CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 12750/02
by Adele JOHANSEN
against Norway

The European Court of Human Rights (Third Section), sitting on 10 October 2002 as a Chamber composed of

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 22 March 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Adele Johansen, is a Norwegian national, who was born in 1960 and lives in Skive, Denmark. She is represented before the Court by Mr G. Kvande, a lawyer practising in Oslo.

A. Introduction

The present proceedings concern essentially the Norwegian authorities' decision on 19 November 1997 to authorise, without the applicant's consent, the adoption of her daughter S. by her foster parents and their refusal to grant the applicant a right to regular access. They are a sequel to the case which the Court decided in its judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-III (hereinafter referred to as "Johansen I"). That case concerned in the main the compulsory taking into care by the Norwegian authorities of the applicant's daughter S. shortly after her birth in December 1989, their subsequent refusal to terminate the care order and the deprivation of the mother's parental rights and access. In its judgment the Court held, *inter alia*, unanimously that neither the care order nor the fact that it remained effective gave rise to a breach of Article 8 of the Convention; and by eight votes to one that the local Client and Patient Committee of Røa's ("the Committee") decision of 3 May 1990, in so far as it deprived the applicant of her access and parental rights in respect of her daughter, constituted a violation of Article 8. As regards the case now under consideration it is important to note that the finding of a violation was confined to that decision and that the Court did not express an opinion on the question of S.'s adoption by her foster parents, which had not yet been decided by the national authorities.

For the background to this case the Court refers firstly to Part I of Johansen I (pp. 985-996, §§ 9-29).

The facts of the case, as presented by the applicant, may be summarised as follows.

Pending the outcome of the aforementioned proceedings before the Court in the Johansen I case, the County Governor (*fylkesmannen*) of Oslo and Akershus suspended the processing of an application for the adoption of S. that had been made by her foster parents on 31 January 1992.

Following the Court's judgment of 7 August 1996, the applicant was informed in October that the adoption proceedings would resume. A psychologist, Ms Karin Hassel, was commissioned to carry out an investigation. On the basis of her report of February 1997, a request for authorisation to adopt was submitted to the Akershus County Social Welfare Board (*fylkesnemndea*- hereinafter "the County Board"). The matter was discussed in April 1997 and again in October 1997, before a differently composed Board. Before the Board the applicant recognised that

S. was in a good foster home and that would grow up there but opposed adoption. She said that she wished to have contact with her daughter and feared that, in the event of adoption, the decision would be left to the foster parents. She was not confident that they would allow her the necessary contact and so requested access.

B. Authorisation of adoption and refusal of access

On 19 November 1997 the County Board decided to authorise adoption of the child by her foster parents. It found no reason to take any decision on the applicant's access to S. until after the adoption, which was to be arranged as soon as possible.

Under section 4-20 of the 1992 Child Welfare Services Act (*lov om barneverntjenester*), where a child had been taken into compulsory care and where the parents had been deprived of their parental responsibilities for it, the County Board was empowered to authorise adoption if (1) it was likely that the parents would be permanently unable to provide suitable care or (2) the child had become so attached to persons and his or her environment that serious difficulties would result if he or she were to be removed, provided that adoption was in the child's best interests and the foster parents had shown that they were able to raise the child as their own.

In the absence of an updated assessment of the applicant's suitability as a carer, the County Board proceeded on the assumption that she was not permanently unable to provide care. It focused its consideration of the adoption issue on the criterion mentioned under item (2) above, that is to say whether S.'s attachment to persons in her current environment meant that her removal would lead to serious difficulties for her.

