COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

(Or. English)

EUROPEAN COMMISSION
OF HUMAN RIGHTS

Application No. 9749/82

M C W

against

UNITED KINGDOM

Report of the Commission

(Adopted on 15 October 1985)

STRASBOURG

9749/82

I. INTRODUCTION

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

2. The applicant is a United Kingdom citizen born in 1951 who lives in Birmingham. He is represented before the Commission by Mr. N. Robertson-Smith of Messrs. Fisher Holyoake, Solicitors of Bromsgrove, and by Mrs. Barbara Calvert, QC, and Mr. Stephen Bellamy of Counsel.

The substance of the application

3. The applicant's third child, S, was voluntarily placed in the care of the local authority in March 1979, when S was aged five months; his mother was suffering from post-natal depression and alcoholism. In August 1979 the local authority resolved to assume parental rights over S and subsequently, in 1980, decided that the applicant and his wife should cease to have access to S, and that S should be placed with new foster parents with a long term view to adoption. The applicant was informed in May 1980 that he and his wife would no longer be allowed access to S, and they last saw him in July 1980.

4. The applicant and his wife instructed solicitors in autumn 1980 to issue proceedings to revoke the local authority's authority over S. Their action was successful in January 1981, but the local authority applied to make S a ward of the High Court, and subsequently, that court decided in June 1981 that the applicant and his wife should not have access to S, inter alia because of the length of time during which they had not had contact with the child.

5. The applicant complains that he did not have a remedy under English law against the decision of the local authority to restrict and subsequently terminate his access to S. He contends that the right of access to a child is a civil right within the meaning of Art. 6 (1) of the Convention, but that he was deprived of access to court in respect of the determination of this right, or in the alternative that his access was rendered ineffective by the actions of the local authority, and that the decisions to restrict and terminate access were an interference with his right to respect for his family life, protected by Art. 8 of the Convention, against which he had no remedy, contrary to Art. 13 of the Convention.

Proceedings before the Commission

6. The application was introduced on 18 January 1982 and registered on 16 March 1982. On 6 October 1982 the Commission decided pursuant to Rule 42 (2) (b) of the Rules of Procedure to invite the respondent Government to submit their observations on the admissibility and merits of the application. The respondent Government's observations are dated 16 February 1983, and on 21 February 1983 the President of the Commission decided that the

applicant should be granted legal aid by way of assistance towards the costs of his representation before the Commission. The applicant appointed a firm which is now Messrs Fisher Holyoake, Solicitors, as his representatives. The applicant's reply to the respondent Government's observations is dated 27 April 1983. On 19 July 1983 the Commission decided pursuant to Rule 42 (3) (b) of the Rules of Procedure to invite the parties to a hearing on the admissibility and merits of the application.

7. At the hearing, which was held on 17 November 1983, the parties were represented as follows:

For the Government:

Mr. M. Eaton, Foreign and Commonwealth Office,	Agent
Miss S. Brooks, Foreign and Commonwealth Office,	Assistant Agent
Mr. E. J. Holman, Barrister,	Counsel
Mr. R. Sanders, Department of Health and Social Security,	Adviser
Mr. T. W. S. Murray, Department of Health and Social Security,	Adviser
Mr. P. M. Rodney, Lord Chancellor's Department,	Adviser

For the applicant:

Mrs. B. Calvert QC, Barrister,	Counsel
Mr. S. Bellamy, Barrister,	Adviser
Miss. A. Derrick, Barrister in pupilage,	Adviser
Mr. N. Robertson-Smith of Messrs. Fisher Holyoake,	Solicitor

The applicant in person

8. The Commission examined the admissibility of the application in the light of the submissions it had received, and on 17 November 1983 declared the application admissible. The text of the Commission's decision on admissibility is Appendix II to the present Report.

9. The parties were informed of the Commission's decision on 24 November 1983, and were further informed that the Commission had decided to invite them to submit such further written observations on the merits of the application as they wished, pursuant to Rule 45 (2) of the Rules of Procedure, within a time limit to run from the dispatch of the text of the Commission's decision on the admissibility of the application. The text of the Commission's decision on

admissibility was dispatched to the parties on 26 January 1984, and they were invited to make such observations as they wished on the merits of the application before 9 March 1984.

10. On 2 March 1984 the applicant's representatives informed the Commission that an application had been made with a view to the adoption of S, by his long term foster parents. The Commission was informed that the applicant and his wife would seek an order that the adoption proceedings be stayed, pending the outcome of the negotiations for a friendly settlement of the application pursuant to Art. 28 (b) of the Convention, or the adoption of the Commission's Report in relation to the application under Art. 31 and a decision by the European Court of Human Rights on the merits of the application. On 25 May 1984 the Commission was approached by solicitors acting for the prospective adopters of S, with various enquiries relating to the Commission's examination of the present application, and in view of the application made by the applicant's representatives as outlined in their letter to the Commission on 2 March 1984. The solicitors to the foster parents were provided with such information as was public relating to the examination of the application. On 26 June 1984 the Official Solicitor to the Supreme Court, who represented S in the proposed adoption proceedings, wrote to the Commission in relation to the motion made by the applicant and his wife. The Commission replied to this request for information by telex of 10 July 1984. The Commission resumed its examination of the application on 12 July 1984 and decided to include the application on its list of cases for its session beginning on 1 October 1984, for a further examination of the merits, or of developments relating to the possible friendly settlement of the application.

11. On 24 July 1984 the applicant's representatives informed the Commission that their application in the adoption proceedings in the United Kingdom had been rejected on 13 July 1984, and that the question of S's adoption had been listed to be heard by the High Court on 2 October 1984. On 8 October 1984 the applicant's representatives informed the Commission that an adoption order had been made in respect of S on 5 October 1984.

12. On 11 October 1984 the Commission resumed its examination of the merits of the application, and the parties were informed accordingly on 22 October 1984. The applicant submitted written observations on the merits of the application by letter of 2 March 1984. The respondent Government submitted written observations on the merits of the application on 4 June 1985.

13. After declaring the case admissible, the Commission, acting in accordance with Art. 28 (b) of the Convention, 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

14. 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:

MM. C. A. Nørgaard, President
G. Sperduti
J. A. Frowein
F. Ermacora
E. Busuttil
G. Jörundsson
S. Trechsel
B. Kiernan
J. Carrillo
A. S. Gözübüyük
A. Weitzel
J. C. Soyer
H. G. Schermers
H. Danelius

15. The text of the Report was adopted by the Commission on 15 October 1985 and is now transmitted to the Committee of Ministers in accordance with Art. 31 (2) of the Convention.

16. 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.

17. A schedule setting out the history of the proceedings before the Commission and the Commission's decision on the admissibility of the application are attached as Appendix I and 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.

9749/82

II. ESTABLISHMENT OF THE FACTS

18. The applicant, a British citizen born in 1951, and resident in England, was married in June 1973. He and his wife have three children; the third, S, was born on 31 October 1978.

19. On 1 March 1979 the applicant's wife was suffering from post-natal depression and alcoholism. S was placed by his parents in voluntary care pursuant to Section 1 Children Act 1948 (the 1948 Act) (1). S was placed with foster parents on a temporary basis. On 8 March 1979 S returned home at the applicant's request until he was again placed voluntarily in care on 21 March 1979. On 13 April 1979 he returned home but was again voluntarily returned to care the following day. He remained with foster parents until 18 May 1979, when he returned home.

20. On 5 June 1979 S was again received into care voluntarily, where he remained, subject to parental visits and some weekends spent with his parents at home. Three visits took place in July and August 1979, when the applicant's wife suggested to social workers that she would take S home. This she was entitled to do, since S was placed in voluntary care. The local authority considered whether to assume parental rights over S under Section 2 of the 1948 Act (2) and, after the applicant's wife had taken S home on 14 August 1979, and then subsequently changed her mind and returned him to the foster parents, the local authority, on 16 August 1979, resolved under Section 2 of the 1948 Act to assume parental rights over S.

