understood as a compensation claim.

The City Court considered that the State could not be held liable for any actions or omissions referable to the period between 1945 and the entry into force of the Convention in September 1953. Moreover, the various instances of abuse of which the first seven applicants complained could not be considered a continuing situation either for the purposes of national law (criminal or tort) or the Convention. In this regard the City Court stressed that it had to be demonstrated in each individual case, as the applicants had attempted to do, that he or she had been the victim of specific violations. The individual plaintiff's claims ought to be considered individually, and thus it was not decisive whether other *war children* had or had not been victims of violation over a shorter or longer period. Then the City Court went on:

“The violations to which [first seven applicants] have referred, concern very different offences. They concern different forms of violation – passivity on the part of the Government, statements from public individuals, serious crimes such as rape, and harassment by private individuals. Moreover, the violations have taken place over a period of 55 years. These are factors that militate strongly against an ongoing situation as this term is defined in compensation and criminal law.

This being so, in the City Court's opinion, it cannot be assumed that we are dealing with a single ongoing situation, in the sense that abuses committed in 1945 are not time-barred as long as the victim can today be subjected to a violation of a quite different character. As regards the relationship to the ECHR, it is the individual abuses against which the Convention protects the citizens.”

The City Court considered that item 2 of the first seven applicants' request was time-barred under section 9 of the Act relating to the Limitation Period for Claims 1979 (*Lov om foreldelse av fordringer nr. 18* of 18 May 1979, hereinafter referred to as “the Limitation Act 1979”), according to which a compensation claim for non-pecuniary damage was time-barred 3 years after the injured person had become or ought to have become aware of the damage and the identity of the person responsible or, in any event, 20 years after the impugned act or other circumstances giving rise to liability. In addition, a 10-year rule which was in force until 1996 was applicable. The City Court was of the view that all of the first seven applicants' claims must have been time-barred under the 20-year rule, which meant that the claims were time-barred at the latest in 1985, 20 years after the youngest plaintiff turned 21. As regards the fifth applicant, he had alleged that the abuse occurred in 1945, 8 years before the entry into force of the Convention. The City Court added that, due to the long lapse of time, it was impossible to prove the alleged violations; no witnesses or documentary evidence could be adduced. Therefore the limitation of the claims did not just have a formal reason but also a substantive one.

As regards item 1 of the first seven applicants' requests, the City Court considered that they did not have an actual legal interest for the purposes of Article 54 of the Code of Civil Procedure. In reaching this conclusion the City Court had regard *inter alia* to its finding that the first seven applicants' compensation claims were time-barred; that the main criticism against the State, namely its failure to take certain measures in the Post War period, fell outside what could be made the subject of a review of the merits of the case; that the first seven applicants' interest in having historical truths ascertained by the judiciary could hardly be achieved given the very great number of *war children* compared to the number - 122 - of litigants in the proceedings.

Nor did the City Court find that making a declaratory judgment in the first seven applicants' case was warranted by other reasons. In cases concerning, as here, allegations of violations of human rights, this would depend on the character of the violation, whether the proceedings had been instituted within a reasonable time, whether other possible remedies had been exhausted; the importance of the case for the victim and the jurisprudential value of the ruling. However, in this case the central points of the first seven applicants' complaint against the State fell outside the temporal scope of the Convention; the possibilities of the judiciary to review policy choices were very limited; the pecuniary claims were time-barred; the applicants had had the opportunity to have their complaints of

violations of the Convention examined by the courts; the case concerned mainly circumstances more than 55 years back in time; no information had been submitted to the effect that similar proceedings had been instituted in other countries nor that the treatment of *war children* had been worse in Norway than in other countries, a question to be assessed by researchers; in order for the 122 out of 10,000 litigants to succeed in the proceedings it would be necessary to provide documentary evidence beyond the first seven applicants' own statements; as was undisputed by them, the alleged violations were not capable of being proved, whereas criminal liability required proof beyond reasonable doubt and civil liability for misplacement and malpractice in respect of the children raised complicated questions.

In view of the above, the City Court found it difficult to see how the first seven applicants could benefit from further judicial review of the case. The parties were in agreement that the matter had not come to an end. In the view of the City Court, it would be best for all the parties involved to leave these issues to historians and politicians, not lawyers.

The City Court dismissed (*avviste*) the case by a decision (*kjennelse*) in so far as item 1 of the first seven applicants' requests were concerned and rejected the claim against the State by a judgment (*dom*) with respect to item 2. The first seven applicants had been granted free legal aid in the proceedings and the State had made no request for costs.

(ii) Proceedings before the High Court relating to the first seven applicant's appeal

The first group of seven applicants then appealed to Borgarting High Court against the City Court's decision and judgment.

On 29 May 2002 the first group of applicants withdrew their appeal against the dismissal by the City Court of item 1 and reformulated their appeal against its judgment regarding item 2. As a result, the former part of the case was discontinued by the High Court in a separate decision, whereas the proceedings concerning the latter part were focused on the limitation issue.

By a judgment of 21 June 2002 the High Court, sitting with 3 professional judges and 4 lay judges, unanimously upheld the City Court's judgment, observing *inter alia*:

“[The first seven applicants] argue that their claims in the case are based on Convention violation, and are not claims in damages law in the normal sense. The High Court cannot see that there is any basis for this argument. Norway's accession to the European Convention on Human Rights did not entail an obligation to incorporate the Convention into Norwegian law; the Convention mandated Norwegian authorities, through legislation and otherwise, to safeguard these rights and ensure that they were not interfered with unless authorised under the Convention. [The first seven applicants] have argued that for many years since the Second World War their human rights have been seriously violated, in part through acts of persons for whom the Government must be seen as directly liable, in part because the authorities had failed

to protect the *war children* and safeguard their rights. The High Court bases its consideration of the time-barring on this claim, without needing to take a position on its merits. [The first seven applicants] argue that these acts and omissions on the part of the authorities have caused them damage of both pecuniary and non-pecuniary nature. The claim advanced here by [The first seven applicants] regarding financial compensation for such injury is, in the High Court's view, a compensation claim, as this expression is used for example in the Damage Compensation Act 1969 and section 9 of the Limitation Act.