The County Board was satisfied that the foster parents were clearly suitable as carers for S. It emphasised that S., who was then 8 years old, had lived in the foster home practically all her life. She was old enough to be fully conscious of her foster parents being her only parents and of her own growth; which suggested that she should live with the foster parents until she reached maturity. While there were no social ties between S. and the applicant, there were clear ties between her and the foster parents whom she perceived as her psychological parents. If she were to leave the foster home, it was most uncertain that she would be able to establish basic ties with new carers, as such ties normally developed before the age of three. Removing her from the foster home was likely to entail serious difficulties for her, with an acute separation crisis, and traumatic despair and insecurity. Thus the County Board considered that the second ground for adoption was fulfilled and the applicant did not dispute that. Nor did she request that S. be returned to her. What she did not seem to accept was the definitive character of an adoption, which suggested that she might wish to seek to be reunited with the child later.

Adoption would moreover be in S.'s best interests. S did not consider herself a foster child and thus had a very strong attachment to her foster parents. However, the fact that she had not yet been adopted seemed to have caused a feeling of insecurity, both on her own part and on the part of the foster parents. As pointed out by the experts, the need for security was a weighty argument for preferring adoption to continued foster care. A lifelong attachment to her foster family would offer a number of advantages to S. later in life.

The Board did not reject the applicant's wish to have access. It emphasised that the child would soon need to become familiar with and have contact with her biological mother. This was a process that needed to take place over time but should start immediately. For the time being it was not advisable to arrange for regular access. The experience of the first contact would necessarily be an important guide for determining how access should be arranged in the future. While S. would probably enjoy having contact with her biological mother and half-siblings, that contact could in no way compensate for a loss of a sense of belonging to the foster family. The County Board was confident that the foster parents would exercise appropriate discretion in facilitating access once the child was ready to meet the applicant and would seek the assistance of the child care authorities. Adoption clearly was in the child's best interests, which outweighed the mother's interest in enjoying a right of access.

On 8 January 1998 the applicant instituted proceedings before the Oslo City Court (*byrett*), requesting it to set aside the County Board's administrative decision as being unlawful. On 13 January 1998 the County Governor authorised adoption but the matter was subsequently suspended pending the outcome of the judicial proceedings.

C. Contact between the applicant and S.

The first meeting between S. and the applicant took place on 30 October 1999. During the meeting, the applicant did not call S. by her current Christian name but by the name she had given her at birth. The applicant told her that her brothers and sisters missed her and asked her to come to live with them in Denmark. She gave S. a letter from her younger brothers and sisters in which they also asked her to come to live with them and which enclosed one half of a piece of jewellery that would be joined together with the other half and hung up on the wall when she came home to her mother in Denmark.

Later the foster parents noted that S. experienced nightmares in which she dreamed of losing her mummy and daddy (the foster parents). She frequently complained of headaches, which she had not done previously.

In February 2000 S.'s feelings of insecurity were reinforced when the applicant was observed in the company of another person near S.'s school

and home asking pupils at the school if they knew where she was. The applicant had also rung the doorbell of S.'s foster father's house, but no one had been at home. The applicant had been observed by a neighbour who had recognised her from a television interview she had given the day before in connection with questions that had been put in relation to the case during question time in the Parliament (*Storting*). Following that incident, S. had said that she was frightened that the applicant might come and take her away. During the school breaks she no longer dared to be outside. She refused to go to bed at night unless one of her foster parents sat with her, she had frequent nightmares and was afraid of falling asleep.

During the winter of 2000, S. expressed the wish to meet her younger half-siblings and her older half-brother, D, on her mother's side. She was particularly interested in meeting D., but did not wish to meet her biological mother again. The meeting took place on 2 May 2000. D was not present. S. was not told beforehand that he would be absent, but the meeting with the half-siblings was held nevertheless. S. accepted the applicant's presence on condition that a psychologist of the child care services, Sissel Unger, accompanied her. The meeting itself took place at a preventive centre, "*Midtimellom*" and went well, except that S. was still called by her former name and the half-siblings persisted in asking her to come to their home in Denmark.

TV2 had secretly filmed the children outside afterwards, having been informed of the event by a person acting on behalf of the applicant. S. had not been aware of this and was very upset when the recording was shown on television that evening.