21. On 21 November 1979 the applicant's wife's alcoholism deteriorated and she was admitted to hospital for treatment. On 22 November 1979 a review was held by the local authority of the family circumstances. It was concluded that the prospects of S's rehabilitation were poor, but that the existing agreement which had been reached with the applicant and his wife that S would be returned to them in February 1980, should be retained. The responsible social workers considered that no postponement of the prospective return date for S would be permissible. In addition, it was agreed that the possibility of finding long term foster parents should be examined, as a contingency plan if S's return to his natural parents proved impossible in February 1980.

22. S spent four days over Christmas 1979 with his natural family, and the applicant continued to look after the two elder children until January 1980, when they were put into voluntary care under Section 1 of the 1948 Act on a temporary basis, since the applicant was threatened with losing his job if he did not return to work, and his wife was in hospital for treatment of her alcoholism. The placement in temporary care was intended to be until the applicant's wife's prospective return home from hospital.

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(1) See Appendix III.1
(2) See Appendix III.2

23. A social worker saw the applicant's wife in hospital on 22 January 1980, and reported that she had seemed worried at the prospect of the children's return home. The social worker warned her that the alternative to S's return home would be his placement in long term care. On 31 January 1981 the social worker saw the applicant in connection with his marital difficulties with his wife and the future of the two elder children. The prospect of S not being returned to his natural parents was not however discussed.

24. On 14 February 1980 resolutions were passed under Section 2 of the 1948 Act in respect of the two elder children. However, according to the applicant, an agreement was made between the parents and the local authority care officers, whereby these children would be returned to their parents over a period, as a result of which the applicant agreed not to object to the parental rights resolution. The applicant and his wife contend that they understood this agreement to envisage the return of S as well.

25. It appears that, on an unrecorded date, the social services of the local authority had decided that S should be placed with foster parents on a long term basis. It appears from the local ombudsman's report that the social workers responsible for S and for the remainder of the applicant's family had concluded in January or February 1980 from their nearly continuous review of the family circumstances, that the arrangement for returning S to his natural family would not work in the light of the prognosis for the applicant's wife's alcoholism and in view of the apparent breakdown of their marriage. There is no recorded minute of any decision to this effect having been taken by the local authority in a formal manner, and it appears that the possible alternative of placing S with long term foster parents was not mentioned to the applicant when the social workers saw him on 31 January 1980, nor to his wife on 14 February 1980, when they visited her to inform her of the passing of the parental rights resolutions concerning the two older children.

26. Although it is not clear exactly when, or by whom in the social services department of the local authority, the decision that S should not return to his natural parents was taken, it appears that the responsible social workers informed the applicant orally of the decision to place for long term fostering on 20 March 1980. The applicant's wife was similarly informed on 26 March 1980, but it appears from the local ombudsman's report that the social worker was not sure that either parent had fully appreciated the implications of this information. It also appears that a decision was made at the same time to place S, if possible, in a foster family which had expressed the wish to adopt a child in suitable circumstances. It does not appear that the applicant, or his wife, were clearly informed of this fact.

27. The social worker's proposal to place S with long term foster parents and to restrict his natural parents' access to him was considered on 31 March 1980 by the local authority's Adoption and Foster Care Committee, without further reference to the applicant or his wife. The Committee was informed by the social workers responsible that the applicant and his wife, who had no knowledge of the meeting and were not present, would not agree to this proposal. The decision was approved.

28. The minute of the Committee's discussion recalls:

> " It was suggested that if there was to be no parental contact the mother particularly would 'search to the ends of the earth for S'. However parental contact to be controlled and not at (the foster parents') home."

29. The local authority informed the local ombudsman in the course of his enquiries that they considered this minute reflected that the intention was that the applicant and his wife should not know where S was living. It is clear however that the minute records a decision that access should be restricted, both as to location and frequency, but not terminated.

30. On 22 April 1980 the senior social worker responsible for the case visited the applicant and his wife to inform them that S was moved to new foster parents. The record of his visit states that he told them that he was not prepared to disclose where the foster parents lived. In addition it appears that the senior area social worker had decided that the applicant and his wife should not be allowed to visit S, a decision which he had reached because he considered that the access would jeopardise the chances of S developing a satisfactory relationship with his new foster parents. It is not revealed how, if at all, this decision to terminate parental access to S derived from the discussions of the Adoption and Foster Care Committee as recorded in the minute quoted above.

31. In May 1980 S was moved to a new foster family for long term fostering, with a view to adoption. On 1 August 1980 the applicant's elder two children were returned to their parents in accordance with the agreement referred to by the applicant. They have remained there ever since; S was not returned, contrary to the applicant's expections.

32. The applicant's wife made a remarkable recovery from her alcoholism, apparently as a result of the shock of a conviction for theft of bottles of alcohol. Furthermore, the applicant and his wife resolved their matrimonial difficulties, and established a basis for the repayment of their household debts.

33. The applicant and his wife protested to the social services department at the refusal of access to S and a meeting was eventually arranged in July 1980 at the social services building for the applicant and his wife to see S. In early September 1980 the applicant consulted solicitors with a view to challenging the local authority's actions. The applicant applied for and was granted legal aid to apply to the Juvenile Court to revoke the resolution concerning the assumption of parental rights over S, and proceedings were issued on 4 November 1980. The original date for the hearing of 11 December 1980 was adjourned on the application of the local authority until 8 January 1981. The Order was revoked on 16 January 1981 permitting S to be returned to the applicant and his wife,whereupon, on the same day, the respondent local authority appealed against the Juvenile Court's decision and issued proceedings in the local District Registry of the High Court to have S made a ward of court.

34. There followed a period of uncertainty as to whether the local authority would pursue their appeal before the Divisional Court, or the wardship proceedings before the High Court. Order 90 Rule 4 of the Rules of the Supreme Court provides that a wardship shall lapse if an appointment for hearing the summons which initiates the wardship is not taken out within 21 days. On 5 February 1981 (the twenty-first day), the local authority took out the relevant notice for an appointment, which was returnable (i.e. to be held) on 3 March 1981. On 3 March 1981, when the local authority applied to the High Court for Directions, the applicant's solicitor challenged the propriety of the wardship proceedings as a duplication of the jurisdiction. This question was referred as a preliminary issue to be heard before a High Court judge on 25 March 1981, when the local authority undertook to withdraw their appeal before the Divisional Court and were then permitted to continue with the wardship proceedings. The judge ordered that the case should be heard as quickly as possible, but all foreseeable dates until June 1981 were full, bearing in mind that a three-day hearing of the wardship issue was expected. The case was therefore ordered to be set down in the first week of June 1981.

35. The case was finally listed on 15 June 1981 and heard on 15-18 and 22 June 1981. The High Court evaluated the evidence submitted in relation to S's well-being and the applicant's circumstances and held that S should remain with the foster parents with whom he was placed in May 1980, without access for the applicant or his wife, too long a period having elapsed since the last contact with his natural parents for any change to be justified.

36. In the course of his fully reasoned judgement, the judge stated (p 3 at E-H):

> " I can only say that it is extremely unfortunate that these (wardship) proceedings were not heard within a matter of a week or so after the (Juvenile Court's) decision. I see no reason why they could not have been ... However, the hearing did not take place and the parents and the Court are now faced with the fact that a further four months have gone by in which S has become even closer to his foster parents."
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> " ... I am not happy about the use of Section 2 (1948 Act) powers to change the status of the child and to cut the parents out of his life, and I am unhappy about a decision arrived at by the local authority without the parents being heard or having the opportunity to make their own representations to the decision-making body ..."

37. However the judge held that there was no longer a practical alternative to S remaining with his foster parents and that restoring rights of access to his parents would only encourage them in their

attempts to have S returned to them which would not be in S's best interests. The applicant appealed to the Court of Appeal, which dismissed his appeal with a fully reasoned judgment on 6 October 1981.

38. The Court of Appeal expressed their sympathy for the natural parents, describing the case as "tragic", but stressed that their duty was to arrive at a decision which was in the best interests of the child and that "the question from beginning to end is whether the child's best interests would be served by remaining with his foster parents or by being transferred to his natural parents". Although the Court recognised "all the credit which both the mother and the father deserve for pulling themselves out of an appalling situation" and that they had "succeeded remarkably" in coping with their elder children, it found that S presented "a different problem" in the light of their lack of contact with him during the preceding period.

