

Press release issued by the Registrar

CHAMBER JUDGMENT IN THE CASE OF K.A. v. FINLAND

The European Court of Human Rights has today notified in writing a judgment¹ in the case of *K.A. v. Finland* (application no. 27751/95). The Court held unanimously that there had been:

- **a violation of Article 8** (right to respect for private and family life and home) of the European Convention on Human Rights given the failure to take sufficient steps to reunite the applicant's family;
- **no violation of Article 8** concerning the taking into care of the applicant's children or his involvement in the decision-making process.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 8,000 euros (EUR) for non-pecuniary damage and EUR 11,219.96 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicant is a Finnish national born in 1951. He and his wife S. have three children, K., A., and J., born in 1980, 1981 and 1986 respectively. S. suffers from mental problems and is on early retirement. On 28 January 1992 the Social Welfare Office of the relevant city was contacted by a private individual who suspected that the children were being sexually abused by their parents.

From 24 to 29 February 1992 J.'s development was monitored in the children's ward of the Central Hospital. The examination revealed no signs of sexual abuse. On 16 March 1992 his nursery notified the social welfare authorities that he had regressed after staying at home with his mother for a week following his hospital stay, and that similar regression had occurred whenever he had spent longer periods at home.

Between 27 and 30 April 1992 the social welfare authorities were contacted a further three times with information raising suspicions that S. was sexually abusing her children. It was alleged that the children were watching pornographic films, that S. was walking around at home nearly naked and that she was using sexually explicit language when talking with and about the children. The parents were allegedly also consuming large quantities of beer on a daily basis.

1. Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

On 25 May 1992 social officials, the school welfare officer and the school nurse interviewed K. and A. together with their parents. According to the social welfare officer's entry in the Board's records, the daughters confirmed the suspicions of sexual abuse, whereas the parents denied it.

The parents consented to having the children undergo an examination in the child psychiatric department of the Central Hospital.

By emergency orders of 12 June 1992 the children were placed in public care, under section 18 of the Child Welfare Act (*lastensuojelulaki, barnskyddslagen* 683/1983) to ensure that the investigation into the alleged incest and abuse could be completed.

On 15 June 1992 the parents were interviewed at the child psychiatric department by Dr H.L. The interview was followed through a one-way mirror by the two psychologists in charge of examining the children, a doctor and a nurse from the children's ward, the children's nurse at the children's home, a social worker and a nurse from the child psychiatric clinic as well as the social welfare official in charge of the case. The interview was not recorded. The parents were informed that clear evidence had been found of sexual abuse of the girls, the parents' heavy drinking and domestic violence directed against the children. The parents denied the sexual abuse and did not, in the opinion of the working group, realise the gravity of the situation.

On 6 July 1992 the parents, heard by social workers, maintained their opposition to the public care of their children. On 13 July 1992 the Social Welfare Board heard the parents, who denied the allegations concerning abuse and neglect of the children. On the same day the Board maintained the care order. The parents appealed unsuccessfully.

The care plan was reviewed at a meeting on 7 December 1992 attended by the parents. The parents and their children would continue to meet three times a week and the children were to receive psychotherapy. The parents objected to the option of foster care for the children. The care plan was again reviewed on 26 February 1993 at a meeting attended by the applicant. The children and the parents had continued to meet three times a week and the children had been on three weekend visits to relatives. The applicant remained opposed to foster care. The care plan was reviewed once again on 5 April 1993 in the presence of the parents. At a further meeting on 31 May 1993 the parents were informed that their children would be taken into foster care on 1 July 1993 and that between that date and October-November 1993 they would not be able to see them. Subsequently, four meetings a year would be organised. On 16 June 1993 the Social Welfare Board decided to place the children in foster care and adopted the new care plan. The applicant appealed unsuccessfully. He also applied unsuccessfully for the public care of his children to be terminated.

On 8 May 1998 and 30 May 1999 respectively, when K. and A. reached the age of majority, their public care ceased.

On 28 February 2000 the parents unsuccessfully applied for J.'s public care to be terminated.

No police investigation was conducted into the suspected incest or sexual abuse of the applicant's children, and no request for such an investigation was ever made by the social welfare authority.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 6 March 1995 and transmitted to the European Court of Human Rights on 1 November 1998. It was declared admissible on 25 January 2001.

