In the case of Rieme v. Sweden*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr Thór Vilhjálmsson,
Mr F. Gölcüklü,
Mr B. Walsh,
Mr A. Spielmann,
Mr N. Valticos,
Mrs E. Palm,
Mr I. Foighel,
Mr A.N. Loizou,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 28 November 1991 and 28 March 1992,

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

Notes by the Registrar

* The case is numbered 60/1990/251/322. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the Government of the Kingdom of Sweden ("the Government") on 14 and 17 December 1990 respectively, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12366/86) against Sweden lodged with the Commission under Article 25 (art. 25) by Mr Antero Rieme, a Finnish citizen, on 28 July 1986.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Sweden recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the Government's application and of the request was to obtain a decision as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Article 8 (art. 8).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30). The Finnish Government, having been informed by the Registrar of its right to intervene in the proceedings (Article 48, sub-paragraph (b) of the Convention

and Rule 33 para. 3(b)) (art. 48-b), did not indicate any intention of so doing.

3. The Chamber to be constituted included ex officio Mrs E. Palm, the elected judge of Swedish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 21 February 1991 the President drew by lot, in the presence of the Registrar, the names of the seven other members, namely, Mr Thór Vilhjálmsson, Mr F. Gölcüklü, Mr B. Walsh, Mr A. Spielmann, Mr N. Valticos, Mr I. Foighel and Mr A.N. Loizou (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Government, the Delegate of the Commission and the lawyer for the applicant on the organisation of the procedure (Rules 37 para. 1 and 38). Thereafter, in accordance with the orders made in consequence, the Registrar received the applicant's memorial on 24 April and the Government's memorial on 13 June 1991.

In a letter of 9 July the Secretary to the Commission informed the Registrar that the Delegate would submit her observations at the hearing.

5. On 15 November 1991 the Commission filed a number of documents which the Registrar had sought from it on the President's instructions.

On 25 September and 22 November 1991 the registry received, from the applicant, further details on his Article 50 (art. 50) claim, which the Court accepted (Rule 50), and documents from both the applicant and the Government, as requested by the President.

6. As further directed by the President, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 November 1991. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr H. Corell,
Ambassador, Under-Secretary for
Legal and Consular Affairs,
Ministry for Foreign Affairs, Agent,

Ms I. Stenkula, Legal Adviser,
Ministry of Health and Social Affairs,

Ms E. Jagander, Legal Adviser,
Ministry for Foreign Affairs, Advisers;

(b) for the Commission

Mrs G.H. Thune, Delegate;

(c) for the applicant

Mr L. Hane, advokat, Counsel.

The Court heard addresses by Mr Corell for the Government, by Mrs Thune for the Commission and by Mr Hane for the applicant, as well as their replies to its questions.

AS TO THE FACTS

I. Particular circumstances of the case

A. Background

7. Mr Antero Rieme, a Finnish citizen born in 1940, resides at Tumba, Sweden, and is a metal worker by profession. He has a daughter, Susanne, together with Mrs J., with whom he cohabited from January 1976 until March 1977. The latter had legal custody of Susanne from the time of her birth on 28 October 1976. In 1980 the applicant met Mrs Anita Mäkinen. They have been living together since that year and have been married since early 1983; she has taken the name of Anita Rieme.

8. On 26 September 1977, when Susanne was eleven months old, the Southern Social District Council (södra sociala distriktsnämnden) of Södertälje ("the Social Council") decided that she should be taken into public care pursuant to sections 25(a) and 29 of the Child Welfare Act 1960 (barnavårdslagen 1960:97 - "the 1960 Act"), because of her mother's alcohol problems. Shortly afterwards, she was placed in a foster home - with the Forsberg family - where she stayed until she moved to her father's home in August 1989 (see paragraphs 23-24 below). She returned to the foster home around Christmas 1989 (see paragraph 25 below).

9. In January 1978 the applicant applied to the District Court (tingsrätten) of Södertälje for legal custody of Susanne. In a custody report to the court, dated 21 September 1978, the social welfare authorities opposed his request, recommending instead that a special legal guardian be appointed. The report observed, inter alia, that the applicant had been reported several times for offences of drunkenness. It also noted that Susanne had become completely integrated into the foster family and that the Forsberg children had accepted her as their own sister. Mr and Mrs Forsberg had taken on their role as foster parents fully conscious of the realities of the situation. They were prepared to take care of Susanne for as long as necessary, on the understanding that this might be until adulthood. Mr Rieme withdrew his request, allegedly because the social welfare authorities had "threatened" to revoke his right of access to Susanne.

10. On 30 November 1981 the applicant again asked the District Court to grant him legal custody.

As appears from the minutes of the court's hearing on 17 March 1982, the court dismissed Mr Rieme's request for a provisional transfer of custody, so that the social welfare authorities could carry out a speedy examination of the question of custody. The relevant report was completed on 27 June 1983. It noted, inter alia, that according to a statement by the foster parents to the social welfare authorities, Susanne was not looked upon as a "foster child" - the expression was not even used in the foster home. Moreover, they had stated that they did not know at the outset how long Susanne's placement with them would last but that it had become permanent. The report concluded that it was not in Susanne's best interests to transfer the custody to the applicant. Instead, custody should be given to a third person.

