COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

(Or. English)

EUROPEAN COMMISSION
OF HUMAN RIGHTS

Application No. 10496/83

Brenda RENNIX
against
UNITED KINGDOM

Report of the Commission

(Adopted on 4 December 1985)

STRASBOURG

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10496/83

I. INTRODUCTION

1. The following is an outline of a case which has been submitted to the European Commission of Human Rights by the parties.

The substance of the application

2. The applicant is a mother of two children born in August 1979 and October 1980 respectively. The local authority in the area where the applicant lives passed resolutions assuming parental rights over the children on 7 April 1981 pursuant to Section 2 Children Act 1948. The local authority's social services department feared for the children's well-being in view of the applicant's association with their father, Mr. B. The children were placed in the care of foster-parents.

3. The applicant sought to challenge the parental rights resolution before the Juvenile Court, but ultimately in September 1981 withdrew this challenge.

4. In October 1981 the applicant was informed that she could not have any further contact with her children, in view of her relationship with Mr. B, and that the local authority proposed placing the children for adoption in the near future. The applicant applied again to the Juvenile Court to discharge the parental rights resolution, which application was refused in April 1982. The applicant's appeal from this decision was rejected in November 1982. The applicant sought to make the children wards of court in January 1983, in order to raise the issue of her access to them. In February 1983 the High Court declined to exercise its discretion to continue the wardship and the applicant has been advised that there are no grounds for appeal against this decision and that there are no further remedies available to her whereby she may establish a resumption of her access to the children.

5. She complains that she was excluded from involvement in the decision making procedure which determined her children's future, that there is no forum before which she can apply for access to her children to be reinstituted and regulated so as to commence reintroduction to them, and no means to challenge the exercise of the local authority's discretion as to her access to them. The applicant complains that the way in which the decisions were taken by the local authority to terminate her access to her children, and the absence of any remedy for her against those decisions, constitute a violation of Arts. 6 and 8 of the Convention.

Proceedings before the Commission

6. The application was introduced on 28 April 1983 and registered on 27 July 1983. The applicant is represented before the Commission by Messrs. Darlington & Parkinson, Solicitors, of 259, Horn Lane, London W3. The respondent Government were represented in the proceedings initially by Mr M.R. Eaton as Agent and subsequently by Miss E. Wilmshurst, Assistant Agent, both of the Foreign and Commonwealth Office, London.

7. On 10 October 1983 the Commission decided to bring the application to the notice of the respondent Government and to invite them, pursuant to Rule 42 (2) (b) of the Rules of Procedure, to submit written observations on its admissibility and merits. On 1 December 1983 the respondent Government requested an extension of this time limit which was granted by the President, and their observations were submitted on 14 December 1983.

8. On 20 December 1983 the President of the Commission decided to grant the applicant legal aid for her representation before the Commission. Observations in reply to those of the respondent Government were filed on the applicant's behalf on 21 February 1984.

9. On 14 May 1984 the Commission decided to declare the application in part admissible, as to the complaints concerning the decision-making procedures relating to the future of the applicant's children and of her contact with them, and the scope of the remedies available to her and their effectiveness, and to declare the remainder of the application inadmissible. The text of the Commission's decision on admissibility is Appendix II to the present Report.

10. On the same date the Commission decided to invite the parties to submit such further observations on the merits of the application as they wish to make pursuant to Rule 45 (2) of the Rules of Procedure.

11. The applicant's observations on the merits were submitted on 13 September 1984. The respondent Government's supplementary observations on the merits are dated 4 June 1985.

12. After declaring the case admissible, the Commission, acting in accordance with Art. 28, para. b of the Convention, also placed itself at the disposal of the parties with a view to securing a friendly settlement. In the light of the parties' reaction, the Commission now finds that there is no basis upon which such a settlement can be effected.

The present Report

13. The present Report has been drawn up by the Commission in pursuance of Art. 31 of the Convention and after deliberations and votes in plenary session, the following members being present (1):

MM. C. A. Nørgaard, President
J. A. Frowein
G. Jörundsson
G. Tenekides
S. Trechsel
B. Kiernan
A. S. Gözübüyük
A. Weitzel
J. C. Soyer
H. G. Schermers
H. Danelius
G. Batliner
H. Vandenberghe
Mrs G. Thune
Sir Basil Hall

14. The text of this Report was adopted by the Commission on 4 December 1985 and is now transmitted to the Committee of Ministers in accordance with Art. 31, para. 2 of the Convention.

15. A friendly settlement of the case not having been reached, the purpose of the present Report, pursuant to Art. 31 of the Convention, is accordingly:

i. to establish the facts; and

ii. to state an opinion as to whether the facts found disclose a breach by the respondent Government of its obligations under the Convention.

16. A schedule setting out the history of the proceedings before the Commission and the Commission's decision on admissibility in the case are attached hereto as Appendix I and Appendix II respectively. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission and are available to the Committee of Ministers if required.

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(1) Mr. G. Sperduti was not present when the final votes were taken, but the Commission decided on 9 December 1985, under Rule 52 (3) of the Rules of Procedure to permit him to express his separate opinion.

II. ESTABLISHMENT OF THE FACTS

17. The applicant, a British citizen, was born in December 1959 and in about October 1978 met a Mr. B, with whom she started living. She became pregnant and her son, A, was born on 29 August 1979, shortly after Mr. B's release from a term of imprisonment.

18. Two days after the applicant's discharge from hospital after the birth of A, Mr. B assaulted her severely in the course of a trivial argument, blackening both her eyes and breaking one rib. Subsequently, when the applicant and Mr. B were visiting A in hospital in October 1979, when an operation had become necessary for a twisted intestine, Mr. B again assaulted the applicant. Although the applicant was not aware of it at the time, this incident resulted in A being put on the "risk register" by the Social Services Department of the local authority in whose area she lived. The child was therefore identified as being potentially at risk due to the family environment.

19. In January 1980, after a period of accommodation in hostels, the applicant and Mr. B obtained the tenancy of a flat, but difficulties arose as a result of Mr. B's drinking, the fact that he constantly assaulted the applicant and did not pay the rent. The applicant acknowledges that at this time she was managing to look after A, but was unable to give him enough love and attention. From February 1980, the family were regularly visited by a social worker, who assisted them with their financial problems.

20. In March 1980, the applicant discovered she was pregnant again and was visited by a social worker from the Social Services Department of the local authority, when she was informed that A was on the risk register because of the incident which had occurred in October 1979 during the hospital visit. The Social Services assisted the applicant to obtain some simple furnishings for her flat and on one occasion when she confided in the social worker about Mr. B's treatment of her, the social worker warned Mr. B to "buck his ideas up" or A would be taken away. In mid-1980, when the applicant was six months pregnant, Mr. B sought treatment for his drinking, but when on weekend leave he relapsed into drinking and assaulted the applicant again. Mr. B then insisted that he and the applicant and A visit his family in Cardiff. Mr. B was arrested there on fraud charges. When the applicant returned to London with A, she discovered that Mr. B had permitted squatters to enter the flat and "sold" them the key. The applicant was advised by the local authority to put A into voluntary care under Section 1 of the Children Act 1948 (the 1948 Act) for a few days until the question of recovering the flat could be resolved, and A was placed with short-term foster parents employed by the local authority's Social Services Department. The applicant was advised to leave A in voluntary care until after her confinement, which she did. The local authority evicted the squatters from the family's flat.

21. The applicant's second child J was born on 9 October 1980, by which time Mr. B had returned to London having been given a suspended sentence. On 10 October 1980, he arrived at the foster parents' home, drunk and in an aggressive mood, to collect A to visit the applicant in hospital. The foster parents were concerned and telephoned the local authority which sent a social worker to accompany Mr. B and A on the visit. The local authority were worried that Mr. B would remove A

from care and the night duty staff were warned to apply for a place of safety order, placing A in emergency compulsory care, if Mr. B tried to do so. The social workers also warned Mr. B that unless his behaviour improved, the local authority might assume his parental rights. The applicant was discharged from hospital on 19 October 1980 and A was returned home in November 1980, but the situation with Mr. B did not improve.