39. The foster parents with whom S was placed in May 1980 were granted leave on 23 March 1982 to apply for S's adoption. An adoption order relating to S was made on 5 October 1984.

40. The applicant lodged a complaint against the local authority with the local ombudsman, alleging maladministration. On 28 February 1983 the local ombudsman found the complaint well-founded, stating in particular that he criticised "the failure to put the parents properly in the picture before firm decisions were taken" by the local authority.

9749/82

III. SUBMISSIONS OF THE PARTIES

Submissions of the Applicant

Domestic law and practice

41. The applicant points out that when S was placed in voluntary care under Section 1 of the 1948 Act, the consent of the parents was required, and the local authority had no power to take the child into care without such consent under that Section. However, when the local authority consider the report of its social services committee deciding whether to assume parental rights under Section 2 of the 1948 Act, the parent or guardian is unable to have access to the reports on which the decision to pass such a resolution is made. Even where a parent objects to the passing of such a resolution and the question is decided by the Juvenile Court, all reports, minutes of meetings, and notes of case conferences are privileged documents which the parent or guardian may not see (following O v. NSPCC, 1978 AC 171). Thus most of the material on which the local authority base their decision to assume parental rights is never known to the parent or to the Juvenile Courts.

42. In a number of cases it has been held that the courts have no power to interfere with the wide discretionary powers that vest in the local authority once parental rights have been vested in them. Thus a parent or guardian cannot apply to a Juvenile Court, or any other court, for an order that the local authority permit access to a child in care or to decide the quantum of such access. Even when wardship jurisdiction has been invoked in order to obtain orders directing a local authority to give access to a parent, it has been held that, unless impropriety is alleged, the Court has no power to intervene to regulate the wide statutory powers given to the local authority. Hence Lord Bridge recognised (in re W (1980) Fam pages 60-68):

> "... If there is no remedy by way of wardship proceedings whereby the decision of a local authority can be brought under review, there is no appellate remedy available at all .. For my part, sympathetically though I listen to those arguments and much as I appreciate the sense which lies behind them I am quite unable to say that they are valid ... The jurisdiction conferred upon a local authority is an exclusive one in which the Court can only interfere (on strictly limited grounds)."

43. The respondent Government's reliance on Lewisham London Borough Council v. Lewisham Juvenile Court for the proposition that "the parent is never totally excluded" but may always apply for the rescission of a resolution under Section 2 of the 1948 Act, fails to recognise that it may not be appropriate to apply for such rescission where the local authority are refusing access or permitting only limited access. The parent has no means of

obtaining an order of access alone, but inability to make contact through access can have far reaching consequences. It may ultimately lead a court to consider that there is no alternative in the interests of a child to permit foster parents to adopt.

44. A local authority in the exercise of its parental rights and duties may decide to place a child with long-term foster parents with a view to those parents adopting the child. This will almost invariably mean that access for the natural parents will be reduced or stopped altogether. Such a decision should be made at a case conference, at which the parents are unlikely to be present, although they should be informed of the decision, and their consent for any adoption would be required. It should be noted that in the present case no such case conference appears to have been held, and that the applicant and his wife were not informed of the decision to place S for long-term fostering but were only notified that their access to him would terminate. These facts are established by the local ombudsman's investigation and findings.

45. Notwithstanding the avenues of appeal referred to by the respondent Government, these courts are not able any more than the Court of first instance to consider questions relating solely to access to the child.

Wardship jurisdiction

46. The applicant points out that the High Court will order that a child will cease to be a ward of Court if the purpose of warding the child is an attempt by the parent to interfere with the statutory parental rights which have been assumed by the local authority. Such orders have been made in a variety of cases (In re M, 1961, CH p 328, In re B 1975 Fam p 86, In re, 1973 Fam p 62, M v. Humberside County Council, 1979 Fam p 114 and In re W, 1980 Fam p 60). Unless the local authority has acted ultra vires, with impropriety, or there are some special reasons (e.g. as in re H, where the parents of a child in care wished to return to their own country) a parent whose child is the subject of a parental rights resolution is unlikely to succeed in an application for that child to be made a ward of Court and for directions to be given in relation to future access to the child.

The Facts

47. The applicant makes the following observations in relation to the facts:

1. On 3 March 1981 the District Registrar did not make any order relating to the care and control of S when extending the wardship, or as to access to him.

2. The respondent Government omit to point out that the application for an appointment before the Registrar was taken up on the last possible day (5 February 1981) before S would have ceased to be a ward of Court automatically under the provisions of Order 90 of

the Rules of the Supreme Court. Had the wardship ceased, the applicant would have obtained the return of the child. Furthermore, the return date of the application was fixed for 26 days after 5 February 1981, and it is therefore improbable that the local authority were pressing for an early return date. It would not have been in their interests to do so as they were opposed to S returning to his parents.

3. The preparation of the welfare report was not a factor which was relevant for the timing of the hearing before the High Court on 11 June 1981, as such reports are prepared with a view to a given date. Had an earlier date been fixed, the Court Welfare Officers would have given that report the necessary priority.

Applicability of Art. 6 (1) of the Convention

48. The applicant submits that matters relating to the custody and rights of access to children are civil rights for the purposes of Art. 6 (1) of the Convention, and that a parental right of access to a child is one which the parent is entitled to have determined in accordance with that Article. In addition this right of access has a separate and continuing existence notwithstanding the passing of a resolution assuming parental rights, since its extinction would involve a contravention of Art. 6 (1) and Art. 8.

49. The applicant submits that a divorced, separated parent having the custody of a child does not have the power to obliterate the other parent's right of access. The non-custodial parent has the right to a fair and public hearing to determine his rights. The same right must be recognised where the custody of the child is in the local authority as exists between spouses in matrimonial proceedings. Furthermore, the right of access is a reciprocal right of the child and as such should be determined by a fair and public hearing.

50. The applicant denies that he was responsible for the delay which occurred before the hearing in the Juvenile Court on 16 January 1981. The parents were not given adequate or proper information by the local authority as to their plans for S and they understood that S would be returned to them when their other children came home in August 1980. The applicants were not informed when a decision was taken to place S with long-term foster parents with a view to his ultimate adoption, and it appears from the report of the local ombudsman that the date on which such a decision was ultimately taken is not known and was not formally recorded by the local authority, but merely appears to have "evolved". The applicant constantly requested access to S, access which was granted after his placement in long-term fostering on one occasion on 25 July 1979.

51. The report of the local ombudsman, which the applicant has submitted in support of his application, confirms his complaints against the local authority and in particular their failure to inform him and his wife of their proposals for S. Had he been properly and clearly informed by the local authority as soon as they had reached their decision to place S with long-term foster parents with a view to adoption, he would have been able to seek legal advice earlier.

52. The applicant sought legal advice in early September and proceedings were issued after the grant of legal aid on 4 November 1980 before the Juvenile Court. The Juvenile Court hearing was delayed by the application for an adjournment by the local authority.

53. Thus it was the lack of communication and lack of frankness of the local authority in relation to their plans for S which made it impossible for proceedings to be issued in the Juvenile Court before the end of 1980. Nor is the respondent Government correct to assert that the local authority did not return S to his parents on 1 August 1980 with his elder brother and sister, "because this would have imposed an unfair burden on the parents who had only very recently begun to overcome their problems" since the local authority had placed S with long-term foster parents three months previously and refused to give his address to the applicant and his wife.

54. Nor was it open to the applicant to accelerate the proceedings in the wardship jurisdiction. The applicants were unable to take an initiative in the wardship jurisdiction, while the local authority retained the alternative of proceeding on their appeal from the decision of the Juvenile Court. Furthermore it was the applicant's contention that the wardship proceedings were improper, as a duplication of the jurisdiction. The local authority were the plaintiffs in the wardship action, which is started ex parte, i.e. without the applicant being a party to the proceedings, and it was their duty to ensure that there was no delay, both for this procedural reason, and because they were under a statutory duty to consider the welfare of the child, which was best promoted by an early hearing. Nevertheless the local authority failed to issue a summons for directions until the last day on which they were permitted to do so and it was returnable on a date some considerable time in the future, whereas it could have been issued on the same day or within two days, of the originating summons which commenced the wardship of S. The applicant reiterates that the Judge before whom the wardship issue eventually came in June 1980 stated that there appeared to him no reason why the wardship proceedings had not been heard within some two weeks of the decision of the Juvenile Court, and the responsibility for this delay rests with the local authority, which had initiated the proceedings.