11. Nevertheless, by judgment of 28 September 1983, the court ordered that the custody of Susanne be transferred to Mr Rieme, having regard to, inter alia, the following considerations. Whilst Susanne's placement in the foster home seemed consistent with her best interests, the applicant had shown active concern for her and had endeavoured to maintain contact. To an outsider, his endeavours could appear to have been unwise and might not correspond to a modern view of children's needs. However, one

should not attach undue importance to the applicant's lack of insight in this matter. His wish to take care of Susanne was not unusual and seemed natural. Furthermore, a transfer of custody would not lead to termination of Susanne's placement in the foster home but would, on the other hand, enable the applicant to have the issue legally determined in the light of any changes which might occur in their situation. Moreover, a transfer could stimulate further contacts and would be valuable to Susanne in the long run. The Social Council should see to it that such contacts did not conflict with her best interests.

12. Susanne's mother, Mrs J., appealed to the Svea Court of Appeal (Svea hovrätt) which, however, confirmed the transfer of custody in a judgment of 21 June 1984.

B. Termination of public care and prohibition on removal

13. In the meantime, on 11 October 1983, the applicant had asked the Social Council, firstly, to terminate the public care of Susanne and, secondly, to grant him access to her at regular intervals. The social welfare officers responsible for the case carried out a review of the question of removing Susanne from the foster home and, on 16 October 1984, following a hearing at which the applicant, his lawyer and his wife - Mrs Anita Rieme - were present, the Social Council granted the care claim but did not determine the access claim. At the same time, it decided, pursuant to section 28 of the Social Services Act 1980 (socialtjänstlagen 1980:620), to prohibit the applicant from removing Susanne from the foster home, on the ground that there was "a risk, which was not of a minor nature", that her mental health could thereby be harmed. This decision was based on the social welfare officers' report and recommendation to the Social Council, dated 28 September 1984.

14. The report, which was attached to the recommendation, set out the background of the case and analysed the relationships between father and daughter, as well as interviews which the social workers had carried out with the Rieme and Forsberg spouses. It also reviewed Susanne's health and development and her need to remain with the Forsberg family. The report relied on a psychiatric opinion, appended thereto, from the Institution for Child and Youth Psychiatry ("PBU") in Stockholm which was dated 7 June 1984 and signed by Mr Jarkko Rantanen, psychologist, and Dr Sari Granström, chief physician. The opinion observed, inter alia, the following:

Susanne had been living in the foster home since she was eleven months old. Her contacts with the biological mother had been interrupted whereas those with the applicant had continued on a regular basis. However, in her eyes, the foster parents assumed the role of her parents; she had not developed equally strong emotional ties with the applicant and his wife. Similarly, she considered the other children (three natural daughters and one foster son) in the Forsberg home as her own brother and sisters. Removing Susanne from this home would involve too many changes for her: she would not only lose her much needed feeling of security and psychological support derived from the Forsberg home, her friends, her school and daily routines but she would also be faced with unreasonably difficult problems of adaptation in a new environment. Susanne had shown a tendency to react physically to significant changes. She suffered from various psychosomatic disorders - including enuresis and recurring stomach pains which were likely to get worse in the event of a removal. This would also entail a risk of her becoming increasingly depressed and distant. Before removal could take place, Susanne's relationship with the applicant and his wife needed to evolve further. The question of removal should not be discussed with her until she had become sufficiently mature and she should not be subjected to

further examinations related to this issue within the next few years.

Further contacts between the applicant and Susanne should develop in collaboration with the foster parents. If those ties, which had already been established through regular meetings, were to be able to continue, the applicant would need a great deal of support in order to be capable of maintaining and furthering their relationship, with due regard to the needs of his daughter.

C. First set of proceedings challenging the prohibition on removal

15. The applicant lodged an appeal with the County Administrative Court (länsrätten) in Stockholm against the prohibition on removal. The court held a hearing in camera on 22 January 1985 at which the applicant and his wife were present and represented by counsel. As witnesses, it heard the foster parents, at the applicant's request, and Dr Granström and Mr Rantanen, at the request of the Social Council.

In its judgment of 25 January 1985, the court recalled that the Social Council's decision to terminate the public care of Susanne implied that the applicant's personal circumstances did not as such constitute an obstacle to reuniting them. On the other hand, the court had regard to the Social Council's assessment, based on the above-mentioned psychiatric opinion (see paragraph 14 above), that remaining in the foster home was in Susanne's best interests. She was a sensitive, fragile and vulnerable girl who would lose her feeling of security and show certain psychosomatic symptoms if she were to be immediately removed from the foster home. Against this background, the court considered that removal would involve a risk, which was not of a minor nature, of harming her mental health. On balancing Susanne's interests against those of the applicant, for which the court expressed great sympathy, it found that there were preponderant reasons in favour of allowing Susanne to remain in the foster home until further notice. Consequently, the appeal was dismissed.