22. In February 1981 the applicant was admitted to hospital urgently with a suspected thrombosis and Mr. B and she decided that, since Mr. B was incapable of looking after the children, they should be placed in the voluntary care of the local authority. Whilst in hospital, the applicant decided to leave Mr. B and arranged with a social worker to go to a women's aid refuge where she stayed for six weeks and where both her children joined her after five weeks.

24. The local authority were fearful as to Mr. B's likely reaction to the applicant's decision and the possibility that he might discharge the children from care. The Chairman of the Social Services Committee of the local authority approved the passing of a resolution assuming Mr. B's parental rights over the children under Section 3 of the 1948 Act on the grounds that Mr. B's "habits or mode of life render(ed) him unfit to have the care of the child(ren)."

25. Mr. B was told of the assumption of his parental rights, but made no objection. He continued to receive support from the Social Services and was admitted to hospital in March 1981 for alcohol detoxification, but relapsed.

26. While the applicant was staying at the women's refuge, she visited the children frequently at their foster parents' home. She told the responsible social worker that she wanted to discharge the children from care when she had recovered from the period in hospital. She took legal advice with a view to excluding Mr. B from contact with her or the children, which the local authority had made a condition for offering her accommodation with the children.

27. In March 1981, a case conference was held by the local authority. The applicant was not present or informed. It was decided to place J on the "at risk" register, as well as A, in view of the uncertainty of the family's position. Nevertheless, the responsible social worker told the meeting that it was hoped that in time the children would be reunited with the applicant. The possibility that the applicant might resume living with Mr. B was also discussed, but no decision was reached as to the consequences which such a possibility should have for the applicant and the children. On 26 March 1981, the children were discharged from care and went to live with the applicant at the refuge.

28. The applicant applied to the Brentford County Court for an injunction excluding Mr. B from the flat, which proceedings came for hearing on 1 April 1981. The applicant was informed of this date on 31 March 1981 and therefore arranged informally with the short-term foster parents, with whom the children had been placed before, that they would look after them on the day of the hearing. This arrangement was based on the good relations which existed between the applicant and the short-term foster parents and did not involve the local authority.

29. Outside the court the applicant met Mr. B and they agreed to try and make a go of their relationship despite the proceedings. The facts relating to the subsequent twenty-four hours are in dispute. The applicant states that she spoke to the foster parents to ask them to look after the children for a further night so that she could establish whether the reconciliation with Mr. B would be effective. The applicant states that she was told to contact a senior social worker, whom she had never met before, who informed her that if she intended to resume her relationship with Mr. B, she could not have her children returned to her. The applicant understood the position to be that she should leave the children with the short-term foster parents until 3 April 1981 and that the local authority would take no further action in the matter until then. She should then discuss the position with the responsible social worker whom she knew on 3 April 1981.

30. According to the social worker's records, the applicant and Mr. B were both warned on 1 April 1981 that the local authority would have to obtain some legal authority over the children, although a parental rights resolution was not mentioned.

31. On 2 April 1981, the two social workers responsible for the case discussed the matter and agreed that an application should be made to assume the applicant's parental rights. It is recorded in the relevant notes:

> " ... In the longer term, consideration should be given to spelling out to (the applicant) what we would expect of her prior to discharging the children to her again, and that if she appears unable to provide long-term satisfactory care for them, we would move to considering freeing them for adoption."

32. The applicant was not contacted by the local authority either in respect of this discussion or otherwise on 2 April 1981, but on the following day attended the Social Services Department as she states she had arranged to do. She states that she was informed that the local authority passed a resolution assuming parental rights over the children on 3 April 1981.

33. The local authority have maintained in all subsequent proceedings that the resolution was passed on 3 April 1981. However, as appears from the local ombudsman's investigation of the case, the resolution was dated 7 April 1981 and the circumstances surrounding the exact date and manner in which it was passed are confused. The resolution was passed pursuant to Section 2 of the 1948 Act; the local authority assumed parental rights and duties in respect of the two children A and J. This Section permits the local authority to pass a resolution assuming parental rights and duties in respect of any child who is in the voluntary care of the local authority, pursuant to Section 2 of the 1948 Act. However, at the time of the Section 3 resolution, it appears that the children were not in the voluntary care of the local authority, although they were de facto placed with the foster parents, who had looked after them when they had been in voluntary care. The grounds for the purported assumption of the applicant's parental rights were that she had consistently failed, without reasonable cause, to discharge the obligations of a parent so as to be unfit to have the care of the children.

34. On 15 April 1981 the applicant gave notice of her opposition to the passing of the parental rights resolution with the result that the question of its appropriateness was referred by the local authority to the Juvenile Court for decision. The children remained subject to the resolution pending the hearing and various hearing dates were set before the Juvenile Court, but had to be vacated. The applicant continued to visit A and J regularly, approximately once each week. She was informed by the responsible social worker that if Mr. B got a job and their flat was improved, the social worker would not oppose A and J returning home. On 4 August 1981, the applicant was offered increased access of two visits per week.

35. Mr. B and the applicant started voluntary work at the Central Middlesex Hospital in West London but on 10 August 1981 Mr. B got drunk and broke into the hospital safe. The applicant went to Cardiff with Mr. B and spent the proceeds there. They were arrested and charged. On 14 September 1981 the applicant appeared in court and was sentenced to six months' imprisonment. Her appeal, on 9 October 1981 before the Acton Crown Court, was successful and she was given two years' probation and released.

36. However, the adjourned hearing for the applicant's challenge to the parental rights resolution which had still not been heard, was set for 29 September 1981 before the Acton Juvenile Court. The applicant was advised by her then solicitors that, bearing in mind that she was then in prison, she could not realistically contest the passing of the resolution, but should be able to retain contact with her children. The applicant's challenge to the parental rights resolution was therefore abandoned. On the applicant's release from prison on 9 October 1981 she asked to see her children but was told she could not, first because she had been in prison and secondly because of her relationship with Mr. B. She was also told of the proposed placing of the children for adoption in the very near future. The applicant has not seen the children since 13 September 1981.

37. The local authority decided as early as 25 August 1981 at a meeting of the Social Services Department that, if the applicant withdrew her objection to the parental rights resolution, or should fail in challenging that resolution before the Juvenile Court, her access to her children would be stopped and the children would be placed for adoption. The applicant was not notified of this discussion or its outcome. The fact that this decision was taken was only revealed in subsequent proceedings.

38. The applicant then sought further legal advice and was advised to apply to the Juvenile Court to discharge the parental rights resolution pursuant to Section 5 of the Child Care Act 1980 (the 1980 Act). She submitted that this would be in the children's best interests; she was no longer able to maintain that she had opposed the parental rights resolution throughout. The applicant's complaint for a discharge of this resolution was made on 8 December 1981, but due to court delays was not heard until 5 and 6 April 1982 by the Acton Juvenile Court. In the meantime, A and J had been placed with long-term foster parents by December 1981, having been introduced to them on 6 November 1981.

39. The Juvenile Court held by a majority that the parental rights resolution should stand. The Court considered that there was a risk that the applicant would resume her relationship with Mr. B and considered that moving A and J from their long term foster-parents would be disruptive for them. The applicant appealed against this decision to the Divisional Court of the High Court, which heard the case on 15, 16 and 17 November 1982. The Divisional Court dismissed the appeal, mainly on the grounds that the removal of the children from their foster parents would cause them unjustifiable disruption. The court considered, inter alia, the applicant's argument that her appeal should be allowed because otherwise the question of her access to the children would be decided upon by the local authority in its sole discretion. She argued that, given the local authority's commitment to the adoption of the children, she could therefore expect that she would be refused any access to them. The court was not able to consider the question of the applicant's access to the children as a separate issue. Both judges also referred to the effect of the passage of time since the children had been placed with prospective adopters in December 1981, until the hearing of the appeal in November 1982. The President of the Family Division stated:

> "I do not suggest anyone is to blame for this. It may merely be the result of circumstances... It cannot be sufficiently stressed that in a case such as the present, where continuity is seen by all concerned to be highly relevant, and indeed was the very basis of the decision of the court below, expedition is all in relation to the possible success of an appeal. "

The court concluded that, on balance, the children's best interests were best served by their remaining in care and the applicant's appeal was dismissed.