[The first seven applicants'] argument that claims for reparation for breach of human rights are not a damages claim in the normal sense cannot therefore succeed. The same applies to the argument that there were previously no statutory powers for the claim under Norwegian law, but that such powers were not created until the Convention was made part of Norwegian law in 1999. In this connection it is not necessary to discuss the detailed content of and development of the State's employer liability, the State's non-statutory objective liability and general liability for negligence in relation to public activities in the years that have elapsed since the Second World War. It follows from the presumption principle that the Norwegian compensation law must be presumed to be, and to have been, in conformity with our obligations under international law, so that the claims for damages could have been raised before the Human Rights Act entered into force, possibly in reliance on the rules of the Convention and the case law of the European Court of Human Rights.

It must further be regarded as reliable law that the provisions of the Convention are not an impediment to the individual countries' operating with limitation periods also in areas that are embraced by the Convention's rules. Such time-barring rules are deemed not to be in conflict with Article 6 of the Convention, on the right to have one's civil rights determined by a court, see the European Court of Human Rights' judgment in the case of *Stubbings and Others v. the United Kingdom* (judgment of 22 October 1996, *Reports of Judgments and Decisions* 1996-IV, § 50-53). The time-barring rules must not be such as to make this right in reality illusory, for example by being unreasonably short. In the *Stubbings* case the European Court of Human Rights found that it was not incompatible with the Convention that a person's right to bring a civil action for damages for having being sexually abused as a child lapsed three years after that person came of age. It is stated in paragraph 66 of the judgment [...]: '... Article 8 does not necessarily require that States fulfil the positive obligation to secure respect for private life by the provision of unlimited civil remedies in circumstances where criminal law sanctions are in operation.' As the High Court points out below, [the first seven applicants'] claims must be regarded as time-barred under the twenty-year rule of section 9 (2) of the Limitation Act. The High Court finds it clear that a limitation period of such duration is not incompatible with the Convention. A corresponding view of the power of the state to operate with civil-law time-barring rules follows from the Commission's decision in the case of *Dobbie v. the United Kingdom* ((dec.) no. 28477/95 16 October 1996) with references. Here it was not deemed to give rise to a violation of Article 8 that the right to bring an action for damages against a physician in connection with a breast operation was limited. Both the Court and the Commission have also noted that there is a 'limitation period' also as regards the right to bring cases before the Court itself, namely the six-month time-limit in former Article 25 and the current Article 35 § 1 of the Convention, a time-limit that is applied strictly, see the *Dobbie* decision.

It follows from the *Dobbie* and *Stubbings* rulings that it is not incompatible with Article 6 [...] or Article 8 [...], for the States to operate with limitation rules for civil compensation claims. Nor have States any general duty to pay damages to those

subjected to abuse from private persons, see the European Court's decision in *Stuart v. the United Kingdom* ((dec.) no. 41903/98, 6 July 1999). It must follow from this that, also when a damages claim is brought directly against a State, it can be limited under national rules without impediment from the Convention, even if the claim concerns loss and injury in areas covered by the Convention. It is also reliable law that damages claims against public authorities are time-barred under section 9 of the Limitation Act, and that the rule applies regardless of the ground for liability, see Kjønsstad & Tjomsland's '*Foreldelsesloven*' (the Limitation Act) (1983) p. 75.

Under section 9(2) of the Limitation Act, compensation claims, including claims made outside contractual relations in respect of non-pecuniary damage, are time-barred 20 years after the damaging act or other circumstances giving rise to liability had ceased. The alleged ground for liability on the part of the State was [...] that the authorities had not carried out the necessary measures in order to secure the war children's human rights. As regards failures to act, the starting point for limitation is the time when the duty to act has ceased [...]. Such a duty for the State to act should in the view of the High Court have ceased at least when the [The first seven applicants] reached the age of maturity, which in the case of the youngest of them was in 1965. After this point in time there could not have been any duty for the authorities to launch an information- or attitude building campaign for persons who were born from a German father and a Norwegian mother in connection with the War, or to carry out other measures for the protection of their human rights. This cannot be altered by the fact that the [first seven applicants] have encountered abusive attitudes and speech because of their background even as adults. In this connection there is no basis for the [first seven applicants'] argument that the ground for liability consists of a continuing situation which has not ceased. That the effects of the damaging acts are durable and arise late does not mean that the 20 years' time-limit does not start to run. The High Court adds that, as pointed out by the City Court, the considerations which underlie the limitation rules apply fully in cases such as the present, where there would otherwise be question of adjudicating occurrences and causal events dating 40 to 50 years back in time.

The 20 years' rule in section 9 of the Limitation Act was new when the Act entered into force on 1 January 1980. It has later been amended, without it having any importance here. It follows from the transitional provision in section 31 that the [first seven applicants'] possible claims against the State were time-barred at the latest in 1985. The proceedings against the State were instituted in 1999. Therefore the City Court's judgment must be upheld. [...]"

(iii) Refusal to grant the first seven applicants leave to appeal to the Supreme Court

The first seven applicants sought to appeal against the High Court's judgment to the Supreme Court, but on 11 December 2002 the Appeals Selection Committee of the Supreme Court refused them leave to appeal, finding it obvious that the appeal had no prospects of success.

(iv) Proceedings brought by the second and third group of applicants

In January and February 2002, the second and third groups of applicants (who had been refused to join the case of the first group) and the State agreed to stay the proceedings in their cases pending a legally enforceable

decision in the case brought by the first seven applicants, which the City Court decided to accept.

In two decisions taken respectively on 2 June 2004 and 23 September 2004 the City Court upheld a request by the State to dismiss the suits from the second and third groups of applicants on the ground that none of the parties had requested resumption of the proceedings within the statutory two years' time limit.

4. *Recent research on the war children*

On 2 February 2005 the applicants filed with the Court's registry copies of two research reports published in 2004, one entitled *Staten og krigsbarna- En historisk undersøkelse av statsmyndighetenes behandling av krigsbarna i de første etterkrigsårene* (the State and the *War Children*, a historic survey of the *war children's* treatment by the State authorities during the first Post War years) by Mr Lars Borgersrud and the other entitled *Krigsbarns levekår, En registerbasert undersøkelse* (*War Children's Conditions of Life, a Register Based Survey*), by Mr Dag Ellingsen.

The first report is an extensive study running to some 400 pages. It included (on p. 392) the information set out here below.

In July 1945, 30 Norwegian *war children* whom the Nazis had taken to Germany for adoption had been brought to Sweden, where they had been adopted. On 17 August 1945 the Government had issued a provisional decree (*provisorisk anordning*) depriving mothers who had married Germans after 9 April 1940 and their children of their Norwegian citizenship indefinitely, following which most of these women were deported. On 12 October 1945 the Government decided to stop the deportation project.