16. Mr Rieme appealed to the Administrative Court of Appeal (kammarrätten) in Stockholm, requesting that the prohibition on removal be lifted and, in the alternative, that the duration of the prohibition be limited. The court dismissed the appeal by judgment of 2 August 1985, which contained the following reasons:

> "The aim of the provisions of section 28 of the Social Services Act is to safeguard the best interests of the child. Among the circumstances which must be considered in that context are the age of the child and his or her abilities and emotional ties. Furthermore, regard must be had, inter alia, to the child's own wishes and to how long the child has been cared for in the [foster] home.
>
> Susanne ... has been cared for in the foster home since October 1977 and thus for the major part of her life. She is considered to be a sensitive child and has had certain psychosomatic symptoms. After the County Administrative Court's examination of the question of the removal of Susanne, it appears that the relationship between Susanne and [the applicant] has developed in a favourable manner. The Administrative Court of Appeal finds, however, that an enforced removal still involves a risk of harming Susanne's mental health, a risk which is not of a minor nature. The request to lift the prohibition from taking Susanne away from the foster home cannot therefore be granted. The question of when the prohibition can be lifted depends on how the contacts between [the applicant] and Susanne develop in the future.

The Administrative Court of Appeal finds that the prohibition cannot at present be limited in time."

17. On 23 September 1985 the applicant applied for leave to appeal to the Supreme Administrative Court (regeringsrätten). Leave was refused on 26 March 1986.

D. Particulars concerning the applicant's contacts with his daughter

18. The social welfare officers' above-mentioned report (see paragraphs 13-14 above) provided the following information on the applicant's contacts with Susanne:

"When Susanne was taken into public care and placed in a foster home in 1977, Antero Rieme maintained quite regular contacts with her. Until early February 1978 he visited her about once a week. Subsequently, the frequency of visits decreased and, for a period, he did not visit Susanne at all. During this period [he] kept himself informed about [her] well-being through Esko Forsberg, who was a colleague at that time. The following year the visits became more regular [although] with varying frequency. Susanne recognised [her father] and called him 'my second daddy'. [He] showed interest in [her]. In August 1981 [he] expressed the wish that [she] come to his and Anita's ... home for some weekends. He planned to apply for the custody of the child and wanted [the care] to be gradually transferred to him. The social welfare officer then responsible for the case would not assist in arranging for Susanne's transfer until the question of custody had been determined, but approved of [her] visiting the applicant occasionally at weekends, when one of the Forsberg spouses was to accompany her. It was also decided that [the applicant] should visit Susanne in the foster home once a month.

In connection with her review of the question of custody, dated [27 June 1983], Yvonne Zäll, Head of Section, considered also the issue of a right of access. It was agreed that the entire Forsberg family should visit the Rieme couple and, moreover, that Susanne should visit them, accompanied by Minna Forsberg. In the beginning, Susanne would not go alone - without Riita and Minna Forsberg - but after a while it became easier for her to be on her own with the Rieme spouses. She has only been there at daytime, as she did not want to stay overnight. It follows from the review of the question of custody that Susanne was happy about the father's visits to the [foster] family and that the foster parents' attitude to them was positive.

Since the District Court decided that the custody of Susanne should be vested in Antero Rieme, the Social Council ... reviewed the question of removal. An agreement was reached with Antero Rieme that access, pending the review, should take place as follows: Susanne, Antero and Anita Rieme should meet two Saturdays a month, one Saturday ... [at Forsbergs' home] and one Saturday ... [at] the Riemes'.

Access should take place on condition that Susanne was positive about [it]. The father wished to have the access extended so as to receive Susanne for visits at his home every other weekend from Friday night to Sunday night and for a week in connection with the weekend of New Year's Eve. Since it was of importance not to disturb or confuse Susanne, the social welfare authorities and [the applicant] reached a written agreement that no changes should be made concerning access pending the examination [of the question of removal].

> Nevertheless, in practice the access arrangements were changed since the social workers agreed with Antero Rieme and the Forsberg family that Susanne could spend the night at the Riemes' ... home, should she so wish. So far she has not. She has clearly stated that she does not wish to stay overnight at [their] home. She has not been able to provide any reasons for this. It has also happened that the Rieme spouses came to the foster home merely to collect her [, without actually visiting her in her home environment]."

19. According to the applicant, the social welfare authorities had accepted, subject to further arrangements, that the child could stay overnight at his home in the month of May 1984. However, he stated that this did not materialise, apparently because they had told the foster parents not to mention anything to Susanne about it.

20. In a memorandum of 14 June 1985 addressed to the Administrative Court of Appeal (in the proceedings concerning prohibition on removal) the social welfare officer responsible for the case stressed that contacts between Susanne and the applicant should evolve slowly and gradually. Her own wishes in this respect were of particular importance. At her own request, she had stayed overnight three times at her father's home during the last couple of months. She had clearly indicated that, for the time being, she only wished to spend one night at a time there and that she did not wish to join her father and his wife for a fortnight's holiday in Finland in the summer of 1985.

However, according to the applicant, Susanne had expressed a desire to go with them on holiday to Finland. When he contacted the social welfare officer on the issue, the latter maintained, in her letter dated 24 June 1985, that Susanne had stated the contrary to her and that one should respect Susanne's choice. Meanwhile, she hoped that the applicant and Susanne would get to know each other better by the time of the next school vacation or another holiday. In addition, under section 28 of the Social Services Act, the Social Council had power to decide where Susanne was to stay. Consequently, the applicant was not in a position to decide the matter.

21. As from May 1986 Susanne stayed overnight every second week-end with the applicant and his wife. She spent parts of her summer holidays with them in 1986 and 1987 in Finland and about one week at Christmas 1987, as well as Easter 1988 and New Year 1988-89.