40. After taking further advice, in January 1983 the applicant applied to make the children wards of court in the High Court in order to raise the issue of her access to them. On 25 February 1983 the High Court declined to exercise its discretion to continue the wardship of the children, on the principles set out by the House of Lords in A v. Liverpool City Council (1981) 2AER 385. The applicant has been advised that there are no grounds for appeal against this decision and that there are no further remedies available to her for the resumption of access to her children. She specifically states that there is no forum in which she can apply for access to her children to be reinstituted and regulated so as to commence re-introduction of them to her, since the children remain in the care of the local authority pursuant to the parental rights resolution, and the question of access to them is in the local authority's discretion.

41. On 27 May 1983 an adoption application was made by the present foster parents of A and J. The applicant was granted legal aid to obtain counsel's opinion on the merits of her opposition to the adoption proceedings.

42. The subsequent proceedings culminated in a hearing before the High Court on 12 November 1984, when the foster parents' application to dispense with the applicant's refusal to consent to the children's adoption failed. The question of the applicant's access to the children was adjourned.

III. SUBMISSIONS OF THE PARTIES

Observations of the Applicant

1. Principal complaints before the Commission

43. The applicant complains that, in view of her own increased maturity and her lifestyle and home circumstances, it is in her children's interests to have access to her with a view to their rehabilitation with her. However, there is no forum in the United Kingdom before which the question of the appropriateness of her access to her children can be canvassed. Such a decision rests in the sole discretion of the local authority and the applicant has been advised that no basis for review exists under English law.

44. The applicant also complains at the way in which decisions have been taken by the local authority concerning her children and her contact with them without her involvement. She contends that neither she nor her representatives have at any time been allowed to attend any case reviews or conferences conducted by the local authority and relating to the children's future or to access. Nor has she, or have her representatives, been allowed or invited to have representations considered by the local authority's decision making machinery. Furthermore they have also been prevented from inspecting or being informed about the contents of the minutes or reports made following such meetings and such information is equally not available on discovery if legal proceedings are issued against the local authority.

45. The applicant further complains that English law gives no right of access to parent or child in respect of a child in the care of a local authority under Section 3 of the 1980 Act, and under Section 1 of the Children and Young Persons Act 1969. Accordingly, the Juvenile and Divisional Courts are unable to examine the question of parental access in such curcumstances and the High Court similarly declines to exercise its wardship jurisdiction in these circumstances following A v. Liverpool City Council (1981) 2AER 385.

46. The applicant asks the Commission to consider what opportunity the applicant had to influence, participate in, be informed of within a reasonable time, or have judicially considered, any decisions concerning her access to and contact with her children in care. She contends that the absence of such opportunities, and of access to court for the determination of disputes relating to them, is in violation of Articles 6 and 8 of the Convention, which must be considered entirely separately from the question whether the decisions actually taken were, or were believed to be, in the children's best interests.

2. Domestic law and practice

47. The applicant points out that under the 1948 Act, even though a local authority has in some circumstances no right to continue to keep a child in its care, the authority is nowhere obliged to actually return the child to the natural parent. Accordingly the child is left

in a kind of limbo with the local authority having no authority to continue to care for the child and the natural parent having no right to compel the local authority to comply with any statutorily imposed duty to return the child.

48. The applicant contends that the local authority did not act lawfully in relation to passing the resolution assuming parental rights over her children, and admitted in its letter to the applicant's solicitors of 9 November 1982 that the resolutions were passed on 7 not 3 April 1981 by the Director of Social Services, and not by the Social Services Committee.

49. The respondent Government fail to mention that proceedings by way of complaint by the parent under the 1948 Act are qualified by Section 127 Magistrates Courts Act 1980, which prevents a complaint from being made about any act which took place more than six months before the complaint is issued. At no time during the six month period following the passing of the parental rights resolution was the applicant aware of the necessary facts and information which would have allowed her to challenge the entitlement of the local authority to pass a resolution at all. This is borne out by the fact that the local authority ombudsman's investigation revealed for the first time that the parental rights resolution was passed on 7 April 1981, and not on 3 April 1981, as the local authority have contended, untruthfully, before every court before which this matter has come.

50. With regard to the wardship jurisdiction the applicant points out that her children's wardship lapsed not as a result of a decision on the merits of the case, which were not considered by the High Court Judge, but because the actions of the local authority which the applicant sought to challenge were within the local authority's area of discretion. Furthermore, with regard to the fresh legislative remedy introduced on 30 January 1984, this remedy is limited in scope, and of no application to the applicant since it gives a right only where there has been a total termination of access. The case of A v. Liverpool City Council (supra) still prevents parents of children in care from having a decision which is not a "termination" of access judicially reviewed on its merits.

3. The merits

Whether access constitutes a civil right

51. The applicant points out first that the case-law relied upon by the respondent Government to the effect that the question of access may not involve a civil right within the meaning of Art. 6, para. 1 of the Convention relates to disputes between parents relating to the custody of their children, and not disputes between a natural parent and the local authority in whose care the child is. Furthermore, in disputes between divorced or separated parents, the question of access is determined ultimately by a court, whereas in the present case the decision to refuse the applicant further access to her children was a non-judicial decision.

52. Nor, in the applicant's submission, can all parental rights and duties be regarded as one "bundle", including access. By definition, access is exercised by a non-custodial parent and it must therefore of necessity have a separate and continuing existence in relation to those rights enjoyed by the custodial parent.

53. In addition, when the parental rights resolution was passed, no decision had been taken by the local authority with regard to the applicant's access to her children. The access which the applicant was allowed between April and August 1981 was rehabilitative access, with a view to the applicant resuming care and control of the children in due course. The decision to terminate access was taken in August 1981 at a secret meeting, the conclusions of which were not communicated to the applicant, with the result that both she, and her then legal advisers, were misled as to the local authority's intentions and she was therefore mistakenly advised by her previous advisers to withdraw her challenge to the local authority's parental rights resolutions. The applicant was also not consulted by the local authority about its plan to terminate access and to place the children with long-term foster parents.

Whether the applicant was responsible for any delay

54. The applicant was not responsible for the delays in the proceedings before the Juvenile Court. The original hearing before the Juvenile Court was set for 16 February 1982, but this date had to be vacated as the Magistrates were unable to sit for a whole day on the matter. The rescheduled date of 22 February 1982 was again vacated as a result of the non-availability of two of the Magistrates scheduled to sit. It was not possible for the Court to arrange a further date until 5 and 6 April 1982. The respondent Government suggest that an application could be made to bring on an earlier hearing, but this contention is rejected. Legal aid would not have been provided for such an application and it is unclear how the High Court could have compelled the Magistrates to find time which their Clerk was unable to find in order to hear the case.

55. With regard to the appeal, the applicant had an interest that the appeal should not be heard before she could demonstrate that she would have nothing more to do with Mr. B, after his release from prison.

56. In addition there were grounds for the delay in the appeal hearing which were wholly outside the applicant's control. These included the time required to provide and thereafter transcribe the notes of evidence taken before the Juvenile Court, which were only available to the appellate court in July 1982, and the limited Legal Aid Certificate initially granted to the applicant, for the purposes of lodging an appeal only, which was only enlarged to cover the substance of the appeal in July 1982. These factors resulted in it being neither practical nor desirable for the appeal to be listed before July 1982. However, it was not possible to list the appeal during the legal vacation in August and September and the case was ultimately listed six weeks into the new term which started in October 1982. The applicant was not in a position to afford, nor would legal

aid have been provided for, an application to accelerate this six week period which, in the context of the case as a whole, would not have appeared crucial.