Applicability of Art. 8 of the Convention taken in conjunction with Art. 13

55. The local authority's decision to place S with long-term foster parents was taken in January or February 1980. It was a decision not only to place him with long-term foster parents but also to place him with a view to adoption, and therefore to refuse access for the parents. If, (which is not admitted), the local authority were acting within their statutory powers those powers contravened Art. 8 because the local authority were able to make a decision which the applicant

was unable to challenge before a court owing to inadequate information from the local authority. The reasons for the decision are not available to the parents or to a court to consider, and effectively enable the authority to ensure that its views and wishes in relation to the future of the child, including the intention that the child be adopted, be carried out.

56. A subsequent decision as to whether the parents' refusal to consent to an adoption should be overruled by the Court as unreasonable will depend in large measure on whether the parents have had access to the child and thus the local authority's decision determining parental access in effect prevents future contact between them and their child, but is unreviewable by the Court.

57. Art. 8 (2) of the Convention leaves a wide discretion in the domestic courts to decide what is necessary to ensure the wellbeing of the child, but Arts. 6, 8 and 13 protect the right of parents and children in that both must have access to procedures which are fair and impartial and which, subject to Art. 8 (2), respect their family lives and may assess the necessity of any interference. The respondent Government rely on cases concerning matrimonial disputes, where the non-custodial parent was able to have the question of refusal or regulation of access decided upon by a domestic court. In the present case this remedy was not available. Restrictions on access were made by a body whose decisions on that question could not be challenged in a court or before a national authority. Such decisions materially affect decisions that have to be taken for the benefit of the child in later proceedings, such as the decisions in the wardship proceedings. Thus, unlike Application No. 5608/72 (CD 44 p 60), it was not a national court which restricted the parents' right of access to S, but a body whose actions in relation to access could not be challenged in a court or before any impartial public body and whose reports and notes, which resulted in this decision, were privileged and could not be examined by the parents nor their legal representatives nor the Court. Such a procedure was in breach of Art. 8 and Art. 8 taken in conjunction with Art. 13.

Submissions of the respondent Government

Domestic law and practice

58. The relevant legislation relating to the care and custody of S was first the Children Act 1948, as amended by the Children Act 1975 (since consolidated in the Child Care Act 1980), and subsequently the wardship jurisdiction of the High Court.

Children Acts 1948 and 1975

59. This legislation deals with the voluntary placing of children in the care of a local authority by their parent or guardian, and provides for the local authority to receive the child into their care. Section 1 of the Children Act 1948 (the 1948 Act) as amended by Section 56 (1) of the Children Act 1975 (the 1975 Act), provides that it shall be the duty of the local

authority to receive a child under 17 whose parents or guardian have disappeared or abandoned the child, or are prevented by illness or other incapacity from caring for the child, or in either such case where it appears that the intervention of the local authority is necessary in the interests of the welfare of the child. The local authority remain under a duty to keep the child in their care so long as its welfare requires it, and until the child attains the majority. Under Section 1 (3) of the 1948 Act the local authority may not keep a child in their care if any parent or guardian requests the return of the child, and the authority are under a duty to ensure the resumption of parental care in all cases where it appears to them consistent with the welfare of the child.

60. In the light of the decision of the House of Lords in London Borough of Lewisham v. Lewisham Juvenile Court Justices (1979 2 WLR 513) the local authority's duty to care for the child does not end directly when a parent requests the return of a child, since the authority might then be compellable to return the child 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 may either pass a resolution under Section 2 of the 1948 Act, vesting all the rights and powers of the parents or guardian in the local authority, or apply to make the child a ward of court.

Assumption of parental rights under Section 2 of the 1948 Act

61. Section 2 of the 1948 Act permits the local authority to "resolve that there shall vest in them the parental rights and duties with respect to <a> child" where the child's parents are dead, have abandoned the child, suffer from some permanent disability making them incapable of caring for the child, or are unfit to do so by reason of a mental disorder, or are of such habits or mode of life as to be unfit to have the care of the child "or have consistently failed without reasonable cause to discharge their obligations as parents, or where the child has been in the care of a local authority under Section 1 of the 1948 Act throughout the preceding 3 years."

62. Where the parents have not already consented in writing to a resolution under Section 2 of the 1948 Act, and their whereabouts are known, they shall be served with notice of it, indicating their right to object within one month. If such an objection is made, the resolution lapses after 14 days, within which time the local authority may apply to the Juvenile Court for a provisional extension of the resolution under Section 2 of the 1948 Act. The Juvenile Court may order the temporary extension of the resolution until the determination of the parents' complaint provided that it is satisfied that the grounds relied upon by the authority for making the resolution were made out when it was made by the local authority, subsisted when the Juvenile Court considers the question, and that the continuation of the resolution is in the interests of the child.

63. The "parental rights and duties" to which a resolution under Section 2 of the 1948 Act applies are defined by Section 2 (11) as "all rights and duties which by law the mother and father have in relation to a legitimate child and in his property except the right to consent or refuse to consent to the making of an application under Section 14 of the 1975 Act and the right to agree or refuse to agree to the making of an adoption order or an order under Section 25 of the 1975 Act".

64. Before passing a resolution under Section 2 of the 1948 Act, the local authority, acting through its Social Services Committee, must consider a report from its Social Services Department on the desirability of assuming parental rights, which should contain all the material necessary for the proper exercise of the authority's discretion. In re D (a minor) (1978 122 SJ 193) it was held that the report should indicate the practical consequences if an order under this Section is made, and discuss any alternative.

65. The local authority in deciding the matter is to regard the interests of the child as of paramount importance and the views of the parents on the proposal are to be taken into account. Such a decision of the local authority could be challenged, if it were ultra vires, on the criteria established in Associated Provincial Picture Houses v. Wednesbury Corporation (1948 1 KB 223), i.e. that the authority had failed to take into account relevant considerations, or had taken account of irrelevant considerations, had acted arbitrarily or in bad faith, or had reached a conclusion which, on the facts, no reasonable authority could have reached.

66. Where the parents make no objection to the Section 2 resolution, or such an objection is rejected by the Juvenile Court, they may apply again to the Juvenile Court under Section 4 (3) (b) of the 1948 Act, which empowers the Juvenile Court to terminate the resolution if it is satisfied that there were no grounds to make it, or that it should be terminated in the interests of the child. An appeal from the decision of the Juvenile Court either under Section 2, or under Section 4 (3) (b) of the 1948 Act, is available to the Family Division of the High Court (pursuant to Section 4 (A) of the 1948 Act and Section 58 of the 1975 Act), with a further appeal from the Family Division to the Court of Appeal and, if leave were granted, from the Court of Appeal to the House of Lords. Subject to means, parents would be able to apply for and obtain legal aid for the representation of their interests at all stages of this procedure.

67. The policy of the 1948 Act is in the respondent Government's submission well summarised by the judgement of Lord Scarman in Lewisham London Borough Council v. Lewisham Juvenile Court (ibid. supra at page 539), where he said:

> "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, 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 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 parent 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, .. or the resolution may at any time be rescinded (by the Juvenile Court) under Section 4."

Wardship jurisdiction

68. The jurisdiction to make a child a ward of court originated in the feudal concept of the Crown as "parens patriae", a jurisdiction which is now exercised by the Family Division of the High Court, as a prerogative jurisdiction at common law, independent of statutory provisions.

69. Where a child is made a ward of court, the Court assumes responsibility for all aspects of his welfare, including, for example, power to order where the child is to live, with whom, and who may have access to him. In exercising this jurisdiction the High Court is required by Section 1 of the Guardianship of Minors Act 1971 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 (such as the local authority), but that person or body may only act in accordance with the Court's directions, and no important step may be taken in the child's life without the Court's consent (re S 1967 1 AER 202 at 209).