22. In a memorandum of 15 December 1987 to the Ministry for Foreign Affairs, apparently prepared in connection with the proceedings before the Commission, the Social Council noted that the measures taken by the social welfare authorities to bring about closer contact between the applicant and his daughter, possibly leading to her removal from the foster home, had essentially consisted of providing support to Susanne and the foster home in a manner aimed at making her meetings and holidays with the applicant as natural as possible. Furthermore, the social welfare authorities had supported initiatives taken by the foster parents to improve their contacts with the applicant.

However, according to the memorandum, the applicant had declined contact with the social welfare authorities since the autumn of 1985, making it more difficult for them to work for a better relationship between him and the foster parents.

Furthermore, Susanne was mature for her age and had become increasingly able to express her own views. The social welfare authorities had considered as decisive her wishes as to how the contacts with the applicant were to be arranged. She had stayed in

the foster home since the age of one and had strong emotional ties with the foster parents. The continued development of the contacts between the applicant and Susanne should therefore take place at her own pace and removal should only occur when she desired it.

E. Second set of proceedings challenging the prohibition on removal

23. On 1 September 1989 the applicant again asked the Social Council to lift the prohibition on removal. At that time, Susanne had been staying with him since school started in August. After reviewing the matter, the social welfare officers submitted a report to the Social Council, noting that Susanne's psychosomatic symptoms had disappeared a few years earlier and that her contacts with the applicant and his wife had been close and had increased steadily at her own pace. The relationship between the applicant and the foster parents had been very tense over the years and for long periods they had not had any contact at all. Susanne had found herself in the difficult position of having to move backwards and forwards between the families. However, she seemed to have coped with the situation and had showed attachment to both sets of parents who were now co-operating in her best interests. Since the end of August 1989 she had been staying with the Riemes, with her own and the foster parents' agreement, and was seeing the foster parents whenever she wished. In view of this, the social welfare officers recommended that the prohibition on removal be lifted.

24. On 20 November 1989 the Social Council terminated the prohibition on removal.

F. Recent developments

25. Around Christmas 1989 Susanne returned to the Forsbergs' home, where at her own wish she has been living ever since. In January 1990 the Forsbergs and the Riemes and Susanne met with the social welfare authorities in Södertälje. On this occasion, the applicant did not seem prepared to accept her staying with the Forsberg family, whereas the latter stated that they wished her to do so and would not force her to leave. The social welfare authorities have as yet not taken any formal decision on the matter.

The applicant and his daughter have been in contact since her return to the Forsberg family; for instance, she visited him at Easter 1991.

II. Relevant domestic law

26. Decisions concerning the applicant's child were based on the Child Welfare Act 1960 (barnavårdslagen 1960:97 - "the 1960 Act"), the Social Services Act 1980 (socialtjänstlagen 1980:620) and the 1980 Act containing Special Provisions on the Care of Young Persons (lagen 1980:621 med särskilda bestämmelser om vård av unga - "the 1980 Act").

The Social Services Act 1980 contains provisions regarding supportive and preventive measures effected with the approval of the individuals concerned. The 1980 Act (1980:621), which provided for compulsory care measures, complemented the Social Services Act 1980; when they entered into force on 1 January 1982, they replaced the 1960 Act. In general, decisions taken under the 1960 Act, which were still in force on 31 December 1981, were considered to have been taken under the 1980 Act. As from 1 July 1990 the relevant legislation has been amended (see paragraphs 40-43 below).

A. Compulsory care

27. Under section 25(a) of the 1960 Act, the competent local

authority in child-care matters - the Child Welfare Board (barnavårdsnämnden) or, in Stockholm and Gothenburg, the Social District Council - was obliged to intervene:

> "[if] a person, not yet eighteen years of age, is maltreated in his home or otherwise treated there in a manner endangering his bodily or mental health, or if his development is jeopardised by the unfitness of his parent or other guardians responsible for his upbringing or by their inability to raise the child."

28. If the Board found that the child's situation corresponded to that described in section 25 of the 1960 Act, it had, before resorting to care, to endeavour to remedy the matter by preventive measures (förebyggande åtgärder). These could consist of one or more of the following steps: advice, material support, admonition or warning, orders pertaining to the child's living conditions, or supervision (section 26). If such measures proved insufficient or were considered pointless, the Board had to place the child in care (section 29).

29. The conditions for compulsory care under the 1980 Act were set out in section 1, which read:

> "Care is to be provided pursuant to this Act for persons under eighteen years of age if it may be presumed that the necessary care cannot be given to the young person with the consent of the person or persons having custody of him and, in the case of a young person aged fifteen or more, with the consent of the young person.
>
> Care is to be provided for a young person if
>
> 1. lack of care for him or any other condition in the home entails a danger to his health or development, or
>
> 2. the young person is seriously endangering his health or development by abuse of addictive substances, criminal activity or any other comparable behaviour.
>
> ... "

30. It is primarily the responsibility of the municipalities to promote a positive development for the young. For this purpose each municipality has a Social District Council, composed of lay members assisted by a staff of professional social workers.

31. The Child Welfare Board - or, in Stockholm and Gothenburg, the Social District Council - had power to take decisions on public care pursuant to the 1960 Act. Under the 1980 Act, such decisions were taken by the County Administrative Court, on application by the Social Council.