D. Judicial proceedings concerning adoption

By a judgment of 19 July 2000 the City Court: (1) upheld the County Board's decision of 19 November 1997 to authorise adoption and to refuse access pending a final decision on adoption; (2) dismissed the applicant's requests for a declaratory judgment (*fastsettelsesdom*) that she had parental responsibility for S. and rights of access, for an order restoring parental responsibility and care to her and for the case to be transferred to another child welfare office.

By a further decision of 19 July 2000 the City Court also dismissed a petition by the applicant for a provisional grant of access and for a stay of execution of the County Board's decision of 19 November 1997.

On 24 August 2000 the applicant appealed against the above judgment and decision to the High Court. On 22 February 2001 it dismissed the applicant's appeal against the City Court's dismissal of her claims under item (2) above, but allowed the remainder of the appeal to be heard, including the issue whether the applicant should have access in the event that adoption was refused.

Subsequently, the applicant brought various proceedings, notably before the City Court on 11 June 2001 claiming that the parental responsibilities for S. were vested in her and that she was entitled to access. On 21 August 2001 the City Court dismissed the latter application but agreed to hear the former. In addition, the applicant made an unsuccessful attempt to discontinue the appeal proceedings before the High Court.

In the appeal against the Board's decision of 19 November 1997 the High Court, sitting with three professional judges, two expert lay judges and two other lay judges, held an oral hearing between 3 and 14 September 2001. The applicant and S.'s father, who were both represented by counsel, were heard, as were the social authorities. A senior child-welfare officer, Vibeke Bonne Øyri, appeared as an expert witness. Twenty-two other witnesses were heard and documentary evidence was adduced, including a revised report by the psychologist Ms Hassel of July 1999. In a separate room the judges took a statement from S. A record was made available to the parties.

In its judgment of 12 October 2001 the High Court upheld by six votes to one the City Court's judgment regarding adoption and unanimously decided not to take any decision on access pending a final decision on adoption.

The High Court first interpreted the Court's Johansen I judgment and noted that the finding of violation concerned only the Committee's decision of 3 May 1990 to deprive the applicant of access and parental responsibilities and did not encompass subsequent decisions by the national authorities on the subject. The High Court proceeded on the assumption that the deprivation of parental responsibilities was lawful.

It then went on to examine whether the other conditions for adoption under section 4-20 of the Child Welfare Act were fulfilled, pointing out that the assessment ought to be based on the situation obtaining at the time of the judgment and what would be in the child's best interests in the long run. In that regard, the High Court, supported by expert evidence, made *inter alia* the following observations:

> " It is not disputed that as at today [the applicant] is capable of caring for her child. Consent to adoption may however be granted if consideration of the best interests of the child so indicates.
>
> S. is nearly 12 years old. For over 11 years she has lived with her foster parents. She is naturally strongly attached to them and to their family, and is fond of them. S. regards the foster parents as her parents and there can be no doubt that they are her psychological parents. S. states clearly that she wishes to continue living with her parents. The High Court considers it completely inappropriate to move S. to [the applicant] against S.'s will. [The applicant] also seems to accept this. The High Court also finds it extremely unlikely that S. would wish to move from her foster parents to Denmark before she reaches the age of majority. The child's attachment to her foster parents, their family and the environment she knows in Norway is too strong for that, in addition to which she currently has feelings of antagonism against her biological mother. On the basis of the extensive evidence that has been presented, the High Court

is in no doubt that these are S.'s own feelings and that she has not been influenced to feel this way. ...

The High Court finds no reason to doubt that S.'s foster parents have proved well suitable to bring up S. as their own child. On the basis of the case documents and testimonies from, among others, the child welfare authorities and the expert witnesses who have had contact with the foster parents, the High Court is confident that the foster parents have provided S. with a secure and caring upbringing. This impression was strengthened through the examination of the foster parents in court and through the Court's conversation with S.

The foster parents have lived in separate houses since the start of 1999. The High Court finds that they are still in frequent contact with each other, and that they see each other several times a week. The Court finds furthermore that they sometimes stay overnight in each others' homes, have contact with each others' families and spend holidays and weekend excursions together. They both say that they are fond of each other but that, partly owing to the strain that the case has been for them, have felt a need to be alone. They are unsure about the future. They report that they have attempted to make permanent arrangement as to where S. is to live, but have gradually abandoned such arrangements. S. now moves freely between the houses and stays the night where it is most convenient for everyone. Neither the foster parents nor S. have said that this gives rise to any problems.

A rupture between parents usually creates problems for the children. However, the amount of strain involved is usually dependent on how the parents handle the situation in relation to the children and on whether there is a high level of conflict between the parents. ... S. reacted negatively to the situation at first. ... However, as a result of the way the parents tackled the problems and the apparent lack of conflict, as well as the close contact that the parents still have between themselves and together with S., she seems no longer to regard this as a major problem today. She hopes, naturally enough, that the foster parents will move together again, which she demonstrates, for example, by insisting on moving out of her mother's room and leaving the double bed to her father when he stays the night there. The High Court finds that S. does not currently regard the fact that the parents live apart as a major problem, but that it is an arrangement she would prefer to be otherwise.

In the assessment of the High Court, the way the foster parents have tackled the care of S. in the situation to date indicates that they would also be suitable to bring up S. in the future, even if they should decide for a permanent separation possibly involving new partners.

The foster parents are not separated. The High Court finds it to be clear that the foster parents, in the sense intended by the Adoption Act, are to be regarded as a married couple. Their formal relationship should thus, pursuant to the Adoption Act, not preclude their joint adoption of S....

By means of its brief conversation with S., the High Court has received confirmation of the impression given by the remaining evidence in the case of a girl who, during the last year or two, has developed considerable personal problems. She expresses insecurity and fear, and begs to be listened to. She wishes to be a normal girl. She wants no more court cases. She wants to continue living with her foster parents and feels encroached upon by [the applicant] and her children. S. has no clear understanding of what adoption really entails. When she has stated that this is what

she wants, in the High Court's assessment, this is an expression of her perception of adoption as an arrangement that would ensure that she be allowed to continue living with her foster parents without needing to fear that [the applicant] can demand that she move to Denmark. She perceives adoption as a guarantee of peace and quiet, allowing her once to live like a normal child.

The High Court finds that it is S.'s relationship to her biological mother and the judicial proceedings which are the cause of her problems today. The emergence of [the applicant] has given S. a feeling of insecurity that she has difficulty in tackling. S. was at first curious to meet her biological mother. For some time, she had accustomed herself to the idea that her foster mother was not her biological mother. This process seems to have been supported and encouraged in a constructive way. The foster parents knew that this situation would arise and had already made contact with specialists to obtain advice about how best to handle it. Naturally enough, S. was motivated by her interest and curiosity to see the mother who had given birth to her. In the view of the High Court, S. had no idea that this meeting might manifest itself as a threat to the life she lived with the people she regarded as her parents and their family, her home, school, friends, etc....

The [first] meeting [held on 30 October 1999] must have been difficult for both parties, and [the applicant]'s actions can be explained by the loss she had felt for a number of years and by the fact that she had been informed only a few hours before the meeting that the daughter [bore a different Christian name]. However, the Court is in no doubt that the meeting was unfavourable for the relations between mother and daughter. S. was unprepared for the discovery that her mother did not want her to continue living with the foster parents and that she was apparently not accepted as S. The Court does not find it difficult to understand that S. was polite to [the applicant] during the meeting and said that she would like to visit her in Denmark. The girl was barely 10 years old. She was alone with her mother for the first time and, in this situation, would hardly want to hurt her mother's feelings or oppose her directly.

[The applicant] has explained that, in her struggle for her daughter, she has been obliged to use all means at her disposal, including the media, to promote her case. This may explain her way of acting but, in the view of the High Court, also shows her lack of ability or willingness to understand that the media coverage had a negative and stressing effect on S., who was recognised by fellow-pupils, neighbours etc., and who was reminded of what she experiences as an insecure situation. The media coverage was the main reason why S. changed schools in January 2001. Thus, [the applicant]'s struggle for what she regards as fair treatment has caused S. to suffer. [The applicant] fails to acknowledge that S. reacts negatively to this.

[The applicant] has clearly stated that her aim is that S. shall come to live with her in Denmark and has demonstrated that she intends to employ all procedural means available in order to achieve this. In the High Court's assessment, S. will be the loser in this process. She feels that her whole identity and existence are threatened and challenged, which makes her frightened, unhappy and insecure. S. is nearly 12 years old and is entering puberty. The High Court is convinced that she will suffer if the proceedings around her and [the applicant's] struggle to get her back with her to Denmark do not end.

In the further assessment, the High Court is divided into a majority [all three professional judges, both expert lay members and one lay member] and a minority [one lay member].

The majority [six to one] holds the view that new actions must be expected from [the applicant] unless adoption is authorised. A typical example is the civil action that has now been brought before City Court in which [the applicant] claimed that she holds parental responsibility. In addition, claims for access, etc. must be expected. Consent to adoption will put a stop to this development. Orderly conditions can only be achieved by allowing the foster parents to adopt S. The legal proceedings for S.'s return will then be discontinued...

The majority holds furthermore the view that adoption would best ensure continued contact between S. and [the applicant] and her half-siblings. The foster parents have stated that they regard it as important for S. that such contact be maintained and developed. However, their condition is that it should take places on S.'s own terms. The majority perceives that the foster parents sincerely mean this, and that they feel it is in S.'s best interests to have such contact. They have themselves expressed the view that any hindrance to contact them would have a negative effect on S.'s relations with them in the long term. As an adoptive child, S. will have nothing to fear from [the applicant]. She will then know that it has been decided that she shall live with her adoptive parents, and that [the applicant] cannot do anything about it. The majority of the High Court regards it as natural and probable that S., within this framework, will gradually come to want more contact with her family in Denmark. If, on the other hand, consent to adoption is not granted, S. would continue to regard [the applicant] as a threat to her own existence and life situation and would be unwilling to have further contact with her. ...

On the basis of an overall assessment, the majority of the High Court considers that it will clearly be better for S. to be adopted by her foster parents than to grow up as a foster child.

On the basis of the majority's assessment, the City Court's judgment, in so far as it applies to consent to adoption, is upheld.

Affirmation of the City Court's judgment entails that the High Court shall not decide on access.

A unanimous High Court holds the view that access should not be decided until a legally enforceable judgment has been passed. S. does not wish access arrangements to be made with [the applicant] at present. She has major problems and needs to be left in peace. In the assessment of the High Court, forced access with [the applicant] in such an interim period would have a disturbing effect on S. and reinforce the insecurity she feels as a result of the court cases. Access during the period until a legally enforceable judgment is passed is thus not regarded as being in S.'s best interests."

The applicant sought to appeal against the above judgment to the Supreme Court, requesting a declaration that the County Board's decision of 19 November 1997 was null and void and an order granting her regular access. On 29 January 2002 the Appeals Selection Committee of the Supreme Court refused the applicant leave to appeal, holding that the appeal manifestly had no prospects of success.

COMPLAINT

The applicant complained under Articles 8 and 46 of the Convention that her daughter S remained in care, that she had been deprived of her parental responsibilities and a right of access and that authorisation had been given for S.'s adoption.

THE LAW

A. The complaint under Article 8 of the Convention

The applicant alleges a violation of Article 8 of the Convention, which in so far as is relevant reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of health or morals, or for the protection of the rights and freedoms of others."

Under this provision the applicant principally complained about the authorisation of the adoption and of being denied a right of regular access pending the final outcome of the adoption proceedings.

In her submission, her consent was a prerequisite for adoption. Despite the Court's judgment of 7 August 1996 in the Johansen I case, the Norwegian authorities had continued to deprive her of her parental rights. In that connection the applicant invoked Article 46 of the Convention (see below). The Court understands her complaint also to concern Article 8 of the Convention.

Moreover, the applicant maintained that there had been a violation of that provision on account of the Norwegian authorities' refusal to restore her care of and access to S. The applicant said that she had the requisite parenting skills to assume care and that there had never been any ground for depriving her of care in the first place. Although her daughter had repeatedly expressed a wish to have contact with her, they had not met until 30 November 1999. The meeting had been successful and should have been regarded as a first step towards reunion between the mother and child. Instead the child-care authorities had rejected all of the applicant's demands for access and started to prepare for S. adoption by the foster parents.

The Court, by way of preliminary observation, notes that the applicant's grievances under Article 8 of the Convention relate to the measures taken by the Norwegian authorities after the delivery of its judgment of 7 August 1996 in the Johansen I case. However, in so far as the applicant complains in the present case about the continuation of the measures at issue in her previous case, the Court cannot but have regard to its finding in that case. In this connection, the Court reiterates that, among the various domestic decisions which were the subject-matter of the review in the Johansen I judgment, only one was found to have given rise to a violation of Article 8 of the Convention, namely the Committee of Røa's decision of 3 May 1990 to deprive the applicant of her access to and parental rights over her daughter (see point 2 of the operative part of the judgment).

Turning to the present case, the Court notes from the outset that no particulars have been adduced to show that, in the aftermath of the Johansen I judgment of 7 August 1996, the applicant made any formal approach to the Norwegian authorities in order to have the care order lifted or to obtain parental rights over and a right of access to S. These matters appear to have become contentious later, in particular in the judicial proceedings brought by the applicant after the County Board's decision of 19 November 1997 to authorise adoption.

In her application under the Convention, the applicant complains mainly about the decision to authorise adoption and the refusal to grant her a right of regular access to the child pending a final decision on adoption. These issues were the subject of the High Court's judgment of 12 October 2002 and the Appeals Selection Committee of the Supreme Court's refusal of leave to appeal of 29 January 2002.

In so far as the applicant also complains about the continuing care order and the deprivation of her parental rights, it does not appear from the information available to the Court that the applicant lodged an appeal against the High Court's dismissal on 22 February 2001. That decision was taken more than six months before she lodged her present application under the Convention. The applicant seems to have brought fresh proceedings regarding the care order and parental rights before the City Court but no particulars have been submitted to show that she has exhausted domestic remedies. Even assuming that the applicant has complied with the formal admissibility requirements of Article 35 §§ 1 and 4 of the Convention with regard to these complaints, the Court considers them manifestly ill-founded, in view of the considerations set out below in relation to her principal complaint concerning the issues of adoption and access.

The Court considers that the impugned measures constituted an interference with the applicant's rights under Article 8 § 1 of the Convention. It finds no reason to doubt that the measures were in accordance with the law – namely section 4-20 of the 1992 Child Welfare Services Act – and pursued the legitimate aim of protecting the best

interests of the child. The only issue to be examined is whether the interference was "necessary".

The Court, like the competent national authorities, does not attach decisive weight to the fact that the applicant was deemed capable of assuming care (see, for example, the Rieme v. Sweden judgment of 22 April 1992, Series A no. 226-B, §§ 70-71, Olsson v. Sweden (no. 2) judgment of 27 November 1992, Series A no. 250, §§ 87-88; the Hokkanen v. Finland judgment of 23 September 1994, Series A no. 299-A, §§ 63-64). It observes that, in reaching the conclusions it did, the County Board laid stress on the need to secure S.'s position in the foster-home environment. In this connection, particular regard was had to her age (then 8) and maturity, the fact that she had no social ties with her biological mother and had lived nearly all her life with her foster parents, whom she regarded as her own parents, and had developed a particularly strong attachment to them. The foster parents had proven themselves suitable carers for S. Removing her from the foster-home environment would not only be damaging to her in the short term but was also likely to have adverse effects in the long term. Indeed, at that point, the applicant did not dispute the view held by the child-welfare services that the foster-home placement was in S.'s best interests.