The provisions of the above decree had later been included in an Act of 13 December 1946. On 1 January 1949 the Act had been amended so as to make it possible for *war children* to re-acquire Norwegian citizenship; this did not apply to their mothers regardless of whether they continued to live in Norway. On 8 December 1950 a new Citizenship Act had been adopted, repealing the above-mentioned provisions. Under the new Act the mothers could re-acquire Norwegian citizenship and the children could have this restored as of right when they turned 18 or on application to the Government.

In the Act on Child Allowances adopted on 24 October 1946 *war children* were in effect excluded, which situation persisted until the entry into force on 1 April 1958 of the Bread Winner Insurance Act and Advance Payment Act, both adopted on 26 April 1957.

The second report stated (in a summary on p.3) that the living conditions of *war children* were a complex matter. On the one hand there were a number of findings that indicated that many of the *war children* had worse living conditions than others of the same age. The mortality during the

period from 1960 until present was clearly higher among the *war children*. The mortality related to suicide was higher, as was that caused by heart and blood illnesses. A number of *war children* had become disability pensioners at a relatively young age. On the whole it suggested that a considerable proportion had health problems and, as a result, a lower quality of life. The divorce rate was clearly higher among the female *war children* than others. Fewer had higher education, the average income level was lower, and wealth was clearly less.

On the other hand there were several similarities between the *war children* and other persons of the same age, such as the frequency of marriage, the divorce rate among men and the frequency of parenthood. Many *war children* appeared to have had a life as ordinary people: they had an ordinary education, an average income, acceptable accommodation, were married and had children.

As regards the position of *war children* and their mothers under Norwegian law on citizenship and maintenance support, the Government submitted to the Court *inter alia* what is stated here below.

In order to avoid dual citizenships it followed from section 8 of the Citizen Act of 8 August 1924 that a Norwegian citizen would lose his/her citizenship if he/she gained another citizenship. The exemption to the rule was if he/she still lived in Norway. The general state of law in Europe prior to the Second World War was that a wife would be accorded her husband's citizenship after marriage. After the war it was deemed as offensive to the general sense of justice if Norwegian women, married to Germans, who therefore had become German citizens, should retain their Norwegian citizenship if they still lived in Norway. The aim of the 1945 decree, transformed into state law in 1946, was to make it possible for the Government to send the spouses, both being German (or Austrian) citizens out of Norway. Other countries had parallel legislation at the time.

Most of the amendments (in 1945 and 1946) to the Act of citizenship only applied to children of Norwegian mothers married to German nationals. Since most of the *war children* were born outside wedlock, they were not within the scope of this legislation. The same was the case as regards the Act on financial aid to mothers. This Act only applied to children of married women who had lost their Norwegian citizenship and did not discriminate against *war children* born outside wedlock. No acts were passed in the period after the war which would entail a clear discrimination of *war children* born outside of wedlock.

By 1950, mothers and children who had been deprived of their Norwegian citizenship because the mother had married a German national could reacquire their lost citizenship.

As from April 1958, benefits for *war children* who in effect had fallen outside the 1946 legislation because they were not Norwegian citizens could be sought under Bread Winner Insurance Act and Advance Payment Act,

adopted in 1957. Pursuant to these Acts, the State was to advance child alimony to all children, including children with German fathers. Prior to these Acts the Norwegian authorities did not advance child alimony from any fathers, regardless of their nationality.

B. Relevant domestic law

1. Right to seek compensation

The Damage Compensation Act 1969, section 2-1 reads:

“An employer is liable for damage caused intentionally or negligently during an employee's performance of work or functions for the employer, taking into account whether the requirements, which the aggrieved person can reasonably make to the activity or service, have been neglected. The liability does not comprise damage or injury caused by the fact that the employee has exceeded the reasonable limits of his duties, considering the nature and range of the activity and the character of the work or function.

For the purpose of these provisions, the term 'employer' means the public authorities and anybody who employs a person in his service, whether for gainful activity or not.

For the purpose of these provisions, the term “employee” means anybody who performs work or functions in the service of an employer. The term 'employee' includes 'ombudsmann' in public service, officers and privates in military service and other persons performing compulsory service for public authorities, and inmates, patients and the like who take part in work in the prison authority's establishments, in health institutions etc.”

Under this provision, the State, as an employer, can be held liable irrespective of whether it has acted with negligence. Furthermore, the employee/employees do not have to be identified and the employer can be held liable if the cumulative acts of its employees fulfil the criteria laid down in section 2-1.

Prior to the 1969 Act, an individual could hold the State responsible for acts of its employees under general principles of law, developed in particular in judicial jurisprudence. Section 2-1 was aimed at codifying those principles.

According to the Government, the State, like private individuals, could also be held liable for damage caused by negligence, under the general principles on the law of tort. This could arise in relation to a variety of activities, including notably decision making and the exercise of its different supervision and control functions.

2. Statute of limitation

Financial claims, including claims for damages, may be lost through limitation. The Limitation Act of 18 May 1979 section 9 regulates the limitation period for claims for damages. The relevant parts of the section read:

“1. Claims for damages or redress shall be subject to a limitation period of 3 years from the date on which the injured party obtained, or should have himself acquired, necessary knowledge of the damage and the person responsible.

2. Nevertheless, the limitation period shall be 20 years after the commission of the tort or other ground for liability ceased. ...”

Until 1996 section 9 (2) also contained a 10 year limitation rule, which read:

“2. Nevertheless, the limitation period shall be at the latest 10 years from the date on which the damage occurred, or 20 years after the commission of the tort or other ground for liability ceased.”

3. *Ex gratia compensation*

Even if an individual war child cannot prove that he/she fulfils the legal criteria for obtaining damages from an individual or the State, he/she can apply for *ex gratia* compensation (*billighetserstatning*) from the State with respect to injury suffered, either due to the acts or omissions of public authorities or for instance criminal acts by individuals. This is meant to be the last resort to obtain damages when a person has suffered harm or distress. It is sufficient that the application describes the circumstances that form the basis for the claim, and if possible document these with for instance a doctor's or psychologist's certificate, testimony from family, friends or others that have knowledge of the applicant's situation etc. In particular if the events occurred quite some time back, as would be the case in relation to many *war children*, there are no strict requirements as to the evidence for the acts/omissions that form the basis for the claim. Furthermore, the relevant Ministry has an obligation to look into and examine the case. The arrangement of *ex gratia* compensation is not subject to any statutes of limitation.