57. In the applicant's contention, time began to run against her when the children were placed with long-term foster parents on 6 November 1981. Thereafter she exhibited no delay and indeed even before that date had already sought legal advice and written to her member of parliament. The propriety of this course of action was substantially vindicated by the decision of the Divisional Court in the appeal. The court was satisfied by November 1982 that all but one of the reasons relied upon by the justices were no longer operative. The court recognised that the applicant and her advisers had been in a classic dilemma: to go on appeal too early would have meant that other objections, including the applicant's possible re-association with Mr. B, could have been raised by the local authority opposing the children's return to the applicant. To go later meant that one of those other objections fell away, but the time factor of the duration of the applicant's separation from her children grew progressively more significant.

Whether the local authority's decision to terminate access was justified

58. With regard to the question whether the local authority had grounds for terminating access to the applicant the respondent Government allege that the children were in physical danger from Mr. B and that they were generally undernourished. The applicant refutes these grounds as completely without foundation. It has never been alleged in the proceedings or otherwise that either of the children was physically ill-treated by Mr. B. Nor were they in any danger from him at the time the decision to terminate access was taken, since they had no contact with him and he was in prison, where he would remain for the foreseeable future. Furthermore, at the time the decision was taken to end access, if the children were undernourished, which is denied, this was the result of the treatment they had received from their short term foster parent, with whom they had been since April 1981. Nor is there evidence that access by the applicant to the children up to and including 13 September 1981 had been in any way disruptive for them. Finally, the applicant's views were never taken into account in reaching this decision, a decision which was taken in secret on a contingency basis, linked to the outcome of the applicant's proceedings to revoke the local authority's power over the children. Had the applicant been informed of this contingency decision it is inconceivable that she would have withdrawn her application before the Juvenile Court, but she had no way of knowing of the decision, or having access to any of the documents which provided the basis for it.

59. With respect to the question of justification under Art. 8, para. 2 of the Convention, the respondent Government rely upon an alleged threat to the children's health as justifying the interference with the applicant's right to respect for her family life. They refer to the requirement that a child be brought up in a stable environment free from conflict and tension. The respondent Government omit to refer to the fact that, during 1983, the long-term foster parents with whom the children are now placed, and who have since applied to seek

to adopt the children, lived separately and apart for a period of four months. The children's then guardian ad litem was "deceived" and "misled" by the foster parents, who did not tell him of the true position; at no time during this period did the local authority inform the applicant or her solicitor of these facts. On the contrary, the local authority have made it clear to the applicant, that, even if the present placement breaks down, they have no intention of returning the children to her, despite the fact that in November 1982 the applicant was found, as a matter of fact, by the Divisional Court to be "a perfectly capable and acceptable mother".

As to the absence of a remedy in respect of decisions to terminate or limit access

60. The applicant stresses the distinction between the decision of a Juvenile Court in relation to the question of the assumption of parental rights, and a decision to terminate parental access to children. It is not usually at the stage that a parental rights resolution is made, that access is taken away. The Juvenile Court does not consider the question of access, which usually arises later in the discretionary context of the local authority's management of the child's life. Such a decision to terminate access may very well be one which the court, which originally ratified the parental rights resolution, would not have countenanced at any price, and which might even have led to the refusal of the ratification of a parental rights resolution.

61. At the relevant time, this decision to terminate access was in no way susceptible to review by a court applying judicial procedures with the parties legally represented and all relevant evidence weighed by the court; in the present case the decision that the children should never see their natural parents again was taken behind closed doors, without the applicant's participation, and without her having access to the material upon which that decision was based. This absence of review is well illustrated in the present case by the order made in the wardship proceedings, where it was held that the court had no jurisdiction to examine the decision of the local authority denying the applicant access to her children. Owing to the jurisdictional restrictions imposed by the decision of the House of Lords in A v. Liverpool City Council (supra), the court was precluded from continuing with the wardship proceedings and from examining the question whether or not the decision to deny access was in the interests of the children.

The respondent Government's submissions

1. Domestic law and practice

62. The application raises issues relating to the voluntary placing of a child in the care of a local authority and the wardship jurisdiction of the High Court.

Voluntary care

63. The relevant provisions in force when the applicant's children were placed voluntarily in care were contained in the 1948 Act as amended by the Children Act 1975. These provisions have been consolidated subsequently in the 1980 Act. The provisions referred to below are those of the 1948 Act.

64. Under the terms of Section 1 of the 1948 Act as amended a local authority is under a duty to take a child into care who has no parent, who has been abandoned, or whose parent or guardian is incapable of providing for the child's proper accommodation, maintenance and upbringing, if this is necessary in the interests of the child's welfare. Where a child is so taken into care, it is the local authority's duty to keep the child in their care so long as its welfare appears to them to require it and until the child attains the age of 18. However the local authority is not authorised to keep a child in its care if the child's parent or guardian "desires to take over the care of the child" and where it appears to the local authority consistent with the child's welfare the local authority shall try and arrange for the child's care to be assumed by its parent or guardian or a relative or friend.

65. The rights for the parent vis-à-vis the child are protected by Section 1 (3) of the 1948 Act, as amended by Section 56 (1) of the Children Act 1975. Where a parent requests the return of the child, the local authority is not compelled to return it regardless of the child's welfare. If the authority considers the transfer of care to the parent to be inconsistent with the child's welfare it must either pass a resolution vesting all the rights and powers of the parents in the local authority under Section 3 of the 1980 Act, or make the child a ward of court.

Assumption of parental rights

66. Under Section 2 of the 1948 Act, replaced by Section 57 of the Children Act 1975, the local authority may resolve that parental rights and duties in respect of a child should vest in the local authority where the child's parents are dead or have abandoned him, or are incapable of caring for the child as a result of permanent disability or mental disorder, or are of such habits or mode of life, or have consistently failed without reasonable cause to discharge the obligations of a parent so as, in either case, to be unfit to have the care of the child. If the parents have not consented in writing to the making of such a resolution, they must be notified in writing of the fact of the making of such a resolution. Within one month of such notification the parent may serve a counter notice and the parental rights resolution will lapse 14 days after the serving of such a counter notice.

67. However, the local authority may apply to the Juvenile Court in which case the order shall not lapse until the Court has decided the issue. If the Court decides that the grounds relied on by the local authority were made out when the resolution was passed, and that

they continue to apply at the time of the hearing, and that it is in the interests of the child that the parental rights resolution continue, the Juvenile Court may make an order to this effect.

68. Before passing a resolution assuming parental rights the local authority, acting through its social services committee, must consider a report from the social services department on the desirability of passing such a resolution. This report must indicate the practical consequences if an order is made, and discuss any alternative. The local authority must consider the interests of the child as of paramount importance and the views of the parents must be taken into account. Any decision of the Juvenile Court would be subject to judicial review before the Divisional Court.

69. In addition, under Section 4 (3) (b) of the 1948 Act a parent may complain at any time to the Juvenile Court and the Court may determine the parental rights resolution if it is satisfied that there were no grounds for making the resolution or that it should be determined in the interests of the child.

70. The underlying policy of the 1948 Act is illustrated by the judgment of Lord Scarman in Lewisham London Borough Council v. Lewisham Juvenile Court (1979) 2WLR 513 HL, at p. 539:

> "The encouragement and support of family life are basic. The local authority is given duties and powers primarily to help, not to supplant parents. A child is not to be removed from his home or family against the will of his parents save by the order of a court, where the parent will have the opportunity to be heard before the order is made. Respect for parental rights and duties is, however, balanced against the need to protect children from neglect, ill treatment, abandonment and danger; for the welfare of the child is paramount. Even in the system of "voluntary" care under the Act of 1948 (as amended by the Act of 1975) the local authority has the power in circumstances of danger to the child's welfare to pass a resolution vesting in itself the parental rights and duties in respect of the child. If the parent does not object or has disappeared, there will be no need to go to court. If the parent objects and serves his counter notice, the Juvenile Court will then decide whether the resolution is to lapse, in which event the parent's rights and duties override those of the local authority, or is not to lapse, in which event the parents must so long as the resolution is in force, yield to the local authority. The parent, is however, never totally excluded. He (or she) can always come back. The local authority may, while the resolution continues, entrust the child to the parent (section 3 (2) repealed but re-enacted by section 9 of the Children and Young Persons Act 1969) and the resolution may at any time be rescinded <by the Juvenile Court> (under) Section 4".

71. Thereafter, the parent or the local authority may appeal against the decision of the Juvenile Court to the Family Division of the High Court (by Section 4 A of the 1948 Act) and thereafter to the Court of Appeal, and subject to leave, to the House of Lords. Legal aid is available for these appeals, subject to means.

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Wardship jurisdiction

72. The jurisdiction to make a child a ward of court originated in a feudal concept of the Crown as "parens patriae"; the jurisdiction is now exercised by the Family Division of the High Court and when a child becomes a ward of court the court assumes responsibility for all aspects of his welfare. In determining what orders to make, Section 1 Guardianship of Minors Act 1971 requires the court to have regard to the child's welfare as the first and paramount consideration. The court may grant "care and control" of the child to a person or body, e.g. a local authority, which must then act in accordance with the court's directions. In the present case the court granted care and control to the local authority under Section 7 (2) Family Law Reform Act 1969 (1). The child remains a ward of court until either he attains majority or the court orders that he shall cease to be a ward and no important step can be taken in the child's life without the court's consent.

73. Under Section 41 (1) Supreme Court Act 1981 no child may be made a ward of court other than by a court order, and anyone who can show an appropriate interest in the child's welfare can apply for the child to be made a ward. An application is made by originating summons under Order 90 of the Rules of the Supreme Court, under which the child becomes a ward immediately the originating summons is issued, but unless an appointment for the hearing of the summons is made within 21 days, the wardship automatically lapses.

74. Such an appointment will be before a registrar who gives directions relating to the case before it is heard before a judge and may make orders as to access if the person with physical custody of the child agrees. The registrar may also decide that other interested persons should be joined in the proceedings.

75. The child may be represented in wardship proceedings by a "guardian ad litem", usually the Official Solicitor, a full-time public appointee, entirely independent of the executive.

76. The parents of the child are able to obtain legal aid subject to their means under Section 7 Legal Aid Act 1974. There are procedural remedies, for example under Order 43 of the Rules of the Supreme Court, if a party to the proceedings is dilatory. Once a child has become a ward of court, it remains open to any party to bring the case back before the court for a variation of the original order

(1) Section 7(2) Family Law Reform Act 1969 provides:-
"Where it appears to the court that there are exceptional circumstances making it impracticable or undesirable for a ward of court to be, or to continue to be, under the care of either of his parents or of any other individual the court may, if it thinks fit, make an order committing the care of the ward to a Council; and thereupon Part II of the Children Act 1948 (which relates to the treatment of children in the care of a Council) shall, subject to the next following subsection, apply as if the child had been received by the Council into their care under Section I of that Act. "

granting wardship, or for directions on matters such as access or education. Such issues will be decided by the court on the sole criterion of the welfare of the child.

77. Thus the wardship jurisdiction is not an alternative form of appeal from the decision of the Juvenile Court concerning a parental rights resolution under Section 2 of the 1948 Act. In an appeal from the decision of the Juvenile Court the point at issue is the narrow one of whether the grounds exist for upholding a resolution passed by the local authority. In wardship proceedings a wider issue of what is in the best interests of the child is considered.

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78. The respondent Government point out that since the facts complained of in the present application arose, the above legislation has provided for the amendment of the 1980 Act to allow a parent, whose child is the subject of a parental rights resolution, to apply to the Juvenile Court for an access order in respect of the child.

2. Merits

Art. 6

79. The respondent Government submit first that the present application discloses no issue under Art. 6, para. 1 in respect of the proceedings before the Juvenile Court, since no civil right fell to be determined in those proceedings. The Commission's case law recognises that rights of custody and access may be given under Art. 8, para. 1 of the Convention (e.g. Decision on the admissibility of Application No. 7911/77 X against Sweden, DR 12, p. 193) but this does not necessarily mean that such a right is a "civil right" within the meaning of Art. 6, para. 1 of the Convention.

80. Nevertheless, even assuming that such rights can be civil rights for those purposes, the respondent Government submit that they have no separate or continuing existence in a situation where the bundle of parental rights of which they form a part have been lawfully transferred to another party.

81. In the present case, following the passing of the resolution under Section 3 of the 1980 Act, the local authority stood in the shoes of the parents and was entitled to exercise the whole bundle of parental rights, including custody and right to regulate and supervise the child's association with other persons, in the interests of the child. It follows that, inter alia, the local authority could decide to exclude the natural parents from access to the child, if this was in the child's best interest. This may prove necessary in the context of the long term care of the child or children, where the children are placed with foster parents, and parental visits prove disruptive to the children. Thus the parents' rights of custody and access cannot be considered in such cases as separable from the parental rights as a whole.

82. Support for this view can be drawn from the Commission's case law in relation to a parent's rights to determine a child's education, such as application No. 7911/77 (supra) and application No. 9867/82, X against the United Kingdom, where it was recognised:

> " ... It is normally for the parent having custody to determine more broadly the mode of the child's upbringing and to assess the possible consequences of taking up residence in a given society."

83. In the respondent Government's submission the transfer to the local authority of all the rights of parents involved the transfer of such rights as the right to custody and access, which became for the local authority to determine. However the transfer of parental rights itself could be challenged, inter alia, by the parent.

84. If, contrary to the above, Art. 6, para. 1 is applicable, the respondent Government contend that, as to duration of the proceedings in question, they did not exceed a reasonable time. The Government refer to the Commission's case law, which recognises that there is a duty on an applicant who is party to civil proceedings to be diligent in pursuing them, and that in certain circumstances an applicant's failure to apply for the resumption of proceedings or to lodge an appeal could constitute delays for which the applicant might be solely responsible (e.g. decisions on the admissibility of Application Nos. 1974/83, Yearbook 9 p. 212, No. 4859/71, X against Belgium, CD 44 p. 21, No. 6504/74, DR 12 p. 5 and 7464/76, DR 14 p. 55).

85. In the present case the applicant and her lawyers had it in their power to ensure that the appeal to the High Court was heard sooner, as was recognised by the President of the Family Division of the High Court at the hearing on 17 November 1982. The President recognised that there was no reason why an interlocutory application should not be made to expedite the hearing of an appeal and that an emergency certificate of legal aid might be available for this purpose. He continued:

> "If such an application is made, it will always be considered on its merits and in a case in which, as I have mentioned, one of the determining factors in the appeal is likely to be the duration of the continuity of the status quo, the court will always consider sympathetically the promotion of an early trial. As it is, the situation has become one in which the continuity has greatly increased."

Nor was the delay from the applicant's release from prison, on 9 October 1981 when she was informed that access was terminated, until her application was heard before the Juvenile Court in April 1982, unavoidable for the applicant, who had legal advice at the time.

86. The respondent Government contend by contrast that the proceedings before the High Court in wardship were sufficiently rapid to ensure that no criticism could be made as to their duration.

Art. 8

87. The respondent Government submit that the denial of access for the applicant to her children was in conformity with Art. 8 of the Convention. In refusing the applicant access from October 1981 the local authority was acting lawfully, having assumed parental rights by resolution on 3 April 1981 under Section 3 of the 1980 Act, and also in the children's best interests by placing them with long term foster parents and terminating access.

88. The children were considered to be in physical danger from Mr. B and were generally undernourished. The social services department of the local authority had provided help and care by obtaining furniture and obtaining other advantages for the applicant, as well as in providing the applicant and Mr. B with work, but the temporary placement of the children in short term fostering for the purposes of rehabilitation was unsuccessful. The decision to terminate access was only taken after experienced professional officers had met and carefully considered the various aspects of the case on several occasions.

89. The respondent Government contend that the procedure for receiving children into care and for assuming parental rights over them shows respect for family life as required by Art. 8, para. 1 of the Convention. The facts of the present case are therefore to be distinguished from the situation in the Marckx case, where Belgian law did not provide the legal safeguards which were necessary to allow the integration of a child born to an unmarried mother into her family from birth. In the present case, however, the domestic law regarding the powers of local authorities to take children into care operate in a legal framework which accords respect and protection to family life.

90. In general the law is based on the premise that the family is the normal and right place for a child to grow up. It is only where problems arise that the law gives back-up powers to local authorities to intervene in the interests of the child. Where such an intervention occurs, it is necessary to examine whether the actions of the authority were in compliance with Art. 8. However, such an examination requires the consideration of the exceptions listed in Art. 8, para. 2 in the light of the reasons behind the local authority's intervention and having regard to the circumstances of each case.

91. It is therefore submitted that any interference with the applicant's right to family life under Art. 8, para. 1 because access to her children was refused, was justified by the exception set out in para. 2 of Art. 8 for the protection of their health. Art. 8, para. 2 leaves a wide margin of appreciation to domestic courts before whom questions of access or custody are raised to decide those questions in the light of what is necessary to protect the wellbeing of children, including their mental and emotional health. In its decision on Application No. 8427/78, Hendriks against the Netherlands, the Commission recalled that:

> "in assessing the question of whether or not the refusal of the right of access to the non-custodial parent was in conformity with Art. 8 of the Convention, the interests of the child predominate. The interference is therefore justified when it has been made for the protection of the health of the child."

92. If an interference with the applicant's right to respect for family life under Art. 8, para. 1 arose because access to the children and their custody was refused to the applicant, the respondent Government submit that this interference was justified by the exceptions under Art. 8, para. 2 of the Convention, and in particular the protection of health. The health and morals of a child or children include their physiological and psychological health and well-being and requires that they be brought up in a stable environment, free from conflict and tension. The child thus has his own "right or freedom" under Art. 8, to be brought up in such an environment. The public authorities have to strike a balance and the access of a parent may have to be stopped in order to protect the freedoms of the child.

93. The respondent Government therefore contend that on the facts of the present case, having regard to all the circumstances, there is no appearance of a violation of Art. 8.

Art. 13

94. The respondent Government submit that the applicant had remedies within the meaning of Art. 13 in respect of the denial of access to and custody of her children. First, the right of access and custody were an integral part of those parental rights transferred to the local authority when the parental rights resolution was taken in April 1981. The applicant had the right to seek the revocation of the parental rights resolution, but although she served notice on the local authority objecting to it, she subsequently withdrew this objection. This remedy would have satisfied the requirements of Art. 13 had the applicant sought to pursue it.

95. In addition the applicant sought to bring the issue of custody and access before the court in the wardship jurisdiction. On the facts of the case the judge sitting in the High Court declined to exercise the wardship jurisdiction to allow the applicant access and custody of her children. However this does not mean that the judge could not have done so. The wardship machinery, which is rapid and simple, allows the High Court to exercise judicial review over the exercise of discretionary powers by the local authority. This power is specifically recognised in A v. Liverpool City Council (supra). According to the respondent Government, after examining the facts of the present case, the High Court judge found that he could not interfere with the decision of the local authority. The local authority's decision was lawful and did not affect the applicant's rights, and thus the applicant was not given the actual remedy of disturbing the decision of the local authority, because in fact there had been no violation of her rights. Had her rights been infringed, the High Court could have enforced this finding by quashing the decision of the local authority.

96. Thus, were there to be a violation, the law provides a remedy. In this case, the applicant had no actual remedy on the facts of her case, because the judge found that there had been no violation of her rights.

OPINION OF THE COMMISSION

Points at issue

97. The points at issue in the present case are:

- whether the decision to terminate the applicant's access to her children, in view of the procedures applied, showed a lack of respect for the applicant's family life as protected by Art. 8, para. 1 of the Convention;

- whether, under Art. 6, para. 1 of the Convention, the applicant was entitled to, and could obtain, a court hearing in respect of her claim for access to the children; and

- whether the applicant had an effective remedy, as required by Art. 13 of the Convention, in respect of her alleged right of access to the children based upon Art. 8 of the Convention.

With respect to Art. 8 of the Convention

98. The applicant complains that the decisions to terminate her access to A and J, and the absence of an adequate opportunity to challenge them, constituted an unjustified interference with her right to respect for her family life protected by Art. 8 of the Convention. The respondent Government contend that the decisions to restrict and terminate access were taken in the best interests of the children and that the procedural safeguards which were provided by the opportunity to apply, either to the Juvenile Court to revoke the local authority's powers over A and J, or to the High Court for judicial review of their exercise, ensured respect for the applicant's family life.

99. Art. 8 provides as follows:

> "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."

100. The Commission notes that the natural link between a parent and a child is of fundamental importance and that, where actual "family life" in the sense of "living together" has come to an end, continued contact between them is desirable and should in principle remain possible (Application No. 8427/78 Hendriks v. Netherlands, Commission's report, para. 95). This is so not only in cases where a parent is deprived of custody in connection with a divorce, but also when the child is taken into public care.

101. Consequently, when a parent is denied access to a child taken into public care, this constitutes in most cases an interference with the parent's right to respect for family life as protected by Art. 8, para. 1 of the Convention. Such an interference can only be justified under the Convention, if it satisfies the conditions laid down in Art. 8, para. 2.

102. One element of the protection afforded by Art. 8 is that the procedures applied to the denial of access must be such as to show respect for the parents' family life. This means that the parents shall normally have the right to be heard before decisions on such matters are taken and to be fully informed about any important measures taken in regard to their children. Restrictions on this right to be heard and to be informed can only be justified in the special circumstances indicated in Art. 8, para. 2.

103. The applicant has concentrated her submissions on this procedural aspect of Art. 8. She has complained that she was not properly informed of meetings of the social services or of the decisions taken by the local authority in regard to the children, and that she did not have a remedy before the courts to challenge these decisions, and she has alleged that this showed a lack of respect for her family life. The Commission therefore finds it justified to limit its examination to the question whether the procedures under English law, as they were applied in the present case, were in conformity with Art. 8 of the Convention.

104. In assessing the procedures which were applied in handling the cases of A and J, the Commission notes, in particular, the following elements:

(a) In March 1981, a case conference was held by the local authority. The applicant was neither present nor informed of the conference. It was decided at the conference to place J on the "at risk" register together with A.

(b) On 2 April 1981, the social workers concerned with the cases of the applicant's children agreed that an application should be made to assume the applicant's parental rights. The applicant was not consulted or otherwise contacted before this decision was taken.

(c) On 3 April 1981, the applicant visited the Social Services Department of the local authority and was then, according to her own statement, informed that the local authority passed a resolution on the same day regarding the assumption of parental rights over the children. In fact, the resolution concerned is dated 7 April 1981, and the circumstances surrounding the date and the manner in which the resolution was passed are unclear.

(d) On 15 April 1981 the applicant gave notice of her opposition to the parental rights resolution and the matter was then referred to the Juvenile Court. Various dates for a hearing were fixed, but the hearing was repeatedly adjourned. Finally the hearing was set for 29 September 1981, but the applicant was then advised by her solicitors that she had no prospects of success, and she therefore withdrew her challenge of the resolution.

(e) On 25 August 1981 the local authority decided at a meeting of the Social Services Department that, if the applicant withdrew her objection to the parental rights resolution, or failed in challenging that resolution, her access to the children would be stopped and the children would be placed for adoption. The applicant was not notified about this decision or about the meeting at which it was taken.