Judgment was given by a Chamber of seven judges, composed as follows:

Nicolas **Bratza** (British), *President*,
Matti **Pellonpää** (Finnish),
Antonio **Pastor Ridruejo** (Spanish),
Elisabeth **Palm** (Swedish),
Marc **Fischbach** (Luxemburger),
Josep **Casadevall** (Andorran),
Stanislav **Pavlovski** (Moldovan), *judges*,

and also Françoise **Elens-Passos**, *Deputy Section Registrar*.

3. Summary of the judgment¹

Complaint

The applicant complained that his children's placement in public care, the decision-making procedure and the implementation of public care violated Article 8 of the Convention.

Decision of the Court

Article 8

a. Taking the children into public care

The Court accepted that the emergency orders of June 1992 were based on a sufficiently careful assessment of the impact of the initial care on the parents and the children, as well as of the possible alternatives to taking the children into public care. The applicant was also sufficiently involved in the decision-making process. In particular, even assuming that he could not, in the circumstances at hand, have been required to make use of the services of his local legal aid office for the purposes of his proper involvement in the decision-making process, it had not been shown that the authorities and the courts failed to take all necessary steps to render his involvement in the decision-making process as effective as possible.

Concerning the ordinary care orders of 13 July 1992, the Court noted that the applicant was provided with the opportunity of being heard by a social worker on 6 July 1992, before the ordinary care orders were issued. While the applicant was not informed of the identities of those who had reported their suspicions of sexual abuse to the Social Welfare Office, he was nevertheless able to study the case-file prepared for the decision-making procedure. In addition, the parents were, on 13 July 1992, heard in person by the Board to which they had also forwarded four written submissions. The parents were therefore aware of the reasons given for the planned ordinary care orders.

1. This summary by the Registry does not bind the Court.

The Court also observed that the applicant could and did appeal against the ordinary care orders and that he was able to comment on the Social Welfare Board's submissions to the administrative courts in the appeal proceedings. In addition, he could sufficiently understand the material deemed decisive by the Social Welfare Board and the administrative courts in maintaining the public care in the form of ordinary care orders. Accordingly, the applicant was sufficiently involved in the decision-making concerning the taking into care of his children.

The Court therefore concluded that there has been no violation of Article 8 either in respect of the justification of the care orders issued in 1992 or in respect of the applicant's involvement in the decision-making process.

b. Implementation of public care and the alleged failure to terminate it

The Court could not discern any serious and sustained effort on the part of the social welfare authority to facilitate a possible family reunification during the many years during which the children were, or had been, in care. The restricted contact between the biological parents and their children and the failure of the social welfare authorities to review that restriction genuinely and sufficiently frequently, far from facilitating a possible reunification, contributed to hindering it.

The local social welfare authority and the administrative courts appeared determined not to consider the reunification of the family as a serious option; presuming instead that the children would be in need of long-term public care in a foster home. The severe restrictions on the applicant's right to visit his children reflected the social welfare authority's intention to strengthen the ties between the children and the foster family rather than reunite the original family.

The Court noted that, when the applicant's daughter K. was heard on 4 July 1992, the possibility of her returning home was not presented as an option. In its care orders of 13 July 1992 the Social Welfare Board stated that the children would be in need of long-term public care. Foster care was being planned for the children for February 1993 at the latest and the children themselves – at the time 12, 11 and eight years old respectively – were heard in respect of such an option, even though the applicant's final appeal against the care orders had not yet been examined by the Supreme Administrative Court and he had expressly opposed foster care while awaiting the outcome of his appeal. In April 1993, when that appeal had been dismissed and the children were heard again, their possible return to the applicant's home was not, apparently, presented as an option.

Finally, the Court noted the leading social worker's entry into the case-notes on 18 April 1994 to the effect that the divorce proposed by the applicant in support of his request for a termination of the care would change nothing, as the children had been placed in "long-term" care, "up to adulthood".

The Court concluded that there had been a violation of Article 8 as a result of the authorities' failure to take sufficient steps to reunite the applicant and his children – beginning with an assessment of the evidence which, in his view, showed an improvement in his situation from late 1993. In the light of this conclusion, it was not necessary for the Court to examine whether the applicant was sufficiently involved in the decision-making process relating to his request for a termination of the public care or whether the access restrictions were justified.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.