70. Anyone who can show an appropriate interest in the child's welfare may apply for the child to be made a ward of court by way of originating summons in the High Court; the child becomes a ward if the originating summons is issued. Unless an appointment for a hearing of the summons, at which the interested parties would attend, is made within 21 days, the wardship automatically lapses. Such an appointment is generally before a registrar, who gives directions as to what is to be done before the case may be heard by a judge. He may also make an order as to access if the person with the physical custody of the child agrees, and may decide if any other interested persons or bodies who have applied to be joined as parties to the

proceedings should be so joined. An appeal lies from the Registrar's decision to a judge in chambers. When the wardship summons is heard by the Judge, he either confirms the wardship, or terminates it. The child may be represented in wardship proceedings by a "guardian ad litem", usually the official solicitor, a full-time public appointee with quasi corporate status, entirely independent of the executive. His appointment is intended to give the Court the assistance of an experienced and impartial person whose interest is the child's welfare.

71. Subject to means, parents are able to obtain legal aid for representation of their interests in wardship proceedings in the High Court under Section 7 of the Legal Aid Act 1974, but legal aid is not normally available for defendants in ex parte applications by the plaintiff.

72. Hence the wardship jurisdiction is separate, and not an alternative form of appeal, from the decision of the Juvenile Court concerning a resolution under Section 2 of the 1948 Act. On an appeal, the point at issue is the narrow question whether grounds exist for upholding a resolution passed by the local authority. In wardship proceedings the wider issue of what is in the best interests of the child is considered.

Art. 6 (1)

73. The respondent Government submit first that the proceedings before the Juvenile Court did not involve the determination of a civil right within the meaning of Art. 6 (1) of the Convention. The Commission's case-law has recognised that the rights of access and custody may raise issues under Art. 8 of the Convention, but this does not imply that they are necessarily "civil rights" for the purposes of Art. 6 (1). Nevertheless, even assuming that such rights are civil rights, in the respondent Government's submission they do not have any separate continuing existence in a situation where the bundle of parental rights of which they form part had been lawfully transferred to another party.

74. Thus in the present case, following the passing of the resolution under Section 2 of the 1948 Act, the local authority stood in the shoes of the parents of S, and was entitled to exercise the whole bundle of parental rights, including custody and the right to regulate and supervise the child's association with other persons in the interests of the child.

75. The Government submit that this view is supported by the Commission's case-law in Application No. 7911/77, X against Sweden (DR 12 p 193) where the Commission decided that that applicant had lost his right to determine his child's education because that was "an integral part of the right to custody which in the present case has been removed from the applicant by the Swedish courts". This view was followed in Application No. 9867/82, Moodey against the United

Kingdom, where the Commission held: "it is normal 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". Thus in the Government's submission the transfer of the rights of the parents includes transfer of the right to decide on questions of custody and access, although such a transfer of parental rights may be challenged before the Juvenile Court, as it was in this case.

76. If nevertheless Art. 6 (1) of the Convention should apply to the proceedings before the Juvenile Court, the respondent Government contend that any complaint as to their duration resulted from the applicant's action or inaction. They recall that the Commission has held that in civil cases "the exercise of the right to a hearing within a reasonable time is .. dependent on the diligence of the interested party" (X against the Federal Republic of Germany, Application No. 1974/63, YB 9 p 212), followed in Applications No. 7370/76 and 4859/71, X against Belgium (CD 44 at p 21). This reasoning was further applied in Application No. 6504/74 (DR 12 p 5) and Application No. 7464/76 (DR 14 p 55) where the Commission implied that in certain circumstances the applicant's failure to apply for a resumption of proceedings or to lodge an appeal would constitute delays for which he himself was responsible.

77. In the present case the respondent Government submit that the applicant was responsible for any delay which occurred before the hearing in the Juvenile Court on 16 January 1981, because it was not until 14 November 1980 that proceedings were issued under Section 4 (3) (b) of the 1948 Act to rescind the resolution made under Section 2 of the 1948 Act on 1 March 1979. It was therefore open to the parents to take such proceedings and in particular to do so after 1 August 1980 when S was not returned to them by the local authority. By contrast, the period between 4 November 1980 and the hearing by the Juvenile Court on 16 January 1981 cannot be considered unreasonable.

78. As far as the scope of the Juvenile Court's jurisdiction is concerned, the Court had jurisdiction to make an order to rescind the resolution under Section 2 of the 1948 Act, which they did when the summons was heard. The effect of the order was that all parental rights, including those of custody and access, reverted to the natural parents.

79. Hence in the respondent Government's submission, if Art. 6 (1) of the Convention is applicable to the Juvenile Court proceedings, those proceedings were in conformity therewith, both as regards duration, given the age of the child, and as regards the scope of its jurisdiction.

Wardship proceedings in the High Court and Court of Appeal

80. The Government submit again that no separate civil rights of custody and access arose for determination in the wardship proceedings, since all parental rights were transferred to the Court

and became exercisable by the Court upon the making of the provisional wardship order. If, contrary to this view, Art. 6 (1) is applicable to the wardship proceedings, then so far as their duration is concerned it submitted that there was no unreasonable delay.

81. The wardship proceedings were initiated on the same day as the Juvenile Court reached its decision, 16 January 1981. The local authority applied to the High Court for directions some 6 weeks later, as a result of the applicant's solicitor challenging the propriety of the continuation of the wardship proceedings on the grounds that they constituted a duplication of the jurisdiction. This issue was resolved by a High Court judge on 25 March 1981, when the local authority undertook to withdraw their appeal before the Divisional Court, and were then given leave to proceed with the wardship application.

82. Nevertheless various procedural and other matters had to be dealt with before the wardship proceedings could be determined, including the ex parte application on 20 January 1981 to omit details of the child's whereabouts from the summons, the acknowledgement of service by the solicitors for the applicant and his wife, indicating their intention to defend, and the filing of the application for an appointment for the hearing for directions on 3 March 1981 before the District Registrar. The District Registrar directed that the matter be heard by the Family Division Judge as soon as possible and on 25 March 1981 a High Court Judge ordered that the matter be listed for hearing during the first week of the Family Division Judge's next sitting at the appropriate court in June 1981. A report by the Court welfare officer was also ordered to be supplied "as expeditiously as possible" and it was supplied on 10 June 1981. On 14 April 1981 notice of the matter was listed for hearing on 11 June 1981 and was sent to all parties by the High Court, a date to which no party raised objection. Considerations influencing the fixing of this date were the availability of counsel for the local authority, the need for completion of the welfare report, the need to ensure a date with no danger of an earlier case overrunning, and the need to find time for other urgent and important cases including another wardship case.

83. Hence the case, which was finally listed on 15 June 1981, was heard as soon as could be in all the circumstances.

84. The presiding judge, on page 3 of his judgement of 22 June 1981, suggested that there was no reason why the wardship proceedings could not have been heard within a week or so of the Magistrates' decision in the Juvenile Courts. The initiative for such a step could and should have been taken by the applicants. When an initial wardship has arisen on the issue of an originating summons, the Court may make an order terminating the wardship at any time. Hence the respondent Government submit that there was no unreasonable delay in the hearing of the wardship proceedings.

85. As regards the scope of jurisdiction of the High Court and the Court of Appeal in the wardship proceedings the choice of these proceedings rather than an appeal to the Divisional Court, which

latter appeal would only have permitted examination of whether a ground existed for upholding a resolution made by the local authority under Section 2 of the 1948 Act, permitted the High Court to consider all aspects of the child's welfare including the parents' rights of custody and access.

Art. 13

86. With regard to the applicant's complaint that he was denied an effective remedy within the meaning of Art. 13 of the Convention for his complaints the respondent Government point out that he had and exercised the right to apply under Section 4 (3) (b) of the 1948 Act to terminate the resolution assuming parental rights under Section 2 of that Act, as a result of which the resolution ceased, and with it the power of the local authority to refuse access to the parents. Hence the proceedings before the Juvenile Court constituted an effective remedy in respect of the local authority's action.

87. Once the wardship proceedings had been instituted, it was open to the applicants at any time to apply for an order dewarding the ward. The Court would make such order as to access as it considered in the best interests of the child and in the event, the High Court judge, after hearing detailed evidence of the submissions on behalf of the parents, who were represented by counsel, as well as the child, refused access to the parents, finding that this was in the best interests of the child, a decision upheld by the Court of Appeal.