(f) The applicant's subsequent request for a discharge of the parental rights resolution was made on 8 December 1981, but due to court delays for which the applicant cannot be blamed, the case was not heard until 5 and 6 April 1982. In the meantime, the children had been placed in December 1981 with long term foster parents. Her appeal against the decision of the Juvenile Court was not heard by the Divisional Court until 15, 16 and 17 November 1982. The judges of that court referred to the effect of the passage of time from December 1981, when the children were placed with prospective adopters, until the appeal hearing in November 1982. The President of the Family Division stated that it could not be sufficiently stressed "that in a case such as the present, where continuity is seen by all concerned to be highly relevant, and indeed was the very basis of the decision of the court below, expedition is all in relation to the possible success of an appeal".

105. The Commission first notes that in the present case there was a serious interference with the applicant's right to respect for her family life, since she was not only deprived of the care of A and J, but also of her right of access to them.

106. After the parental rights resolution had been passed on 7 April 1981, the applicant's parental rights over A and J were vested in the local authority. However, her rights under Art. 8 of the Convention had not ceased, and it was the task of the local authority to take due account of the applicant's interests when exercising its statutory rights over A and J. In particular, the Commission considers that the local authority was obliged to keep in mind that A and J might in the end be returned to their mother and should have avoided, as far as possible, any measures which would make such return impossible or difficult.

107. One important aspect of the applicant's rights under Art. 8 of the Convention was her right to be heard and informed about important decisions regarding A and J, unless there were convincing reasons under Art. 8, para. 2 to exclude her from such consultation or information. However, the applicant was not consulted by the local authority on a number of important decisions regarding the children, and information about such decisions was insufficient and incomplete. This was even more serious, since some of the decisions, which concerned the placement with foster parents and the termination of the applicant's access to A and J, were not only decisive for the immediate contacts between the applicant and the children, but also for the long term question of the children's rehabilitation with their mother.

108. In fact, it was inevitable, in view of the children's ages, that the placement with long term foster parents and the interruption of contact with the applicant created a factual situation which it would later not be in the children's interest to change. Through a continuous process of restricted and interrupted contacts between the applicant and her children, a situation was created in which the force of the applicant's claim to contact with the children was gradually diminished.

109. Consequently, the Commission cannot but find that the local authority exercised its functions in a way which did not respect the applicant's right under Art. 8, para. 1 of the Convention. It remains to consider whether the interference with this right was justified on any of the grounds enumerated in Art. 8, para. 2 of the Convention.

110. The respondent Government have contended that any interference which arose with the applicant's rights under Art. 8, para. 1 of the Convention was justified under Art. 8, para. 2 as necessary in a democratic society for the protection of the children's health. They stress the importance of a stable home environment for young children.

111. The Commission notes that the local authority were regularly in touch with the applicant at the time when their critical decisions concerning the children's future were taken. However, the applicant was not involved in the consultation procedures concerning the children's future, and was given inadequate information about measures taken or considered. The Commission cannot find, on the basis of the material available, that it was necessary in the interest of A or J, or both of them, to exclude the applicant entirely from any involvement in the decision-making regarding their futures, and even to give her inadequate information about measures which were considered or had been decided upon. Consequently, the lack of respect which the local authority showed for the applicant's rights under Art. 8, para. 1 of the Convention cannot be justified under para. 2 of that Article.

112. In reaching this conclusion, the Commission also takes into account the delays which occurred in the court proceedings as a result of the repeated adjournments of hearings. In view of the nature of the matters to be decided by the courts, these delays also affected the applicant's opportunity to secure the return of her children.

113. The Commission concludes, by a unanimous vote, that there has been a violation of Art. 8 of the Convention in that the procedures which were applied in reaching the decisions to terminate the applicant's access to A and J did not respect her family life.

With respect to Art. 6, para. 1 of the Convention

114. The applicant submits that the right of parental access to a child is a civil right within the meaning of Art. 6, para. 1 of the Convention, and that a parent is therefore entitled to have this right determined in a fair and public hearing before an independent and

impartial tribunal. Since she had no right to a judicial remedy against the decisions of the local authority regarding her access to A and J, she considers that Art. 6, para. 1 has been violated.

115. The respondent Government contend that the whole bundle of parental rights was transferred from the applicant to the local authority when the parental rights resolution was taken in respect of A and J. The resolution was open to challenge before the Juvenile Court in a procedure which complied with Art. 6 of the Convention. While the parental rights resolution was in force, however, the applicant did not enjoy a right of access to the children under English law. The Government therefore contend that Art. 6, para. 1 of the Convention was satisfied by the availability of an application to the Juvenile Court and by the opportunity to challenge any decision concerning parental access by way of judicial review.

116. In considering this complaint in relation to Art. 6, para. 1 of the Convention, the Commission will first examine whether a right was at all involved in the present case and, if so, whether that right was a civil right within the meaning of Art. 6, para. 1.

117. As regards the existence or not of a right of access in the present case, the Commission first notes that, generally speaking, Art. 6, para. 1 of the Convention is not aimed at creating new substantive rights which have no legal basis in the State concerned, but at giving procedural protection to rights which are recognised in domestic law. On the other hand, it is not decisive whether a certain benefit is characterised under the domestic legal system as a right, since the term "right" must be given an autonomous interpretation under Art. 6, para. 1 of the Convention. Even where a benefit can be granted as a matter of discretion rather than as a matter of right, a claim for such a benefit may well be considered to fall within the ambit of that provision.

118. In the present case, the parental rights resolution of 7 April 1981 transferred all the parental rights over A and J to the local authority. The local authority could therefore decide whether, or to what extent, the applicant was to have access to A and J. This did not mean, however, that the applicant was legally deprived of access, but only that it was within the local authority's discretion to decide whether she would be granted access. The facts of the case show that in the beginning the applicant was not denied access to A and J, although her access was restricted after the passing of the parental rights resolution, and that it was only after some time, in August 1981, that a contingent decision was taken to terminate her access altogether.

119. It appears, therefore, that although under English law the applicant did not have a right of access to the children due to the parental rights resolutions, she continued for some time to have contact with them, and this access could continue as long as the local authority, in the exercise of its discretionary powers, allowed her such access. The applicant could submit requests to the local authority in regard to access, and the fact that such requests would

be considered by that authority as relating to matters of discretion and not to matters of right under domestic law is not sufficient to exclude the application of Art. 6, para. 1 of the Convention.

120. When considering the situation in English law, the Commission also notes that the law relating to children in public care, although giving a very wide discretion to the local authorities, nevertheless reflects the general idea that the continuation of parental access to children is in some cases a normal or even desirable feature. In this respect, the Commission refers to the provisions in the 1948 Act which allow the local authority to contribute to the costs of parental visits to a child in care and to the Children and Young Persons Act 1969 which makes special provisions for cases where a child in care has not been visited by its parents during a certain period of time.

121. It may also be recalled that a right of access to a child is indeed guaranteed by the Convention itself as being an element in the right to respect for family life protected under Art. 8 of the Convention. It is also a right which is a general feature of the family law in the Contracting Parties.

122. Having regard to these different considerations, the Commission is of the opinion that the possibility which the applicant had under English law to obtain access to A and J at the discretion of the local authority could reasonably be characterised as a right under Art. 6, para. 1 of the Convention.

123. It remains to consider whether this right was a civil right in the sense in which this term is used in Art. 6, para. 1 of the Convention. On this point, the Commission recalls the European Court's and its own case-law, according to which family law rights are civil in character and therefore fall within the scope of Art. 6, para. 1 of the Convention (see, for instance, Eur Court HR, Rasmussen case, judgment of 19.11.84, para. 32). It follows that Art. 6, para. 1 of the Convention is applicable to the parental access right claimed by the applicant.

124. The Commission must therefore examine whether the applicant had at her disposal a remedy which would have made it possible for her to have the issue of her access to A and J determined by a court in a fair and public hearing.

125. The Government have pointed out that the applicant could and did apply to the Juvenile Court to revoke the parental rights resolution. However, such proceedings did not constitute a remedy in regard to the specific complaint of lack of access to A and J, but had a much wider scope. The Commission considers, therefore, that such an application to the Juvenile Court did not give the applicant the opportunity to obtain a court decision regarding the particular civil right which is now the subject of her complaint to the Commission.