Similar considerations were relied on by the national courts in upholding the County Board's decision. It is true that the foster parents ceased to cohabit in 1999, which the applicant invoked as a reason for objecting to the foster care. However, the foster parents were not separated but continued to have a marital relationship and to assume joint care of S. The Court sees no reason to doubt the national High Court's finding that the foster parents were still to be regarded as suitable carers for S.

As to the applicant's complaint about being denied a right of access, the Court observes that this issue was postponed pending final resolution of the adoption matter. The Board did not reject the applicant's wish to have access. It emphasised that the child would soon need to become familiar and have contact with her biological mother. This was a process that needed to take place over time but should start immediately. For the time being it was not advisable to arrange for regular access. The experience of the first contact would necessarily be an important guide to determining how access should be arranged in the future. Bearing in mind the various considerations highlighted above and the long-term character of the foster-home placement, the Court does not find that this approach gave rise to any cause for concern that the applicant's rights under Article 8 of the Convention might have been infringed.

It is further to be noted that reactions to the first meeting between the applicant and S. on 30 November 1999, especially by S., were mixed. In particular, the fact that the applicant used this and other occasions as an opportunity to convey to S. the idea that she should move to the applicant's

home as well as her readiness to resort to the mass media as a means of mounting pressure, cannot have facilitated matters. On the contrary, according to the evidence established by the High Court, S. was traumatised by these events and developed a strong sense of insecurity, anxiety and despair. The intrusive media coverage had led her to change school in January 2001.

Moreover, while the applicant had made it clear that her aim was to be reunited with S. in Denmark and had tried all available judicial means to achieve that aim, S. felt that the applicant and her children had intruded on her life. She did not want to be involved in any further judicial proceedings but sought, through adoption, a tranquil and secure existence, as an ordinary girl in a foster home. In the circumstances, S. did not wish to meet her mother. She was nearly twelve years old when the matter was considered by the High Court, which understandably attached great weight to her own wishes. It was deemed that satisfactory contact between mother and child in the future could best be achieved by adoption, as it would remove the pressures that had come in the way of a fruitful relationship between them.

Against this background, and having particular regard to S.'s special need for a secure and calm foster family environment as well as her own wishes in that respect, the Court finds that there were clearly relevant and sufficient reasons for authorising the adoption and that the measure was proportionate to the legitimate aim of protecting the child's best interests. There is nothing to indicate that the national authorities overstepped their margin of appreciation.

Nor does the Court find anything to suggest that the refusal to grant the applicant a right of regular access pending the outcome of the adoption proceedings constituted an unjustified interference with her right to respect for her family life.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 34 § 4.

B. The complaint under Article 46 of the Convention

Article 46 of the Convention reads:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

Under this provision the applicant complained that, despite the Court's finding in the Johansen I case that the deprivation of her parental rights over S. violated Article 8 of the Convention, the Norwegian authorities had decided to authorise the child's adoption by the foster parents. In the

applicant's submission, the national authorities had therefore continued to violate Article 8 and thereby failed to comply with its obligation under Article 46 of the Convention.

The Court reiterates that, by Resolution DH (97) 505 adopted on 29 October 1997, concerning the execution of the Johansen I judgment, the Committee of Ministers declared that, after having taken note of the information supplied by the Government of Norway "about the measures taken in order to prevent new violations of the same kind as found in the judgment", "it ha[d] exercised its functions under [former] Article 54 of the Convention in this case".

The Court further notes that the facts and circumstances underlying the applicant's complaint under Article 46 raised a new issue which was not determined by the Johansen I judgment and are essentially the same as those which were considered above under Article 8, in respect of which the application was declared inadmissible as being manifestly ill-founded.

In these circumstances, no separate issue arises under Article 46 (see the above-mentioned Olsson (no. 2) judgment, § 94).

It follows that this part of the application also is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 34 § 4.

For these reasons, the Court by a majority

Declares the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President