Art. 8

88. It is submitted that the denial of access and custody of S is in conformity with Art. 8 of the Convention. He was placed in voluntary care on 1 March 1979 by his parents, four months after his birth, because, in the context of his mother's drinking problem, she was frightened she might harm him. The family's difficulties only began to resolve themselves around August 1980, at which stage the two elder children were returned to their parents. Meanwhile although the local authority had tried to foster S for short-term only, unavoidably this resulted in his being cared for by constantly changing adults. The local authority was in a dilemma and S's welfare required a secure solution. The decision to put him with his long-term foster parents in May 1980 placed him for the first time since his birth in a stable environment where he could stay with the prospect of security.

89. In refusing access to the parents from that date the local authority was not only acting lawfully, having assumed parental rights by the resolution under Section 2 of the 1948 Act, but in the child's best interests. The decision to make the child a ward of Court after the decision of the Juvenile Court was motivated by the same consideration. After a full examination of the evidence the High Court judge decided that it was in the best interests of the child and in particular his emotional and mental health that the wardship should continue.

90. 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 (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.

91. 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 (2) in the light of the reasons behind the local authorities' intervention and having regard to the circumstances of each case.

92. It is therefore submitted that any interference with the applicant's right to family life under Art. 8 (1) because access to S and custody to him was refused, was justified by the exception set out in para. 2 of Art. 8 for the protection of his health. Art. 8 (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 the child, including its mental and emotional health. In its decision on Application No. 8427/78, H 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."

93. The respondent Government refer in this connection to the Commission's further case-law concerning the custody of children on separations and divorces, where the psychological wellbeing of the individuals has been recognised as an element of "health" referred to in Art. 8 (2) of the Convention. In Application No. 4396/70 (CD 36 at p 88) the Commission recognised that an aspect of the child's mental wellbeing was its need for a stable environment. The case related to the taking of a child into care after the separation of its parents on divorce. Furthermore in Application No. 5608/72 (CD 44 p 66), concerning a child who became a ward of the English Court and whose father was granted only limited access, the Commission recognised that

> "once a parent has been deprived of the custody of his child, it may be necessary for the national courts to place restrictions on his right of access to the child, such restrictions frequently being imposed for the child's interests and therefore justified under paragraph 2 of Art. 8."

94. For these reasons the respondent Government submit that the application discloses no violation of the Convention.

OPINION OF THE COMMISSION

Points at issue

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

- whether the decisions to restrict and eventually terminate the applicant's access to his son S, in view of the procedures applied, showed a lack of respect for the applicant's family life as protected by Art. 8 (1) of the Convention;

- whether, under Art. 6 (1) of the Convention, the applicant was entitled to, and could obtain, a court hearing in respect of his claim for access to S;

- whether the proceedings to make S a ward of court were heard within a reasonable time as required by Art. 6 (1) of the Convention; and

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

With respect to Art. 8 of the Convention

96. The applicant complains that the decisions to restrict and terminate his access to S, and the absence of an adequate opportunity to challenge them, constituted an unjustified interference with his right to respect for his 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 S 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 S or to the High Court for judicial review of their exercise, ensured respect for the applicant's family life.

97. 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."

98. 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 H 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.

99. 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 (1) of the Convention. Such an interference can only be justified under the Convention, if it satisfies the conditions laid down in Art. 8 (2).

100. One element of the protection afforded by Art. 8 is that the procedures applied to issues of restriction or 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 child. Restrictions on this right to be heard and to be informed can only be justified in the special circumstances indicated in Art. 8 (2).

101. The applicant has concentrated his submission on this procedural aspect of Art. 8. He has complained that he was not properly informed of the decisions taken by the local authority in regard to S, and that he did not have a remedy before the courts, and he has alleged that this showed a lack of respect for his 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.

102. In assessing the procedures which were applied in handling S's case, the Commission notes, in particular, the following elements:

(a) The parental rights resolution was passed by the local authority on 16 August 1979 pursuant to Section 2 of the 1948 Act. The applicant and his wife were apparently not informed that such a resolution was proposed, but were subsequently informed that it had been passed.

(b) After the parental rights resolution had been passed, and until the applicant and his wife were informed that S had been placed with a family with a view to adoption and their access to him was to cease, they were not involved in the decisions taken by the local authority concerning S's future. Hence they were not informed in advance that a review was being conducted as to whether S should be returned to them, or whether he should be placed with long term foster parents with a view to adoption.

(c) Once the decision to place S for adoption had been taken, the applicant and his wife were not informed of that decision for at least one month and possibly for two months. The information which was then provided was given orally and the social worker involved was not sure that either parent appreciated the implications of what they were told.

(d) When, on 31 March 1980, the matter of S's placement and the parents' access to him was considered by the local authority's Adoption and Foster Care Committee, the parents had not been informed of the meeting and were not present.

(e) On 22 April 1980, the applicant and his wife were informed that S was to be moved to new foster parents, but it was not disclosed to them where the foster parents lived. This new placement, which was made with a view to adoption, took place in May 1980.

(f) On 16 January 1981 - after the Juvenile Court had decided to revoke the resolution concerning the assumption of parental rights over S - the local authority issued proceedings in the local District Registry of the High Court to have S made a ward of court. The case was not heard until 15 - 18 and 22 June 1981. In his judgment, the judge stated that it was "extremely unfortunate" that the wardship proceedings had not been heard within a matter of a week or so after the Juvenile Court's decision. He added that he saw no reason why they could not have been heard within that time. However, since the hearing did not take place, the parents and the Court were faced with the fact that a further four months had gone by in which S had become even closer to his foster parents. In these circumstances the judge no longer saw any practical alternative to S remaining with his foster parents, and restoring rights of access to his parents would only encourage them in their attempts to have S returned to them which would not be in S's best interests.

(g) In its judgment of 6 October 1981, the Court of Appeal recognised that the applicant and his wife had succeeded remarkably in coping with their elder children, but found that S presented a different problem, in the light of the parents' lack of contact with him during the preceding period. Consequently, the Court of Appeal rejected the applicant's appeal against the judgment of the High Court.

(h) In response to the applicant's complaint, the local ombudsman, on 28 February 1983, criticised the failure of the local authority to put the parents properly in the picture before firm decisions were taken.

103. The Commission first notes that in the present case there was a serious interference with the applicant's right to respect for his family life, since he and his wife were not only deprived of the care of S, but their right of access to him was first restricted and later completely terminated. In the end, S was adopted by his foster parents, and the links between the parents and the child were thereby irrevocably severed.

104. After the parental rights resolution had been passed on 16 August 1979, parental rights over S were vested in the local authority. However, the parents' 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 interests of the parents when exercising its statutory rights over S. In particular, the Commission considers that the local authority was obliged to keep in mind that S might in

the end be returned to his parents, and should have avoided, as far as possible, any measures which would make such return impossible or difficult.

105. One important aspect of the parents' rights under Art. 8 of the Convention was their right to be heard and informed about important decisions regarding S, unless there were convincing reasons under Art. 8 (2) to exclude them from such consultation or information. However, the applicant and his wife were not consulted by the local authority on a number of important decisions regarding S, 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 restriction and termination of parental access to S, were not only decisive for the immediate contacts between the parents and their child, but also for the long-term question of the child's rehabilitation with its parents.

106. In fact, it was inevitable, in view of the child's age, that the placement with foster parents and the interruption of contact with the parents created a factual situation which it would later not be in the child's interest to change. Through a continuous process of restricted and interrupted contacts between parents and child, a situation was created in which no other reasonable possibility existed than to have the child adopted. On this point, the Commission again recalls the local ombudsman's criticism of the failure of the local authority to put the parents properly in the picture before firm decisions were taken.

107. Consequently, the Commission cannot but find that, during the time when the parents rights resolution was in force, the local authority exercised its functions in a way which did not respect the applicant's right under Art. 8 (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 (2) of the Convention.

108. The respondent Government have contended that any interference which arose with the applicant's rights under Art. 8 (1) of the Convention was justified under Art. 8 (2) as necessary in a democratic society for the protection of S's health. They stress the importance of a stable home environment for a young child and point out that the placement with long-term foster parents provided S with this security for the first time.