126. Under English law, the applicant could also have asked the High Court for judicial review of the way the local authority had exercised its powers under the parental rights resolution. Such

judicial review could deal with, for instance, the decisions taken by the local authority in regard to the applicant's access to her children. However, the judicial review would have been limited in scope because the High Court could only have examined whether the local authority had failed to take into account relevant factors or had taken irrelevant factors into account, or whether its decision was such that no reasonable authority could reach. The Commission considers that a remedy of such limited scope, in a case where the applicant complains primarily of the way the administrative discretion in regard to her access rights was exercised, does not satisfy the requirements of Art. 6, para. 1 of the Convention (cf, for instance, Eur Court HR, case of Le Compte, Van Leuven and De Meyere, judgment of 23.6.81, para. 51).

127. The Commission further notes that the applicant tried in January 1983 to make the children wards of court in order to raise the issue of access, but that the High Court declined to exercise its jurisdiction in this regard (see para. 40).

128. Consequently, the applicant could not obtain a determination by a court of her civil right of access to A and J.

129. The Commission concludes, by twelve votes to three that there has been a violation of Art. 6, para. 1 of the Convention in that the applicant was denied access to court for the determination of her civil right of access to A and J.

With respect to Art. 13 of the Convention

130. The Commission has also considered whether the applicant's complaints fall to be considered under Art. 13 of the Convention in that the applicant was denied an effective remedy before a national authority for her complaints of an interference with her right to respect for her family life protected by Art. 8 of the Convention. However, the Commission recalls its constant case-law that Art. 6, para. 1 of the Convention provides a more rigorous procedural guarantee than Art. 13 and therefore operates as a lex specialis with regard to a civil right, to the exclusion of the more general provisions of Art. 13.

131. It follows that no separate issue arises in the present case under Art. 13 of the Convention.

132. The Commission finds, by twelve votes to two with one abstention, that no separate issue arises under Art. 13 of the Convention.

Summing up of the Conclusions and Findings

133. (a) **The Commission concludes,**

(i) by a unanimous vote, that there has been a violation of Art. 8 of the Convention in that the procedures which were applied in reaching the decisions to terminate the applicant's access to A and J did not respect her family life (para. 113),

(ii) by twelve votes to three, that there has been a violation of Art. 6, para. 1 of the Convention in that the applicant was denied access to court for the determination of her civil right of access to A and J (para. 129).

(b) **The Commission finds**, by twelve votes to two with one abstention, that no separate issue arises under Art. 13 of the Convention (para. 132).

Secretary to the Commission

(H. C. KRÜGER)

President of the Commission

(C. A. NØRGAARD)

10496/83

Separate opinion of Mr. G. Sperduti (See footnote to page 3)

For the reasons developed in my separate opinion in Application No. 9840/82, Blackham v. the United Kingdom, I do not consider that Art. 6 of the Convention was at issue in the present case.

10496/83

Partly dissenting opinion of Mr. H. G. Schermers

In my partly dissenting opinion in Application No. 9749/82, Williams v. the United Kingdom, I have explained why I do not consider that the claim of parental access to a child subject to a parental rights resolution involves an independent civil right. For those reasons, in my opinion, there has been a violation of Art. 13 in the present case, but not of Art. 6.

10496/83

Partly dissenting opinion of Sir Basil Hall

1. I agree with the opinion of the Commission that the procedures applied in the course of reaching the decisions to terminate the access of the applicant to her children constitute a violation of the right conferred on her by Art. 8 of the Convention to respect for her family life. I do not agree with the opinion of the majority that Art. 6 applies in this case.

2. It is I believe relevant in considering the application of Art. 8 to access to children to bear in mind that questions of access only arise where a parent is separated from his or her child. Access cannot be in issue when a family is united.

3. The parental rights resolution of 7 April 1981 transferred all the applicant's parental rights over A and J. The effect of the order was that under English law the applicant had no right of access to A and J. It was however in the local authority's discretion whether she should be granted access.

4. For the reasons given by Mr. Schermers and Mr. Jörundsson in their partly dissenting opinion in application No. 9749/82 (Williams v. the United Kingdom) I do not consider that Art. 6 of the Convention applies in this case; but I would add a further reason. Para. 121 of the Report in this case states:

> "It may also be recalled that a right of access to a child is indeed guaranteed by the Convention itself as being an element in the respect for family life protected under Art. 8 of the Convention."

I do not share the opinion of the majority that a right of access is guaranteed. It is the right to respect for family life which is guaranteed. The authorities must, in order to comply with Art. 8, take into consideration that right to respect when exercising their discretion (and in this case failed sufficiently to do so), but the exercise of that discretion did not in my opinion involve the determination of a civil right of the applicant.

5. In this case the efficacy of judicial review of the exercise of the local authority's discretion as a remedy was not discussed. If one takes the view, as I have, that the requirement is that in exercising their discretion over access the local authority must have regard to the applicant's right to respect for her family life and that is a factor which is not required by English law to be taken into account, obviously judicial review is not an effective remedy. But the policy of an Act is a factor to be taken into account, and if Lord Scarman's statement of the policy of the Children Act 1948 quoted at para. 70 of the Commisson's report is correct, judicial review might well constitute an effective remedy. My own view is that it would.

APPENDIX I

HISTORY OF THE PROCEEDINGS

Item	Date	Participants
Examination of Admissibility		
Introduction of the application	28 April 1983	
Registration of the application	27 July 1983	
Preliminary examination by the Rapporteur (Rule 40 of the Rules of Procedure)	July and August 1983	
Request by the Rapporteur to the respondent Government for information pursuant to Rule 40 (2) (a) of the Rules of Procedure	3 August 1983	
Information received from the respondent Government pursuant to Rule 40 (2) (a)	22 August 1983	
Commission's deliberations and decision to invite the respondent Government, pursuant to Rule 42 (2) (b) of the Rules of Procedure, to submit written observations on its admissibility and merits	10 October 1983	MM. Frowein, President Fawcett Busuttil Opsahl Jörundsson Tenekides Trechsel Kiernan Melchior Sampaio Gözübüyük Weitzel Soyer Schermers Batliner

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Item	Date	Participants
Observations of the respondent Government	14 December 1983	
Decision to grant the applicant legal aid	20 December 1983	
Observations of the applicant in reply	21 February 1984	
Commission's deliberations and decision to declare the application in part admissible and in part inadmissible	14 May 1984	MM. Nørgaard, President Sperduti Ermacora Fawcett Triantafyllides Busuttil Opsahl Jörundsson Tenekides Trechsel Kiernan Melchior Sampaio Carrillo Gözübüyük Weitzel Soyer Schermers Danelius Batliner

Examination of the Merits

Commission's first deliberations on the merits and decision to invite the parties to submit such written observations on that part of the application declared admissible as they wished; parties informed that the Commission is at their disposal with a view to securing a friendly settlement pursuant to Art. 28, sub-para. b of the Convention	14 May 1984	MM. Nørgaard, President Sperduti Ermacora Fawcett Triantafyllides Busuttil Opsahl Jörundsson Tenekides Trechsel Kiernan Melchior Sampaio Carrillo Gözübüyük Weitzel Soyer Schermers Danelius Batliner

Item	Date	Participants
Applicant's observations on the merits	13 September 1984	
Commission's second deliberations on the merits	9 March 1985	MM. Nørgaard, President Sperduti Frowein Ermacora Busuttil Jörundsson Tenekides Trechsel Kiernan Carrillo Gözübüyük Soyer Schermers Danelius Batliner Campinos Vandenberghe Mrs Thune Sir Basil Hall
Commission's further deliberations on the merits, vote and adoption of the present Report	4 December 1985	MM. Nørgaard, President Frowein Jörundsson Tenekides Trechsel Kiernan Gözübüyük Weitzel Soyer Schermers Danelius Batliner Vandenberghe Mrs Thune Sir Basil Hall