Whether the claim for compensation is granted is based on a test of reasonableness. It is in particular relevant if the public authorities can be blamed for the harm. It is sufficient that a public body is to blame; the identification of the wrongdoer among the public official is not a condition. Even where the authorities were not to be blamed, compensation has been awarded, *inter alia* in cases of personal injury due to criminal acts committed before the Regulation concerning criminal injuries compensation (*forskrift om voldsoffererstatning*) was passed on 1 January 1975.

The amount of compensation awarded *ex-gratia* is based on an assessment of reasonableness. It does not attempt to cover all economic losses. The committee set to determine applications for *ex-gratia* compensation, composed by one former Supreme Court Judge and two members of Parliament, may award up to NOK 200 000 (in 2005). Cases where it is deemed necessary to award a higher amount or which are of a specific political nature are to be assessed by Parliament.

On 1 July 2005 new rules for *ex gratia* compensation for *war children* entered into force and new guidelines were published. As a result, the possibility for *war children* of obtaining such compensation was expanded; for example, injury caused by bullying was included in the guidelines. The more serious types of infringements against *war children* were already covered by the existing guidelines, such as sexual assault, wrongful placement in an institution, inadequate schooling and reproachable conduct on the part of employees in the child protection services, within or outside the orphanage. In such cases, compensation is awarded if the circumstances are made sufficiently probable and if they have caused particular suffering, loss etc for the war child. The fact that the individual is a war child does not in itself qualify for compensation.

It has been accepted that bullying may be particularly hard to prove after a long time. Thus, for *war children* Parliament accepted a special arrangement, whereby up to NOK 20,000 may be awarded on the basis of a credible personal statement. If there is documentation of more serious damage due to bullying, a higher amount may be awarded.

COMPLAINTS

The applicants, relying on Articles 3, 8 and 14 of the Convention, complained that, because of their origin as children of a Norwegian mother and a German father, they had been subjected to deficient care, extensive discrimination as well as various forms of harassment and abuse, ranging from defamation to qualified ill-treatment. The Norwegian authorities were responsible for having contributed to this state of affairs both actively and passively. This involved discriminatory steps taken by the authorities, including legislative measures, and derogatory public statements made by public officials in Norway in the aftermath of the War - to the effect that they were mentally and genetically defective individuals and potential fifth colonists, as well as the authorities' failure to take any remedial measures subsequently.

A number of the *war children* had been committed to psychiatric institutions without adequate professional assessment. As there had been little or no monitoring of foster homes and adoptive homes, many of the *war children* had been placed in unsuitable homes. In a number of institutions, adoptive homes and foster homes *war children* had been exposed to treatment that amounted to torture, such as flogging, chaining in a cellar, washing with boiling water and sexual abuse. The public authorities could hardly have been unaware of harassment and abuse occurring but had failed to take the necessary measures to prevent this. Many of the children had been deprived of their original names and identity. Several had been

refused baptism certificates. Archives containing important information had been destroyed.

The defamation and infringements still continued, in the sense that the *war children* were continuously reminded in negative terms of their origin and value.

THE LAW

The Court will consider the present application only in so far as concerns the persons who have come forward as applicants by submitting a power of attorney.

The Court will first examine whether the applicants have fulfilled the requirement in Article 35 § 1 of the Convention to exhaust domestic remedies.

A. Submissions of the parties

1. The Government's arguments

In the Government's opinion, none of the applicants had exhausted available domestic remedies according to Article 35 §1 of the Convention. This question ought to be assessed with due regard to the effective remedies that were actually afforded to the applicants under Norwegian law. As accounted for in the national judgments, the applicants had had the opportunity to claim compensation under national law on the basis of the allegations advanced in their application to the Court ever since the alleged wrongdoings took place. They would clearly have been entitled to damages under Norwegian law had they made their allegations probable and had they presented them within the time limits. Such an award could have been based on the rules concerning liability for negligence or on the "employer's liability". In the Government's view, the national law on compensation fulfilled the requirements to an effective remedy under Article 13 of the Convention. The fact that claims for compensation eventually became time-barred according to the Limitation Act did not alter this.

Had the first group of seven applicants put forward their claims for compensation within the time-limits laid down in the Limitation Act, the national courts would have had an opportunity to examine the merits of their claims in their entirety. The reason why they had not carried out such an assessment in the relevant proceedings was that the claims were clearly time-barred under every alternative contemplated in the Limitation Act. The failure of the seven applicants to initiate domestic proceedings until long after the expiration of the time limits of the Limitation Act constituted a failure on their part to make use of the effective remedy afforded to them by

Norwegian law. With regard to the second, third and fourth groups of applicants (as listed in the appendix), neither of them had exhausted domestic remedies either. Under these circumstances the applicants could not be regarded as having exhausted available domestic remedies.

As was apparent from the personal statements, the failure to present claims earlier could not have been due to lack of information. The applicants had knowledge of the alleged violations when they occurred and they were well aware of the fact that the Government had not initiated a general information campaign in the 1940s or later. As to documenting the various Governmental decisions, the applicants had the same rights as all other citizens to access files from the authorities based on the Public Administration Act 1967 or the Freedom of Information Act 1970.

The Government in addition emphasised that the Limitation Act 1979 ensured several important purposes. A rule that a claim could exist indefinitely or for a very long time would result in several important disadvantages, not only for the claimant and the debtor, but for society as a whole, including the justice system.

Firstly, evidence supporting the claim would generally be impaired over time, which in itself called for limitation periods to prevent injustice. Witnesses might be dead, they may have forgotten what took place or their memory of the situation may have been altered. Relevant documents or other written recordings may be lost. Thus, the rules on time limits were designed to ensure the proper administration of justice and compliance with, in particular, the principle of legal certainty. Secondly, statutes of limitation would stimulate those who had a rightful claim to put it forward as soon as possible. This would also counteract unsound situations, where more uncertain claims were put forward at such a late stage that the time might have diminished the counter evidence. In Norway one of the main purposes behind the Limitation Act was thus to ensure the normal termination of obligations, in the interest of both the claimant and the debtor. The national statute limitation rules were a result of a balancing of these general considerations and more specific circumstances that might give grounds for longer statutes of limitation in particular situations. They were *inter alia* based on the same considerations as the Court accepted as a justified limitation on the right to a court under Article 6 § 1 in § 51 of the *Stubbings and Others* judgment (cited above).