When a decision on public care had been taken, the Social Council (formerly the Child Welfare Board under the 1960 Act) was to implement it, by attending to the practical details of such matters as placement, education and other treatment of the child (sections 35-36 and 38-41 of the 1960 Act and sections 11-16 of the 1980 Act).

The 1980 Act required the care of the child to be carried out in such a way as to enable him to have close contacts with his relatives and to visit his home. This requirement could mean that the child returns to his home, after a period, to live there, although he is still formally under public care (section 11 of the 1980 Act).

32. Under section 42(1) of the 1960 Act, compulsory care had to be discontinued as soon as the aims of the care measures were deemed to have been achieved.

The corresponding rule in the 1980 Act provided that the Social Council was obliged to monitor carefully the care and to terminate it when it was no longer necessary (section 5).

33. At the relevant time, section 41 of the Social Services Ordinance 1981 (socialtjänstförordningen 1981:750) laid down that a care decision based on unsatisfactory conditions in the child's home must be reconsidered by the Social Council regularly and at least once a year.

Both before and after the entry into force of the 1980 Act, a parent who has custody of the child could, under the general principles of Swedish administrative law, at any time request that the decision on public care be terminated.

34. According to a report by a special committee on social affairs (Betänkande av Socialberedningen - SOU 1986:20), the social welfare authorities in a number of municipalities have been operating a distinction between support placement (stödplacering) and substitute placement (ersättningsplacering), the latter designating a more permanent form of placement.

B. Prohibition on removal

35. The Social Council could issue a prohibition on removal under section 28 of the Social Services Act, which read as follows:

> "The Social Council may for a certain period of time or until further notice prohibit the guardian of a minor from taking the minor from a home referred to in section 25 [i.e. a foster home], if there is a risk, which is not of a minor nature, of harming the child's physical or mental health if separated from that home.
>
> If there are reasonable grounds to assume that there is such a risk, although the necessary investigations have not been completed, a temporary prohibition may be issued for a maximum period of four weeks, pending the final decision in the matter.
>
> A prohibition issued under this section does not prevent a removal of the child from the home on the basis of a decision under Chapter 21 of the Parental Code."

The preparatory work (Prop. 1979/80:1, p. 541) relevant to this provision mentioned that a purely passing disturbance or other occasional disadvantage to the child was not sufficient ground for issuing a prohibition on removal. It stated that the factors to be considered when deciding whether or not to issue such a prohibition included the child's age, degree of development, character, emotional ties and present and prospective living conditions, as well as the time he had been cared for away from the parents and his contacts with them while separated. If the child had reached the age of 15, his own preference should not be opposed without good reasons; if he was younger, it was still an important factor to be taken into account.

The Standing Social Committee of the Parliament stated in its report (SOU 1979/80:44, p. 78), inter alia, that a prohibition might be issued if removal could involve a risk of harm to the child's physical or mental health, thus even where no serious objections existed in regard to the guardian. The Committee also stressed that the provision was aimed at safeguarding the best

interests of the child and that those interests must prevail whenever they conflicted with the guardian's interest in deciding the domicile of the child. It also took as its point of departure the assumption that a separation generally involved a risk of harm to the child. Repeated transfers and transfers which took place after a long time, when the child had developed strong links with the foster home, should thus not be accepted without good reasons: the child's need for secure relations and living conditions should be decisive.

36. Section 28 of the Social Services Act did not apply to children who were being cared for in foster homes under section 1 of the 1980 Act. As long as such care continued, the right of the guardian to determine the domicile of the child was suspended. Whilst that right in principle revived on the termination of such care, it could be further suspended by an application of section 28 by the social welfare authorities.

37. Under section 73 of the Social Services Act, a decision taken under section 28 could be appealed to the administrative courts. In practice, besides the natural parents both the child concerned and the foster parents have been allowed to lodge such appeals. In the proceedings before the administrative courts, a special guardian may be appointed to protect the interests of the child, should these come into conflict with those of the child's legal guardian.

C. Regulation of access

1. During compulsory care

38. The 1960 Act provided that the Child Welfare Board could regulate a parent's right of access to his child in care to the extent that it found this reasonable in the light of the aims of the care decision, the upbringing of the child or other circumstances (section 41).

Under the 1980 Act, restrictions on access could be imposed by the Social Council, in so far as this was necessary for the purposes of the care decision (section 16). Such decisions could be appealed to the administrative courts by both the parents and the child.

2. During prohibition on removal

39. On 18 July 1988 the Supreme Administrative Court held that a decision by the Social Council to restrict the access rights of the appellants, Mr and Mrs Olsson, while a prohibition on removal under section 28 of the Social Services Act was in force had no legal effect and that no appeal to the administrative courts would lie against such a decision. The court stated:

> "Under section 16 of the [1980 Act] ..., a Social Council may restrict the right of access in respect of children taken into public care under this Act. As regards the right of access to children while a prohibition on removal is in force, no similar power has been vested in the Social Council in the relevant legislation. As there is no legal provision giving the Social Council power to restrict the right of access during the validity of the prohibition on removal ..., the instructions given by the Chairman of the Social Council in order to limit the right of access have no legal effect. Nor can any right of appeal be inferred from general principles of administrative law or from the European Convention on Human Rights."