109. The Commission notes that at certain periods, notably at the end of 1979, the applicant and his wife may not have been able to participate extensively in any consultation procedures concerning the future of S. Nevertheless, there was a clear improvement in the family circumstances, which the local authority itself recognised by resolving to return the two elder children home in August 1980. In any case, the Commission cannot find that it was necessary in the interest of S to exclude the applicant and his wife entirely from any involvement in the decision-making regarding S, and even to give them 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 (1) of the Convention cannot be justified under para. 2 of that Article.

110. In reaching this opinion, the Commission also takes into account the delay which occurred in the hearing of the wardship proceedings. This delay, which was strongly criticised by the judge in the case, was clearly prejudicial to the applicant and his wife in that it made it considerably more difficult for them to have S returned to them. It follows that, in this respect too, there was a lack of respect for the applicant's rights under Art. 8 (1), which cannot be justified under Art. 8 (2) of the Convention.

111. The Commission concludes, by thirteen votes to one, that there has been a violation of Art. 8 of the Convention in that the procedures which were applied in reaching the decisions to restrict and then terminate the applicant's access to S did not respect his family life.

With respect to Art. 6 (1) of the Convention

112. The applicant submits that the right of parental access to a child is a civil right within the meaning of Art. 6 (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 he had no right to a judicial remedy against the decisions of the local authority regarding his access to S, he considers that Art. 6 (1) has been violated.

113. The respondent Government contend that the whole bundle of parental rights was transferred from the applicant and his wife to the local authority when the parental rights resolution was taken. This 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 and his wife did not enjoy a right of access to S under English law. The Government therefore contend that Art. 6 (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.

114. In considering this complaint in relation to Art. 6 (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 (1).

115. As regards the existence or not of a right of access in the present case, the Commission first notes that, generally speaking, Art. 6 (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 (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.

116. In the present case, the parental rights resolution of 16 August 1979 transferred all the parental rights over S to the local authority. As long as this resolution was in force, ie until 16 January 1981, it was therefore within the competence of the local authority to decide whether, or to what extent, the applicant and his wife were to have access to S. This did not mean, however, that they were legally deprived of access, but only that it was within the local authority's discretion to decide whether they would be granted access. The facts of the case show that in the beginning the applicant and his wife were not denied access to S, although their access was restricted, and that it was only after some time, in the spring of 1980, that a decision was taken to terminate their access altogether.

117. It appears, therefore, that although under English law the applicant and his wife did not have a right of access to S as long as the parental rights resolution was in force, they continued for some time to have contact with him, and this access could continue as long as the local authority, in the exercise of its discretionary powers, allowed them such access. The applicant and his wife 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 (1) of the Convention.

118. 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 Children 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.

119. 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.

120. 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 S at the discretion of the local authority could reasonably be characterised as a right under Art. 6 (1) of the Convention.

121. It remains to consider whether this right was a civil right in the sense in which this term is used in Art. 6 (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 (1) of the Convention (see, for instance, Eur Court HR, Rasmussen case,

judgment of 19.11.84, para. 32). It follows that Art. 6 (1) of the Convention is applicable to the parental access right claimed by the applicant.

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

123. The Government have pointed out that the applicant could have applied to the Juvenile Court to revoke the parental rights resolution. However, such proceedings would not have constituted a remedy in regard to the specific complaint of lack of access to S, but would have had a much wider scope. The Commission considers, therefore, that such an application to the Juvenile Court would not have given the applicant the opportunity to obtain a court decision regarding the particular civil right which is now the subject of his complaint to the Commission.

124. 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 S. 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 his access rights was exercised, does not satisfy the requirements of Art. 6 (1) of the Convention (cf, for instance, Eur Court HR, case of L C , V L and D M , judgment of 23.6.81, para. 51).

125. Consequently, the applicant could not, as long as the local authority exercised the parental powers over S, obtain a determination by a court of his civil right of access to S.

126. The legal situation changed after the Juvenile Court had revoked the parental rights resolution and the local authority had issued wardship proceedings on 16 January 1981. In these proceedings, the High Court had full jurisdiction to examine all questions relating to S's welfare, including questions of care and parental access. Consequently, there was not, at this stage, any lack of a judicial remedy in regard to access. The only question which arises in these proceedings is whether the High Court gave its judgment within a reasonable time as required by Art. 6 (1) of the Convention.

127. The wardship proceedings before the High Court lasted from 16 January to 22 June 1981, and the Commission recalls that the judge, in his judgment, regretted the delay in the proceedings which he described as being "extremely unfortunate" and as having been prejudicial to the applicant and his wife, since it had contributed to creating a situation which it would not be in S's interest to change.

128. The delay in the wardship proceedings was one of the elements which the Commission took into account when finding that the applicant's rights under Art. 8 of the Convention to respect for his family life had been violated (see para. 110 above). In these circumstances, the Commission does not find it necessary to examine, as a separate issue, whether the requirement in Art. 6 (1) of the Convention as to a reasonable time has been observed.

129. The Commission

(a) concludes, by eleven votes to two with one abstention, that there has been a violation of Art. 6 (1) of the Convention during the time when the parental rights resolution was in force in that the applicant was denied access to court for the determination of his civil right of access to S;

(b) finds, by thirteen votes to one, that no separate issue arises under Art. 6 (1) of the Convention in regard to the length of the wardship proceedings.

With respect to Art. 13 of the Convention

130. The applicant has invoked Art. 13 of the Convention and contended that he was denied an effective remedy before a national authority for his complaints of an interference with his right to respect for his family life protected by Art. 8 of the Convention. However, the Commission recalls its constant case-law that Art. 6 (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 eight votes to six, 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 thirteen votes to one, that there has been a violation of Art. 8 of the Convention in that the procedures which were applied in reaching the decisions to restrict and then terminate the applicant's access to S did not respect his family life (para. 111),

(ii) by eleven votes to two with one abstention, that there has been a violation of Art. 6 (1) of the Convention during the time when the parental rights resolution was in force in that the applicant was denied access to court for the determination of his civil right of access to S (para. 129 (a)).

9749/82

(b) The Commission finds,

(i) by thirteen votes to one, that no separate issue arises under Art. 6 (1) of the Convention in regard to the length of the wardship proceedings (para. 129 (b)),

(ii) by eight votes to six, that no separate issue arises under Art. 13 of the Convention (para. 132).

Secretary to the Commission — President of the Commission

(H. C. KRÜGER) — (C. A. NØRGAARD)

9749/82

Partly dissenting opinion of Mr. J. A. Carrillo

1. While I agree with the opinion of the majority, that there has been a violation of Art. 6 (1) of the Convention in that the applicant did not have access to court to determine his civil right to access to S, I cannot accept the majority's finding that no separate issue arises under Art. 13 of the Convention (para. 131).

2. The fact that Art. 6 (1) applies to one aspect of an application does not necessarily prevent, or excuse, the Commission from examining another aspect of the application by reference to Art. 13. Although it is settled case law that the procedural protection afforded by Art. 13 cannot supplement that provided by Art. 6 (1) in respect of a right to which the latter provision applies, the facts of a given complaint may raise issues both as to the availability of access to court in respect of a civil right, and as to the availability of a remedy before a national authority within the meaning of Art. 13 in respect of an alleged interference with one of the substantive rights under the Convention. This is clearly illustrated in the Commission's decision on the admissibility of Application No. 9261/81, X. against the United Kingdom (D.R. 28 p. 177 at 188). Whether or not an examination under both Art. 6 and Art. 13 is called for will depend upon the nature of the complaint brought by the applicant in a particular case.

3. In the present case the Commission has found a violation of Art. 8 in the absence of the applicant's "right to be heard and informed about important decisions concerning S" (para. 105). The Commission also refers, in the same paragraph, to the fact that the information given to the applicant about such decisions was insufficient and incomplete. Art. 8 was violated because the Commission found that it was not "necessary in the interests of S to exclude the applicant and his wife entirely from any involvement in the decision-making ... and even to give them inadequate information about measures which were considered or had been decided upon" (para. 109).

4. It was this aspect of the present case which gave the judge at first instance in the wardship proceedings the most cause for concern when he stated:

> "I am not happy about the use of Section 2 (1948 Act) powers to change the status of the child and to cut the parents out of his life, and I am unhappy about a decision arrived at by the local authority without the parents being heard or having the opportunity to make their own representations to the decision-making body ... " (para. 36).