The Government further stressed that in order for the State to be held responsible for the events claimed to constitute violations of Articles 3, 8 or 14 of the Convention, it would have to be proved that the State, which could only be held responsible for specific events, had failed to secure the rights of each applicant, and that this failure had led to his or her being subjected to serious harm.

This was clearly a highly difficult matter, both with regard to the personal statements and the more general allegations with regard to the

State's positive obligations. In respect of the latter, the Court must assess the relevant acts/omissions of Norwegian Government in the immediate Post War period. This would require extensive knowledge and understanding of the situation in Norway during this period of time. Assessing the alleged violations using present day knowledge and conditions would be a grave injustice towards those attempting to rebuild a nation after five years of war and occupation, while at the same time attempting to safeguard the rights and freedoms of all citizens, including the *war children*. The decision-makers at the time did not have access to the resources and the experience which was available now, more than 60 years later. Arguably, there were suggestions and proposals with regard to the *war children*, also by public employees, that did not fit well with the prevailing views of today, and some were clearly unacceptable. But it must be stressed that these views were never adopted by the Norwegian Government. The official authorities had consistently held that the *war children* should be treated in the same manner as other Norwegian citizens.

The assessment of these questions, which were complex, had been made all the more difficult by the fact that none of the applicants, either before the national courts or the European Court, had supported their claims with evidence. To prove with a sufficient degree of probability the specific events as well as any causal connection between any negligence by the State and these events would be extremely difficult or nearly impossible. The complaints were only supported by the applicants' own statements, which from a legal point of view could not be regarded as sufficient, bearing in mind the seriousness of the allegations against both public officers and private individuals who were long since deceased and were thus unable to refute them.

The most critical phase for the *war children* had been immediately after the war ended in 1945. Norway had been subject to five years of harsh German occupation. At the time Norwegians in general had had strong antipathies towards the Germans and those who had co-operated with them. Clearly, the Convention was not applicable in 1945, but the Government had been highly aware of the need to protect the *war children*. And despite the extreme challenges the Government faced in the summer of 1945, it appointed a highly qualified War Children Committee to assess the situation and make proposals deemed necessary. The Committee's proposal to initiate a campaign had been thoroughly assessed by the Government. The fact that there had already come about a change in the general attitude towards the *war children*, in particular due to the Commission's work and statements, had made such a campaign less necessary. The Government had been of the opinion that it would be more beneficial for the *war children* to fit into society without special attention being drawn to them through such a campaign. This assessment had been strengthened by the fact that the children were quite quickly absorbed into society. Consequently, on the

basis of the relevant knowledge at the time, the Government did not initiate an information campaign. It was not deemed necessary in the interest of either the children or their mothers to take special protective measures. Thus, the decisions taken had not been based upon neglect of the children or even limited resources. On the contrary, the Government's focus had been the interest of the *war children* and whether or not special measures, including an information campaign, had been necessary to protect them. The Government had to assess the *war children* as a group.

None of the research reports submitted gave a factual basis for any of the individual claims from *war children*. The Government did not dispute that a number of *war children* had suffered harm in Norwegian society after the Second World War. At the same time it was clear that many *war children* had had a totally normal childhood in comparison with other children of their age. Thus, in a legal context, it was highly difficult to single out the individuals who had suffered harm and injury. It was even more difficult to determine whether such episodes could be attributed to any acts or omissions on the part of the State.

The Government disputed several submissions made by the applicants with reference to those research reports to the effect that certain legislative measures taken in the Post War period had been discriminatory towards *war children*. As to the law on citizenship, the Government emphasised that none of the applicants claimed to have been victims of loss of citizenship. In any event the state of the law, which was amended as early as in 1950, could hardly be viewed as contrary to Article 14 of the Convention, had it been applicable at the time, if assessed in light of the situation obtaining then.

As regards the Child Benefit Act 1946, the Government disputed that its omission to cover non-Norwegian citizens was incompatible with Article 14 of the Convention. This Act did not discriminate, either in law or in fact, against *war children* but should be seen as a breakthrough for modern social security legislation. Contrary to previous acts, the right to child benefits had been made automatic – there was no assessment as to whether the parents needed such economic support. If the mother was married, she did not receive support for her first child. Since most of the mothers of war children were unwed, the Child Benefit Act 1946 was of great positive significance to them. In any event, as already stated, none of the applicants had lost their Norwegian citizenship.

The Government further contested the applicant's argument that the Government had failed to secure *war children's* right to child alimony from their German fathers. None of the applicants had claimed to be victims with regard to lack of child alimony – even less had they presented any facts to support such an allegation. Under any circumstance, such a right rested with their mothers.

The Government also stressed that none of the applicants were ever deported.

As to the applicants' argument that the *war children* had been largely over-represented at the Emma Hjort Home, which was an institution for the mentally retarded, the Government pointed out that a total of 23 war children (of 10 000 to 12 000) had been placed at this home between 1945 and 1948. In their submission, the legal regime and the medical standards applied with regard to such institutions had not been discriminatory towards *war children*. There had been no factual basis in those figures or otherwise or any legal basis for such an allegation. Whether the placement of the 23 children at Emma Hjort had been in accordance with the prevailing regime at the time, ought to be assessed on the basis of each individual child's medical history. In the case under consideration, only one of the applicants, Mr Paul Hansen, had been among the 23 children placed at the Emma Hjort Home (from 1946 to 1950 and from 1960-1965). However, neither before the Norwegian courts nor in his application to the Court had he presented any evidence to support the allegation that he had been wrongfully institutionalised according to prevailing standards at the time or that the decisions had been influenced by the nationality of his father.

The applicants had to a certain degree made personal statements involving allegations against *inter alia* family members, neighbours, classmates, teachers, strangers, and local authorities. Generally no specific details had been given of the alleged acts or omissions. There was no evidence that the authorities in any way were informed of the alleged crimes, acts or omissions. So there was no factual basis for claiming that the authorities had failed to protect each individual applicant.

The applicants' individual claims all concerned instantaneous episodes of assaults and harassment during their childhood. None of them had argued that serious abuse or harassment had taken place during the last 30 or so years. The fact that none of them claimed to have suffered treatment falling within the Convention for many decades illustrated that their claims were not based on a continuing situation.

2. *The applicants' arguments*

The applicants requested the Court to reject the Government's invitation to declare the application inadmissible on grounds of non-exhaustion.

In so far as the first group of applicants was concerned, they referred to the decisions taken by the national courts, from which it clearly followed that all national judicial remedies had been exhausted. It was the national courts' decision to single out the time-bar issue and this had prevented the applicants from obtaining a review of the merits of their claims.