D. New legislation

40. The provisions of the Social Services Act which related to the prohibition on removal are now contained, in amended form, in the 1990 Act containing Special Provisions on the Care of Young Persons (lagen 1990:52 med särskilda bestämmelser om vård av unga - "the 1990 Act"). This entered into force on 1 July 1990.

41. Section 24 of the 1990 Act, which corresponds to the previous section 28 of the Social Services Act (see paragraph 35 above), provides that the County Administrative Court may, on application by the Social Council, impose a prohibition on removal for a certain time or until further notice. The condition for such a prohibition is that there must be

> "an apparent risk (påtaglig risk) that the young person's health and development will be harmed if he is separated from the home".

Although this wording differs from that of section 28 of the Social Services Act, it was not intended, according to the preparatory work (Prop. 1989/90:28, p. 83), to introduce thereby a new standard.

42. According to section 26 of the 1990 Act, the Social Council shall, at least once every three months, consider whether a prohibition on removal is still necessary. If it is not, it shall lift the prohibition.

43. Pursuant to section 31, the Social Council may regulate the parent's access to the child if it is necessary in view of the purposes of the prohibition on removal.

PROCEEDINGS BEFORE THE COMMISSION

44. In his application of 28 July 1986 to the Commission (no. 12366/86), Mr Rieme alleged that his requests for transfer of custody and for termination of the prohibition on removal had not been determined "within a reasonable time" by the Swedish courts, as required by Article 6 (art. 6) of the Convention. Moreover, contrary to this provision, he had not received a fair hearing. He further claimed that the maintenance in force of the prohibition on removal over such a long period and the absence of an adequate right to access to the child had given rise to a violation of his right to respect for family life, as guaranteed by Article 8 (art. 8). He invoked, in addition, Article 17 (art. 17).

45. On 5 July 1989 the Commission declared the complaints under Article 6 (art. 6) inadmissible and the remainder of the application admissible.

In its report of 2 October 1990 (Article 31) (art. 31), the Commission expressed the opinion, by eight votes to five, that there had been a violation of Article 8 (art. 8). The full text of the Commission's opinion and of the five separate opinions contained in the report is reproduced as an annex to this judgment*.

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* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 226-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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46. The Court notes that the applicant's daughter did not take part and was not represented in the proceedings before the Convention institutions.

FINAL SUBMISSIONS TO THE COURT

47. At the hearing on 25 November 1991, the Government confirmed the final submission in their memorial, inviting the Court to find that "the facts of the case do not reveal any violation of the Convention".

AS TO THE LAW

I. SCOPE OF THE CASE

48. The applicant raised several issues under Article 6 (art. 6) of the Convention (see paragraph 44 above). However, the case, as delimited by the Commission's decision on admissibility, concerns only his complaint that the Swedish authorities had acted in a way which hindered reunion with his child, in breach of Article 8 (art. 8).

49. The Government maintained that the Convention institutions' examination under Article 8 (art. 8) should not extend beyond 26 March 1986, which is the date of the last decision by a domestic court in the case. The applicant had not availed himself of the opportunity, which was open to him, to institute fresh proceedings before domestic courts and had therefore failed to exhaust domestic remedies in respect of facts which had occurred after that date. Additionally, the Government warned against a tendency of applicants not to pursue their claims domestically, once the Commission had declared their application admissible. Mr Rieme had not submitted a fresh request for revocation of the prohibition on removal until 1 September 1989. In his case, a decision on admissibility was taken on 5 July 1989. On the other hand, the Government considered that facts which took place after 26 March 1986 were of interest to the extent that they could shed light on facts before that date.

50. The Court notes that Mr Rieme did not complain of an isolated act but rather of a situation in which he had been for some time and which would continue until it was ended by a decision to lift the prohibition on removal. The prohibition applied until further notice and, as the Commission observed, apart from the passage of time, there were no significant new facts which could justify fresh proceedings to have it quashed. Were Article 26 (art. 26) to make mandatory the taking of such steps, which by their very nature may be repeated an indefinite number of times, it might create a permanent barrier to bringing matters before the Convention institutions (see, inter alia, the Guzzardi v. Italy judgment of 6 November 1980, Series A no. 39, pp. 29-30, para. 80).

51. Furthermore, whilst the Court's jurisdiction in contentious matters is determined by the Commission's decision declaring the originating application admissible, it is competent, in the interests of economy of proceedings, to take into account facts occurring during the course of the proceedings in so far as they constitute a continuation of the facts underlying the complaints declared admissible (see, amongst many other authorities, the Olsson v. Sweden judgment of 24 March 1988, Series A no. 130, pp. 28-29, para. 56).

52. For these reasons, the Government's preliminary objection is rejected.

II. ALLEGED VIOLATION OF ARTICLE 8 (art. 8)

53. The applicant complained that the Swedish authorities had hindered his reunion with his daughter Susanne in violation of Article 8 (art. 8) of the Convention, which provides:

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

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

The Government rejected this contention, whereas the Commission agreed that there had been a breach of this provision.

A. Existence of an interference

54. The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and the natural family relationship is not terminated by reason of the fact that the child is taken into public care (see, amongst many authorities, the Margareta and Roger Andersson v. Sweden judgment of 25 February 1992, Series A no. 226-A, p. 25, para. 72).