It was in respect of these facts, which the applicant contended were themselves a violation of Art. 8, that he contended that he had no effective remedy before a national authority as required by Art. 13. In my opinion this complaint is separate from the complaint that the applicant did not have access to court, as required by Art. 6 (1) in respect of his claim of access to S.

5. In my opinion the applicant's complaint under Art. 13 is also a separate, although related, matter to his complaint under Art. 8. It was the absence of an effective remedy against the measures taken

by the local authority which resulted in a factual situation which it was no longer in S's best interests to alter (para. 106). The applicant complains under Art. 13 about the lack of any procedural safeguards whereby the necessity and proportionality for the local authorities' actions could be tested.

6. It remains to consider whether the remedies which were available to the applicant for this complaint were effective for the purposes of Art. 13. Two remedies fall to be considered: first an application to the Juvenile Court to revoke the parental rights resolution, and secondly an application to the High Court in wardship or for judicial review. In my opinion neither of these remedies are sufficient for the purposes of Art. 13. An application to the Juvenile Court would have permitted the applicant to attempt to terminate the local authority's powers in respect of S; it would not have provided an opportunity to challenge the necessity and proportionality of the exercise of those powers by the local authority. While the parental rights resolution subsisted the scope of review provided by wardship and judicial review was equally too narrow. The criteria established in Associated Provincial Picture Houses v. Wednesbury Corporation (1948) 1 KB 223 would not have allowed "the applicant ... to challenge the necessity of the alleged interference with (his) right to respect for (his family life protected by Art. 8 of the Convention)" (Commission's decision on the admissibility of Application No. 9261/81 (supra) p. 189).

7. I therefore conclude that there was a violation of Art. 13 of the Convention.

9749/82

Partly dissenting opinion of Mr. H. G. Schermers joined by Mr. G. Jörundsson

I agree with the majority of the Commission that in the present case the applicant's right to respect for his family life was breached, not necessarily by the fact that his access to S was restricted and eventually terminated - on the need for those measures the Commission cannot overrule the British authorities -, but because of the procedures which were applied in reaching the decisions.

However, I cannot share the opinion of the majority on the scope of Arts. 6 and 13 of the Convention.

In recent case-law the Court has given a rather wide interpretation to the notion of "the determination of civil rights and obligations" in Art. 6. This provision thus guarantees judicial control over many acts of the Government of the States parties to the Convention. In a time of expanding Government involvement in the lives of individuals, this may be a fortunate development. There must be limits, however, not only with respect to the kinds of rights that can be considered as civil rights, but also with respect to parts of rights which can be separately challenged.

All human rights enumerated in the Convention are personal rights and in that sense they are civil rights as well. Does this mean that an applicant can always claim a remedy under Art. 6 of the Convention in respect of them, and that Art. 13 of the Convention becomes a dead letter? This cannot be the purpose of the Convention and neither would it be desirable. Art. 13 has a wider scope than Art. 6 as it is not limited to court remedies. Courts are often good supervisors of Governmental acts, because of their independence and their objective, legal approach to problems, but they do not always offer the best remedies. Courts are slow and they are not specially trained in all subjects. In cases like the present one the remedy before an independent child psychiatrist, or a family doctor, may be at least as effective.

The principle infringement of the applicant's right to respect for his family life occurred when the local authority assumed parental rights over S. The legality of that infringement could be challenged before a court, thus the requirements of Art. 6 of the Convention were met.

Once they had assumed parental rights, the local authority could restrict the applicant's access to S. Each restriction and the final termination was a further infringement of the applicant's right to respect for his family life. It seems appropriate that a remedy must be available against each of these further infringements, especially when the circumstances of this case are taken into account. There is no reason, however, why this should, each time, be a court remedy. That is not required by the Convention, and it would be extremely impractical.

In the present case, where the lawfulness of the limitation of the applicant's right to family life could be challenged on an earlier occasion, the only further remedies required in respect of the

subsequent, further, infringements were those of Art. 13 of the Convention. The available remedies were not however sufficient for the purposes of this provision.

For these reasons I found in the present case a violation of Art. 13, but no breach of Art. 6.

Appendix I

HISTORY OF THE PROCEEDINGS

Item	Date	Participants
Examination of the admissibility		
Introduction of the application	18 January 1982	
Registration of the application	26 March 1982	
Preliminary examination by the Rapporteur (Rule 40 of the Rules of Procedure)	May and July 1982	
Commission's deliberations and decision to communicate to 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	6 October 1982	MM. Nørgaard, President Frowein Fawcett Triantafyllides Opsahl Jörundsson Tenekides Trechsel Kiernan Melchior Sampaio Gözübüyük Weitzel Schermers
Observations of the respondent Government	16 February 1983	
Decision to grant the applicant legal aid	21 February 1983	
Observations of the applicant in reply	27 April 1983	

Item	Date	Participants
Commission's deliberations and decision to invite the parties to make oral submissions on admissibility and merits pursuant to Rule 42 (3) (b) of the Rules of Procedure	14 July 1983	MM. Nørgaard, President Sperduti Frowein Busuttil Jörundsson Tenekides Trechsel Kiernan Melchior Sampaio Gözübüyük Weitzel Soyer Schermers Danelius
Hearing of the parties pursuant to Rule 42 (3) (b) of the Rules of Procedure, followed by deliberations and decision on admissibility	17 November 1983	MM. Nørgaard, President Sperduti Frowein Ermacora Fawcett Busuttil Jörundsson Trechsel Kiernan Melchior Carrillo Sampaio Gözübüyük Weitzel Soyer Schermers Danelius
Examination of the merits		
The Commission's first deliberations on the merits: parties invited to submit such further observations on the merits as they wished, pursuant to Rule 45 (2) of the Rules of Procedure, and informed that the Commission was at their disposal with a view to securing a friendly settlement pursuant to Art. 28 (b) of the Convention	17 November 1983	MM. Nørgaard, President Sperduti Frowein Ermacora Fawcett Busuttil Jörundsson Trechsel Kiernan Melchior Carrillo Sampaio Gözübüyük Weitzel Soyer Schermers Danelius

9749/82

Item	Date	Participants
Applicant's observations on the merits	2 March 1984	
Commission's further deliberations on the merits of the application	12 July 1984	MM. Nørgaard, President Sperduti Jörundsson Tenekides Trechsel Kiernan Gözübüyük Soyer Schermers Danelius
Commission's further deliberations on the merits	11 October 1984	MM. Nørgaard, President Sperduti Frowein Busuttil Jörundsson Trechsel Kiernan Melchior Gözübüyük Weitzel Soyer Schermers Danelius
Commission's further deliberations on the merits	9 March 1985	MM. Nørgaard, President Sperduti Frowein Ermacora Busuttil Jörundsson Tenekides Trecshel Kiernan Carrillo Gözübüyük Soyer Schermers Danelius
Commission's further deliberations on the merits	17 May 1985	MM. Nørgaard, President Sperduti Frowein Jörundsson Kiernan Carrillo Gözübüyük Weitzel Soyer Schermers Danelius

9749/82

Item	Date	Participants
Observations of the respondent Government on the merits	4 June 1985	
Commission's further deliberations on the merits	2 July 1985	MM. Nørgaard, President Sperduti Frowein Sir James Fawcett MM. Busuttil Jörundsson Trecshel Kiernan Carrillo Gözübüyük Soyer Schermers Danelius
Commission's further deliberations on the merits	8 July 1985	MM. Nørgaard, President Sperduti Frowein Ermacora Jörundsson Trecshel Kiernan Carrillo Gözübüyük Schermers Danelius
Commission's further deliberations on the merits	8 October 1985	MM. Nørgaard, President Sperduti Frowein Jörundsson Trecshel Kiernan Gözübüyük Weitzel Soyer Schermers Danelius
Commission's further deliberations on the merits, vote and adoption of the present report	15 October 1985	MM. Nørgaard, President Sperduti Frowein Ermacora Busuttil Jörundsson Trecshel Kiernan Carrillo Gözübüyük Weitzel Soyer Schermers Danelius