The Government had incorrectly argued that the second and third group of applicants had withdrawn their actions. In accordance with Articles 105 and 106 of the Code of Civil Procedure, it had been agreed and decided that

the proceedings be temporarily suspended pending a judicial decision regarding the first group. This was in view of the similarities between the cases. There was every reason to assume that the result of a review by the national courts with respect to the second, third and fourth groups would have been similar to that of the first group.

At any rate, it had not been possible for the applicants to press charges or in other ways hold the responsible individuals liable. This was all the more so since the *war children* had been in an unprotected situation in addition to the emotional effect of considering themselves as inferior and with no legal rights.

The applicants had not had the strength to sue the public authorities until they did so in 1999. They had had a certain need to protect their mothers. A number of violations were of such a nature as to make it difficult to bring them to surface. The applicants had not enjoyed the necessary support by competent people. Those who had tried to raise the matters had been met with rejection and silence.

Prior to the publication of the various research reports during the period from 1999 to 2004, it had been practically impossible for the applicants to obtain access to relevant documentary evidence to sustain their complaints as such evidence had been kept by the State, notably in the State Archives. The Government's submission that their claims were time-barred therefore appeared somewhat paradoxical. A time-limit could only start to run from the moment when the relevant and necessary information had been published. The national rules on time barring could not be relied upon in their case and could not constitute a ground for rejection of their application.

Whereas the Government submitted that responsible official authorities had not been aware that the applicants had been exposed to violations, it was evident from the report by the Committee on War Children that weighty advice and recommendations had been made to initiate measures for the *war children* in order to prevent violations. One important recommendation had been to arrange for vocational training for mothers of *war children*, so as to enable them to provide for their own and their children's subsistence. Another recommendation had been to launch a public information campaign to change the negative prevailing norms in society. Yet a further recommendation had been that the Government should give paternity orders in advance, which would have helped the mothers in taking care of their children by giving them the same financial rights as other citizens. All this went to show that the Committee on War Children and the Ministry of Social Affairs were indeed aware of the problems attached to the upbringing of *war children* and to their mothers.

Nevertheless, none of these important recommendations had ever been followed, in the absence of which the State failed to reverse the adverse

situation for *war children* and had become responsible for making their childhood and adolescence particularly difficult or unbearable.

Obviously these facts could not have been unknown to any of the Governments in power during the post-war years until this day. Against the background of the documents presented, the suggestion that there was ignorance about this in official circles appeared sensational.

The applicants, referring to the two research reports from 2004, submitted that there was reliable evidence to show that special legislation and arrangements were put in place in respect of their economic rights, such as child allowances and child contributions. This form of discrimination had the effect of enhancing the negative attitudes in society towards *war children*.

The applicants stressed that they had been exposed to continuous violations since the end of the Second World War until the present day. Most of the violations had started before Norway's ratification of the Convention. Thereafter, both the violations by the Government and those by third parties had persisted. Especially in the absence of any reparation having been made and of any effective possibility of obtaining reparation, the applicants should still be considered as victims of the alleged violations for the purposes of the Convention.

It had not been possible for the applicants to raise any claim for *ex gratia* compensation. Under the former arrangement claims made on the ground of difficult conditions and harassment during childhood and adolescence due to the fact of being a war child were rejected. Furthermore, it had been extremely problematic to meet the requirements of proof. Under the new arrangement there was uncertainty as to whether each of the applicants would be granted compensation and the amount.

B. Assessment by the Court

In determining whether the applicants have exhausted domestic remedies for the purposes of Article 35 § 1 of the Convention, the Court will have regard to the general principles established in its case-law as enunciated notably in its *Akdivar and Others v. Turkey* (judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, §§ 65 to 69, pp. 1210-11). In doing so, the Court will first consider the situation of the first group of seven applicants who on 10 December 1999 brought compensation proceedings before the Norwegian courts ending in the refusal of leave to appeal by the Appeals Selection Committee of the Supreme Court on 11 December 2002. Thereafter, the Court will deal with the respective situations of the other three groups of applicants who were not parties to those proceedings.

Turning to the specific circumstances of the first seven applicants, the Court notes from the outset that, as can be seen from the High Court's

judgment of 21 June 2002, the object of their action before the national courts was to have it established that the State was liable to pay them compensation for violations of Articles 3, 8 and 14 of the Convention occurred for many years since the Second World War, in part on account of acts by persons for whom the State was directly liable, in part because the authorities had failed to protect *war children* and to safeguard their rights. In disputing that their respective compensation claims were time-barred under the national law, the applicants argued that since they concerned violations of the Convention they were not compensation claims in the normal sense. They further argued that, until the incorporation of the Convention by the Human Rights Act 1999, there was no legal basis in national law for seeking compensation for the alleged violations.

However, the High Court found that their claim for compensation for pecuniary and non-pecuniary damage, as formulated by them, could be qualified as a compensation claim in the sense of, for instance, the Damage Compensation Act 1969 and section 9 of the Limitation Act. The latter, in fact could have applied to a compensation claim made on any ground under national law. Moreover, before the entry into force of the Human Rights Act 1999, the compensation claims could have been raised before the national courts with reference to the Convention and Strasbourg case-law by virtue of the general principle that Norwegian law was to be presumed consistent with Norway's international obligations under human rights treaties. The Court finds no reason to call into doubt the High Court's assessment that the first seven applicants' claims against the State fell within the provisions of the Damage Compensation Act 1969 and section 9 of the Limitation Act. The Court agrees with the Government that, under section 2-1 of the 1969 Act, which codified general principles established in Norwegian case-law, the State as an employer could be held liable on strict ground for negligence committed by an employee, whether identified or not, in the performance of his or her work or service. Nor does the Court find any reason to question the High Court's interpretation and application of section 9 to the effect that the first seven applicants' claims against the State were time-barred at the latest in 1985, 20 years after the youngest of them had reached the age of 21.

In this connection the Court recalls that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, *inter alia*, the *Pérez de Rada Cavanilles v. Spain* judgment of 28 October 1998, Reports 1998, § 43).

In the light of the above, the Court is satisfied that there existed a remedy that was sufficient and available to afford redress in respect of the breaches alleged.

However, the first group of seven applicants failed to comply with the time-limits laid down in domestic law. Therefore, in accordance with the Court's case-law, their complaints under Articles 3, 8 and 14 of the

Convention should in principle be declared inadmissible for failure to exhaust domestic remedies (see *Akdivar and Others*, cited above, § 66). In this respect, the Court discerns no ground on which to distinguish between their position and that of the remaining applicants.

Nevertheless, the Court will consider whether there are any special circumstances which absolve the applicants from their normal obligation to exhaust domestic remedies within the applicable statutory time-limits (*Ibidem*, § 67).

In this regard, the Court observes that the individual statements provided by the first group of seven applicants both before the national courts and in the Convention proceedings contain harrowing accounts of personal experiences of social ostracism and social exclusion, comprising different elements, and to varying degrees, of physical and psychological abuse and harassment, neglected care and upbringing, deficient education and misplacement in psychiatric institutions and specialised schools and suppression of identity. Most of the individual accounts submitted by the second, third and fourth groups of applicants included such elements. The alleged perpetrators were not always strangers but often persons in the applicant's near environment, such as foster and adoptive parents, step fathers, grand parents, class mates and even school personnel, who also tolerated the harassment. A number of the applicants have suffered from psychological problems and are unable to work. There can be no doubt that if a State were to be found liable under the Convention for a large number of people being subjected to such treatment, this would constitute a very serious matter.

However, a common feature of the individual accounts of the applicants is that they are presented particularly succinctly with scarce details about the time and place of their traumatic experiences and often without specific information about the public institutions in question or the identity of the individual perpetrators of the alleged abuse, let alone about the circumstances of the traumatic incidents.

Moreover, as to the alleged causes of the grievances which the applicants considered imputable to the respondent State, it should be emphasised that the impugned statements made by certain public officials and the contested political decisions and legislative measures taken by the authorities occurred during the first years after the Second World War and essentially predated the entry into force of the Convention with respect to Norway (3 September 1953). The same could be said about the deliberate political choices made at that time not to follow the War Children Committee's 1945 recommendation to launch an attitude-building information campaign.

As to individual experiences alleged by the applicants, it should be noted that none of them claimed to have been deprived of their Norwegian citizenship or to have been deported. One applicant, Mr Paul Hansen, submitted that he had been wrongfully placed in the Emma Hjort Home and

nine others that they had been so committed to unspecified homes, but it appears that the most recent such placement, which concerned the former applicant, ended in 1965. The Court also finds that the alleged experiences of harassment and abuse consisted essentially of instantaneous acts during the applicants' childhood and youth which, despite their ensuing effects, did not give rise to any possible continuous situation of a violation of the Convention.

Against this background the Court finds nothing to indicate that since the Convention entered into force in respect of Norway there has been an administrative practice *vis-à-vis war children* consisting of a repetition of acts incompatible with the Convention and an official tolerance by the authorities of the respondent State (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 64, § 159), of such a nature as to make proceedings futile or ineffective and to render the exhaustion rule inapplicable (see *Akdivar*, cited above, § 67).

Furthermore, it has not been suggested that by the time the disputed 20-year time bar expired - in 1985 for the youngest of the group of first seven applicants, they were unaware of the instances of misplacement, ill-treatment, harassment and discrimination to which they had allegedly been subjected. Their various submissions to the effect that they were prevented from lodging judicial proceedings in time because it was impossible for them to obtain access to official records about them and other relevant evidence are unsubstantiated.

It should also be mentioned that even the evidence which the group of the first seven applicants adduced in the proceedings instituted in 1999 was deemed incapable of founding any legal claim for the purposes of a judicial process. According to the City Court, due to the long lapse of time, it was impossible to prove the alleged violations; no witnesses or documentary evidence could be adduced. Therefore the limitation of their claims did not just have a formal reason but also a substantive one. The High Court agreed with the City Court that the rationale behind the limitation rules applied fully to such cases, where there was question of adjudicating facts dating forty to fifty years back in time.

The Court, for its part, having regard to the case as a whole and to its own case-law relating to the right of access to a court in personal injury cases (see, in particular, *Stubbings and Others v. the United Kingdom*, cited above, §§ 50-57), is satisfied that the national courts' assessment was one that properly fell within their margin of appreciation.

In the light of the above, the Court finds nothing to indicate that the application of the 20-year rule entailed an arbitrary limitation on the applicants' right to pursue before the national courts their compensation claims against the State or that there are any other special reasons for dispensing them from the requirement to exhaust domestic remedies in accordance with the applicable domestic limitation rules. These findings are

not altered by the information contained in the two research reports published in 2004 and invoked by the applicants for the first time in the proceedings before the Court.

Having reached this conclusion, the Court does not find it necessary to consider separately the applicants' complaint under Article 13 of the Convention, which in any event was not specifically raised in the initial application under the Convention.

It follows that the application must be rejected under Article 35 §§ 1 and 4 of the Convention for failure to exhaust domestic remedies in respect of their Convention grievances.

For these reasons, the Court by a majority

Declares the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

APPENDIX¹*a. Second group of applicants²*

1. *Laila Irene Kitlaus, Oslo*
2. Liv Reidun Nybø, Bryne
3. Rolf Moen, Sandvika
4. *Anette Lund, Oslo*
5. Lisbeth Lien, Kristansund
6. Anne Katrine Brendskag, Boxholm, Sverige
7. Gerd Streich Haugen, Tretten
8. Grete Storberget, Kongsvinger
9. Anne-Catrine Askersrud, Moss
10. *Karin Ullensvang, Oslo*
11. Angela Brigitte Solberg, Husnes
12. Wilhelm Gulbrandsen, Borgenhaugen
13. Laila Ramnes, Mandal
14. Fritz Lamø, Kristiansund
15. v/Sissel Greta Oustad, Oslo
16. Gerd Mary Pedersen, Kristansund
17. Hildur Marie Furnes, Nesbru
18. Irene Ørsjødal, Levanger
19. Unni Margrethe Forberskog, Mosjøen
20. Erna Rundgren, Hurum
21. Monika Mork, Sætre
22. Liv Margaret Skauen, Moss
23. Ann-Karin Hansen, Asker
24. Karin Wenche Aasen, Rognan
25. Hans Viktor Haugerud, Vikersund
26. Rita Signora Bjerkeli, Torp
27. Evelyn Karin Skogvold Molden, Mosjøen
28. Willy Schei, Revetal
29. Frida Vinsrygg Lund, Stavanger
30. Gerhard Hammervold, Storslett
31. Jorun Støen, Sandefjord
32. Anne Britt Hansen, Gjøvik
33. Bent Arild Bauer, Borgerhaugen
34. Tora Åsgård, Fannrem
35. Karin Sæterli, Storsteinnes

¹No power of attorney was submitted by the persons whose names are indicated in italics.

²All the applicants listed under the second group are Norwegian nationals.

36. Rita Krogh, Palm Beach, USA
37. Anne Marie Faul Damhaug, Rasta
38. Karin Johanne Nerموen, Rennebu
39. Frank Erik Kohl, Langesund
40. Gerd Terese Sanna, Odense, Danmark
41. Hans Isachsen, Wedel, Germany
42. Yngvar Holzweissig, Brandbu
43. Karin Sahlmann, Jævla, Sverige
44. Else Marie Bjørnvik, Kristansund
45. Gerdhard Bachmann, Hamar
46. Øyvind Strømstad, Kongsvinger
47. Laila Strinæs, Trysil
48. Gerd Fleischer, Oslo

b. Third group of applicants¹

1. Anita Biong, Bekkestua
2. Anna Marie Johnsen, Larvik
3. Anne Brith Hansen, Gjøvik
4. Anne Marie Biegel Vasshaug, Harstad
5. Bjørn Arild Drivdal, Vear
6. Brit Nervik, Stokke
7. *Claus Pettersen, Mariestad, Sverige*
8. Eivind Borgen, Tønsberg
9. Elisabeth Weihs, Tønsberg
10. Elsa Jensen, Trollhättan, Sverige
11. Evy Regina Hansen, Horten
12. Fritz Hansen, Hemnes
13. Gerd Elisabeth Wessel, Horten
14. Gerhard Lyngvær, Frei
15. Greta Larsen, Saupstad
16. Halfrid Vestmoen, Vestby
17. Jan Erik Rasmussen, Oslo
18. Harald Krogen, Stjørdal
19. Harald Larsen, Tromsø
20. Heidi Helgetveit, Lunde
21. Helga Lietz, Hemsedal
22. Helge Diehl Dørum, Kristiansand
23. Hjørdis Pauline Olsen, Meistervik
24. Hugo Frebel, Vadsø
25. Ilse Margrethe Hansen, Horten

¹ All the applicants listed in the third group are Norwegian nationals, except for 10. Elsa Jensen and 49. Sune Normann, who are citizens of Sweden.

26. *Ingo Bauer, Fjerdingby*
27. Jan Gerhard Lembecker, Tønsberg
28. Jan Åge Nøkleby, Larvik
29. Janne Elise Pedersen, Steinkjer
30. Karen Margrethe Moss Schørpe, Fåberg
31. Kari Pils, Rådal
32. Karin Brit Pedersen, Sandefjord
33. *Karin Fink, Lillesand*
34. Karin S. Berntsen, Sandefjord
35. *Karl Jacobsen, Skudneshavn*
36. Kirsten Marie Skjermo, Surnadal
37. Kjell Gunnar Moen, Kvallevåg
38. Kristian Wilhelm Andersen, Lakselv
39. Lilly Ester Hareton, Skedsmokorset
40. Lillian Lervåg, Gjettum
41. Oskar Pedersen, Storslett
42. Oswald Hermann Marthinsen Støen, Vestskogen
43. Paul Tangen, Moss
44. Per Arne Løhr Meek, Averøy
45. Reidun Myking, Sandvika
46. *Reinhold Gunter von Gronau, Os*
47. Rita Storløs Olsen, Vikersund
48. Rolf Edgar Martinsen, Otta
49. *Sune Norrman, Hasselby, Sverige*
50. Svein Otto Sæthre, Sem
51. Sølvi Kuhrig Henningsen, Sandefjord
52. Turid Eriksen, Trondheim
53. Turid Wenche Nymoene, Andebu
54. *Tordis Kjellevand, Krisiansand*
55. Unni Ørnvik, Kristiansund
56. Vigdis Fjeld Karlsen, Våle
57. Vivi Sirnes, Flekkefjord
58. Wally Andersen, Borgerhaug
59. *Walter Nordlien, Kristiansund*
60. Wenche Strige, Flekkefjord

c. *Fourth group of applicants*¹

1. *Per Skjønstad, Skien*
2. *Tore Grane, Oslo*
3. *Hans Ernst Gjertsen, Sande i Vestfold*

¹ All the applicants listed in the fourth group are Norwegian nationals, except for 24. Hennie Persson (Swedish), 34 Jan-Erik Sjølie (Swedish) and 41 Siri Zimmermann.

4. *Helge Ludvigsen, Oslo*
5. *Eirind Baagen, Tønsberg*
6. *Willgunn Zell, Jafjordbotn*
7. Anne Lise Heyer Lie, Vestby
8. Ralph Castellan, Sand
9. *Berit Bergstrøm, Disen*
10. *Kjell Nergård, Øverbygd*
11. *Roger Rødseth, Spjelkavik*
12. Harald Arnstad, Oslo
13. Reinholt Haugen, Verdal
14. *Elias Maraenius Akselsen, Skarnes*
15. Ellen Berg Thoreby, Skjeberg
16. *Unni Aanes, Oldersko*
17. Karen Elisabeth Halaash, Kristiansund
18. Arnold Sørli, Oslo
19. *Hans Lie, Nødinge, Sverige*
20. Anne Marie Wittmann, Porsgrunn
21. Anne Kathrine Brenskag, Oslo
22. Ruth R. Lind, Angred, Sverige
23. Inger Hansen, Søndeled
24. Hennie Persson, Oluouhamn, Sverige
25. Lise Lotte Sudenius Braa, Horten
26. Wencke A. Shishido, San Rafael, USA
27. Annelise H. Eilertsen, Ålgård
28. *Karl Walter Syversen, Tønsberg*
29. Rolf Nilsen, Myklåland, Evje
30. Åshild Kornberg, Kirkenær
31. Ernst Lagholz, Karlstad, Sverige
32. *Erik Fiskaa, Bud*
33. Turid Sørli, Notodden
34. Jan-Erik Sjølie, Dandery, Sverige
35. Inger Johanne Mortensen, Haugesund
36. Bjørn Solhjem, Tretten
37. *Roald Karlsen, Grengesberg, Sverige*
38. Ulf O. Hansen, Botnhavn
39. *Karin Havnerås Michalsen, Sund*
40. *Knut Strengelserud, Røyken*
41. *Siri Zimmermann, Nitzschka*
42. Elisabeth Arnevig, Brüssel
43. *Elisabeth McMahan, Oslo*
44. Jorunn Skoglund, Lillhammer