55. The implementation of the public care order, the subsequent prohibition on removal and its maintenance in force clearly constituted, and this was not disputed, an interference with the applicant's right to respect for family life (see, ibid., and the Eriksson v. Sweden judgment of 22 June 1989, Series A no. 156, p. 24, para. 58).

56. Such an interference constitutes a violation of Article 8 (art. 8) unless it was "in accordance with the law", had an aim or aims that is or are legitimate under Article 8 para. 2 (art. 8-2) and was "necessary in a democratic society" for the aforesaid aim or aims (see, for example, the above-mentioned Olsson judgment, Series A no. 130, p. 29, para. 59).

B. "In accordance with the law"

57. The applicant made several allegations to the effect that the interference was not "in accordance with the law".

1. "Substitute placement"

58. In the applicant's contention, the social welfare authorities had, contrary to Swedish law, placed Susanne in the Forsberg family with the intention that she should never be reunited with him and had promised them that they would be able "to keep the child for good". She had been subjected to so-called "substitute placement" (ersättningsplacering). This was a practice applied by the social welfare authorities in certain cases, whereby it was decided at the very outset that the placement was to be of a long-lasting or permanent character (see paragraph 34 above), thus substituting the foster parents for the natural parents. As a consequence, little effort was made to reunite the child and the natural parents.

In support of his allegation, the applicant relied mainly on an observation made in the custody review of 21 September 1978 (see paragraph 9 above) that Susanne had become completely integrated into the foster family and that the Forsberg spouses, who had taken on their role as foster parents fully aware of the realities of the situation, had been prepared to take care of her for as long as needed and had accepted the prospect of her staying there until adulthood. Furthermore, he referred to a statement in the custody review of 27 June 1983 (see paragraph 10 above), according to which the foster parents had not considered Susanne a "foster child" -

indeed the expression had not even been used in their home. Moreover, they had stated that they had not known at the outset how long Susanne's placement with them would last but that it had now become permanent. In addition, the applicant pointed out that the social welfare authorities had been opposed to his obtaining custody of Susanne and had compelled him to have less contact with her pending the two above-mentioned custody reviews. These reviews - which had lasted for nine months and for one year and three months, respectively - had unduly delayed his reunion with the child. A further delay of almost a year had been caused by the Social Council's review of the question of removal (see paragraph 13 above), carried out between October 1983 and September 1984, the purpose of which had been to hinder reunion.

59. However, in the Court's view, the above does not bear out the allegation that the foster parents were promised that they could keep the child. Nor is there any indication that the social welfare authorities acted in a manner inconsistent with Swedish law, or with a view to hindering reunion. On the contrary, as appears from the case-file, they sought to facilitate contact between the applicant and his daughter and to enable them to deepen their relationship (see paragraphs 18, 21 and 22 above). They terminated the public care order in 1984 - shortly after the applicant received custody of the child - and lifted the prohibition on removal in 1989 (see paragraphs 11-13 and 23-24 above).

2. The law relating to prohibition on removal

60. The applicant did not dispute before the Court that the prohibition on removal had a basis in Swedish law. However, he argued that the law in question did not afford him adequate protection against arbitrary interference. Not only was the criterion in section 28 of the Social Services Act ("risk ... of harming the child's ... mental health") vague but also the preparatory work to this provision (see paragraph 35 above) contained several unrelated and even contradictory criteria.

61. Like the Government and the Commission, the Court is unable to share this view, for the reasons expressed in the above-mentioned Eriksson judgment (Series A no. 156, pp. 24-25, para. 60) in the following terms:

> "Section 28 itself is admittedly worded in rather general terms and confers a wide measure of discretion. However, it is scarcely feasible to set out in advance all the circumstances in which the removal of a child from a foster home may cause a serious risk of harming his physical or mental health. If the authorities' entitlement to act were to be confined to cases where actual harm had already occurred, the effectiveness of the protection which the child requires would be unduly reduced. Moreover, in interpreting and applying this section, the relevant preparatory work ... provides guidance as to the exercise of the discretion it confers and the administrative courts have competence to review at several levels the decisions made pursuant to this section.
>
> Taking these safeguards against arbitrary interferences into consideration, the scope of the discretion conferred on the authorities by the section in question appears to the Court to be reasonable and acceptable for the purposes of Article 8 (art. 8)."

3. Access arrangements

62. The applicant complained of not having been able to obtain a

decision by the social welfare authorities on the regulation of access (see paragraph 13 above).

The Delegate of the Commission, for her part, stressed at the Court's hearing that if any access restrictions were imposed while the prohibition on removal was in force, they would lack a basis in domestic law. She referred to the above-mentioned Eriksson judgment (ibid., p. 25, para. 65) where it was held that:

> "... the imposition of restrictions on access while a prohibition on removal is in force has been found by the Supreme Administrative Court to lack all legal effect as there are no legal provisions on which any such restrictions could be based [see paragraph 39 above]. Having regard to this authoritative interpretation of Swedish law, the Court concludes that the interference in question with Mrs Eriksson's right to respect for family life did not have the requisite basis in domestic law and was therefore not 'in accordance with the law' for the purposes of Article 8 (art. 8)."

63. However, the Court notes that in the present case no formal decision was taken with regard to access while the prohibition on removal was in force. Instead, the access arrangements were the result of co-operation between the applicant, the foster parents and the social welfare authorities. Accordingly, access to his daughter was gradually stepped up, so as to accommodate not only his own wishes, but also hers (see paragraphs 20-22 above). Consequently, the Court does not find it established that access arrangements were imposed upon the applicant contrary to Swedish law.

64. Having regard to the above, the Court is satisfied that the interference was "in accordance with the law".

C. Legitimate aim

65. The applicant contended that the measures at issue did not have a legitimate aim for the purposes of Article 8 (art. 8), as they were taken with a view to preventing reunion between him and the child.

66. The Court accepts that the relevant Swedish law was aimed at protecting the "health" and "the rights and freedoms" of the child and finds no indication that it was applied for any other purpose in this instance (see paragraph 59 above). The interference thus had aims that were legitimate under Article 8 para. 2 (art. 8-2).

D. "Necessary in a democratic society"

67. In the applicant's main submission, the social welfare authorities had acted in a way calculated to hinder his reunion with the child. In particular, the decision to prohibit removal and its maintenance in force for over five years were not "necessary in a democratic society". He had been unable to have adequate access to the child. Nor had it been possible for him to obtain a decision regulating access, despite having requested this in connection with the termination of public care in 1984 (see paragraph 13 above). As a consequence of the latter, no court remedy had been available to him in respect of the access arrangements (see paragraph 39 above).

68. On this latter point, the Court recalls that during the period in question the access arrangements were the result of co-operation (see paragraph 63 above).

69. The notion of necessity implies that the interference must be

proportionate to the legitimate aim pursued; in determining whether an interference is "necessary in a democratic society", the Court will take into account that a margin of appreciation is to be left to the Contracting States (see, amongst many authorities, the above-mentioned Eriksson judgment, Series A no. 156, p. 26, para. 69).

Furthermore, it must be recalled that in cases like the present a father's right to respect for family life under Article 8 (art. 8) includes a right to the taking of measures with a view to his being reunited with the child (see the above-mentioned Eriksson judgment, Series A no. 156, pp. 26-27, para. 71, and the above-mentioned Margareta and Roger Andersson judgment, Series A no. 226-A, p. 30, para. 91).

70. In the Social Council's decision of 16 October 1984 and the subsequent judgments upholding it (see paragraphs 13-17 above), the reasons for the prohibition on removal were essentially that Susanne - who was a very sensitive, fragile and vulnerable person - suffered from psychosomatic problems. She had been staying with the Forsberg family since an early age and had become deeply rooted in that environment, where she felt secure and at home in all respects. Separating her from this family would have led to too many stressful changes for her and involved a risk of aggravating her problems. It was therefore in her best interests to remain with the Forsberg family and to develop her contacts with the applicant in a gradual way. All these factors, on balance, outweighed the applicant's interest in being reunited with her.

71. The Court, like the Government and the Commission, is satisfied that these reasons were relevant and sufficient; they provided a valid justification for the prohibition on removal and its maintenance in force, at least up to 26 March 1986, when the Supreme Administrative Court refused leave to appeal. In particular, having regard to the Swedish authorities' margin of appreciation, the interference complained of was not disproportionate to the legitimate aims pursued.

72. As to the period after that date, the Commission considered that, although they could not be said to have acted against reunion, the social welfare authorities had failed to promote it actively, as they were required to do. Moreover, taking into account the transitional character of the kind of measure at issue, its long duration in the present case could only be justified in very special circumstances. The fact that the child had - at the time when the public care order was lifted and the prohibition on removal imposed - spent as much as seven years in the foster home, and this since the age of one, militated in favour of a longer transitional period than otherwise. However, while the prohibition on removal was in force, the applicant did not have any legal possibility to secure greater access. In view of these factors, the Commission found that the interference was disproportionate to the legitimate aims pursued; it was not "necessary in a democratic society", notwithstanding Sweden's margin of appreciation, to maintain the prohibition for over five years.

73. The Court has come to a different conclusion. As from May 1986, Susanne stayed overnight every other weekend at the applicant's home and spent several holidays with him and his wife during the remainder of the period in issue (see paragraph 21 above). The measures taken in order to create closer contacts between the applicant and his daughter had, as appears from the Social Council's memorandum of 15 December 1987 (see paragraph 22 above), consisted mainly of providing support to Susanne and the foster home to make her contacts with him as natural as possible. She had been living in the foster home since an early age and had strong emotional ties with the foster parents. In view of her age

and maturity, the relationship with her father was to evolve at her own pace.

74. The applicant's contention that the social welfare authorities intended to hinder reunion is, as already pointed out, unsubstantiated. Unlike in the Eriksson case (Series A no. 156, pp. 26-27, paras. 71-72), the Court sees no ground for criticising their conduct in the present instance.

75. At all times the Swedish authorities acted within the law. Having regard to their margin of appreciation, they cannot be said not to have had relevant and sufficient reasons for keeping the child in the foster home during the period in question.

76. Consequently, the Court does not find that the prohibition on removal lasted for longer than could reasonably be thought necessary.

77. Accordingly, there has been no violation of Article 8 (art. 8).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Dismisses the Government's preliminary plea as to the scope of the case;

2. Holds that there has been no violation of Article 8 (art. 8).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 22 April 1992.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar