AS TO THE ADMISSIBILITY OF

Application No. 12574/86
by Birgitt and Lars Erik NYBERG
against Sweden

The European Commission of Human Rights sitting in private on 4 October 1988, the following members being present:

MM. C. A. NØRGAARD, President
J. A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A. WEITZEL
H. G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Sir Basil HALL
Mr. C. L. ROZAKIS
Mrs. J. LIDDY

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 9 June 1986 by Birgitt and Lars Erik NYBERG against Sweden and registered on 2 December 1986 under file No. 12574/86;

Having regard to:

- the first report provided for in Rule 40 of the Rules of Procedure of the Commission;

- the Government's written observations dated 4 September 1987;

- the applicants' written observations in reply dated 17 November 1987;

- the second report provided for in Rule 40 of the Rules of Procedure of the Commission;

- the submissions of the parties at the hearing on 4 October 1988;

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case, as they appear from the parties' submissions, may be summarised as follows:

The applicants are Mr. and Mrs. Nyberg, born in 1944 and 1954 respectively. Mr. Nyberg is a Swedish citizen and Mrs. Nyberg is a German citizen. They reside at Neukirchen-Vluyn in the Federal Republic of Germany. Before the Commission the applicants are represented by Mr. Lennart Hane, a lawyer practising in Stockholm.

The applicants have two sons: Björn born in 1981 and Ralf born in 1984.

On 3 December 1981 the Social District Council No. 6 (sociala distriktsnämnden nr. 6) in Stockholm decided to take Björn into care pursuant to Sections 25 (a) and 29 of the 1960 Act on Child Welfare (barnavårdslagen). On 23 February 1982 the County Administrative Court (länsrätten) of Stockholm decided to take Björn into care under Section 1 para. 2 sub-para. 1 of the 1980 Act with Special Provisions on the Care of Young Persons (lagen med särskilda bestämmelser om vård av unga). The reasons for the care order were that the mental state of the parents involved a danger to Björn's development. Björn was placed in a foster home at Skirebo outside Jönköping on 8 October 1982.

On 25 October 1982 the applicants submitted a request to the Social Council that the care of their son be terminated. The request was rejected by the Council on 16 June 1983. The applicants' appeals to the County Administrative Court, the Administrative Court of Appeal (kammarrätten) and the Supreme Administrative Court (regeringsrätten) were unsuccessful. The Supreme Administrative Court refused leave to appeal on 12 January 1984.

On 5 July 1984 the applicants introduced an application (No. 11180/84) before the Commission alleging inter alia that the refusal to return their son to them was a breach of Article 8 of the Convention. After having obtained the Government's and the applicants' written observations on the admissibility and merits of the application, the Commission declared the application inadmissible on 5 March 1986. The Commission stated in its decision that the refusal to terminate the care order, although constituting an interference with the applicants' rights under Article 8 para. 1 of the Convention, was justified under the terms of paragraph 2 of Article 8 as being necessary in a democratic society for the protection of the health and rights of others.

On 11 September 1984 the applicants requested the Social District Council No. 6 in Stockholm to make arrangements in order to establish contacts on a regular basis between the applicants and their son Björn. They suggested that meetings should be arranged at least twice a month with a view to reuniting Björn with his parents.

On the same day the County Administrative Board (länsstyrelsen) of the County of Stockholm asked for the Social Council's opinion on account of the applicants' request for an extended right to contact with their son. On 29 November 1984 the Social Council in its opinion to the County Administrative Board stated that the applicants should be given the opportunity to meet their son every five weeks. The Social Council did not make a decision under Section 16 of the 1980 Act with Special Provisions on the Care of Young Persons, which regulates the right of parents to have contact with a child taken into public care.

The applicants complained to the County Administrative Board which on 7 March 1985 instructed the Social Council to investigate and decide the matter urgently. The County Administrative Board emphasised that it was important that the Social Council, in case its opinion differed from that of the parents as to the frequency of their contact with the child, make a decision under Section 16 of the 1980 Act. As the parents can appeal against such a decision it gives them the opportunity of having the question decided by a court.

From the investigation made by the social authorities, which was completed on 24 September 1985, it appears that in November 1983 the parents complained that they were not allowed to see Björn often enough. It also appears that attempts at that time were made to reach the applicants by telephone but with no result since their telephone

had been disconnected. In December 1983 the applicants did not turn up at a meeting with Björn since Mrs. Nyberg who was pregnant had gone to Germany to give birth to the child. In July 1984 Björn's foster parents received a post card from the applicants saying that they had returned to Sweden and wanted to meet Björn as soon as possible. During their stay in Germany they had written a few letters to Björn and had talked to him over the telephone on a few occasions. The applicants met with Björn in September 1984. It was then decided that they should see him every five weeks.

On 3 October 1985 the Social Council decided that Björn could meet his parents one day every three weeks at a place chosen by Björn's parents but not at the foster home, and that a special contact person (kontaktman) should be present at the meetings.

On 19 December 1985 the Social Council reviewed that decision. A new investigation had been carried out in which it was concluded that Björn's frequent visits to his parents in Stockholm affected him negatively. Since the Social Council's decision Björn had visited the applicants on three occasions together with a contact person. The Council now decided that the meetings should take place every three weeks, alternately at the parents' home and the foster parents' home.

In January 1986 the applicants brought an appeal against that decision but withdrew it in view of the Council's decision to terminate the public care of Björn.

In the meantime, on 19 October 1984, the applicants submitted a further request to the Social Council that the care of the son be terminated. On 23 January 1985 the Council requested a child psychiatric opinion which was received on 23 June 1985. The Council also found it necessary to supplement the investigation with a psychiatric opinion on the applicants and requested such an opinion in April 1985. The opinion dated 7 June 1985 was received by the Council in June 1985. It was issued by an assistant chief doctor at the Enskede Skarpnäck Psychiatric Institute.

The child psychiatric opinion, which was issued among others by a specialist in child psychiatry at the Children's and Juveniles' Psychiatric Clinic of Jönköping, was criticised by the applicants and withdrawn by the doctors who issued it. A new opinion based on a new investigation was issued by a chief doctor and a qualified psychologist at the Clinic on 9 September 1985. The applicants did not participate in the latter investigation which thus concentrated on Björn's development. Since the two opinions contained completely different conclusions, the Social Council decided to ask the National Board of Health and Welfare (socialstyrelsen) for a new assessment of the child. On 15 November 1985, the National Board replied that it could not make such assessments. The Social Council then decided to ask the National Board for an assessment of the child psychiatric opinion of 9 September 1985 in order to obtain an opinion as to whether further psychiatric examinations were necessary. On 27 January 1986 the National Board replied that the investigation which was at the basis of the opinion was sufficient for an assessment as to what was in the best interest of the child.

The social investigation made subsequent to the request that the public care of Björn should be terminated was completed on 23 January 1986. The conclusion of the investigation was that there were no longer sufficient reasons to uphold the public care order concerning Björn. It was found, however, that there was a considerable risk that Björn's health and development could be seriously damaged if Björn was separated from his foster parents.

On 6 February 1986 the Social Council decided to terminate the care of Björn and to issue a prohibition for the applicants to separate Björn from the foster home where he was living. The latter

decision was taken pursuant to Section 28 of the Social Services Act (socialtjänstlagen).

This section provides, in its first paragraph:

(Swedish)

"Socialnämnden får för viss tid eller tills vidare förbjuda den som har vårdnaden om en underårig att ta denne från ett hem som avses i 25 §, om det finns risk som inte är ringa för att barnets kroppsliga eller själsliga hälsa skadas om det skiljs från hemmet."

(English translation)

"The Social District Council may for a certain period of time, or until further notice, prohibit the custodian of a minor from taking the minor away from a (foster home), if there is a risk, which is not of a minor nature, of harming the child's physical or mental health if the child is separated from that home."

The said prohibition was valid until further notice. The Council expressed the opinion that it was important to create good opportunities for Björn to build up and develop a relationship of confidence with the applicants.

The applicants appealed to the County Administrative Court against the decision regarding the prohibition on removal (flyttningsförbud). Following a hearing before the Court on 28 May 1986, the Court, in a judgment of 6 June 1986, confirmed the prohibition on removal, but ordered that it should only apply until 15 December 1986. In the judgment the following reasons are stated:

"On the basis of the investigation in the case, the Court finds, inter alia, the following facts established. Björn was placed on 8 October 1982 in the foster home of the spouses Maud and Göran Henriksson in Skirebo outside Jönköping. In the home there is, apart from the spouses, a foster brother who is four years older than Björn. There is no indication in the case that Björn has received other than the best possible care in the foster home. As regards the spouses Nyberg a durable stabilisation appears to have occurred as regards their mental health. Birgitt Nyberg works as a home assistant and Lars Erik Nyberg receives sickness benefits. He has regular contact with a psychiatric care centre for medication. Björn's younger brother Ralf, born on 14 January 1984, lives with the spouses Nyberg. Lars Erik Nyberg takes care of Ralf during the day while Birgitt Nyberg works. The spouses' ability to function as parents has been shown by Ralf's favourable development. It is undisputed in the case that the spouses would be able to take care of and foster Björn. Birgitt Nyberg had the responsibility for the care of Björn during his first eight months. Thereafter the separation from the mother took place as a result of her sudden sickness. After the separation the spouses, in particular Birgitt Nyberg, endeavoured to maintain contact with Björn. A couple of lengthy interruptions have occurred in the contact when the spouses Nyberg stayed in the Federal Republic of Germany. In 1986 some contact occurred between Björn and his parents. Björn has slept overnight once in his parents' home. No contact could take place in May.

The Social Council has invoked a statement from the Children's and Juveniles' Clinic of the Central Hospital of Jönköping dated 9 September 1985 concerning Björn. In the statement the investigators, the chief doctor, Ingrid

Laurell, and the qualified psychologist, John-Erik Ottosson, consider that Björn is in all respects a normally developed boy. He has no child neurotic disturbances. Emotionally he is secure and settled in his foster family where he has spent almost three-quarters of his life. As a result of Björn's young age it is, of course, evident that his security and identity are attached to the foster parents. According to the investigators' opinion, there ought to be very strong reasons for moving him from the foster home, having regard to the long time he has lived there and the connection he has.

In the investigators' opinion there is a risk which is not of a minor nature that Björn's mental development will be jeopardised by his removal from the foster home, if it is not ascertained in advance that Björn's relationship with the natural parents is of such a nature that Björn can identify them as alternative psychological parents along with the foster parents.

In a statement of 27 January 1986 the National Board of Health and Welfare expressed its opinion on the position taken by the Children's and Juveniles' Psychiatric Clinic of Jönköping that Björn should not be removed from his foster parents. In the opinion of the National Board this position is well-founded on the basis of knowledge of children's development and needs as applied to Björn's special situation. The National Board has considered that Björn, if he is moved from the foster home, will be subjected to a risk of damage to his mental health and development which is not to be considered as being only of a minor nature. It is desirable that he should be allowed to stay in the foster home. The National Board of Health and Welfare considers that Section 28 of the Social Services Act is applicable.

The spouses Nyberg have invoked a certificate by the certified psychologist Lars Billing.

In a statement the County Administrative Board of the County of Stockholm took the view in brief that it is at present not possible to move Björn to his natural parents and that, therefore, a prohibition pursuant to Section 28 of the Social Services Act ought to be maintained but that preparatory measures ought to be taken in order to reunite Björn with his parents.

At the request of the spouses Nyberg, evidence has been given by a psychiatrist in private practice, Olle Björkström, the certified medical doctor Gunnel Hörnqvist, and the certified nurse Nancy de Sousa.

Björkström has in essence said the following: As the situation now is with the defective contacts Björn has had with Birgitt Nyberg, it is a fact that the foster parents are Björn's primary and psychological parents. Björn's solidarity is with them. It would be very strenuous for Björn if he were to move home to his biological parents. His primary parent-child relationship would then be broken, which would imply a great trauma for him.

Hörnqvist has considered that the spouses Nyberg would manage to take care of Björn and to tackle the problems which would arise if he moved home. Hörnqvist considers that Björn has a living contact and a deep relationship with, in particular, Birgitt Nyberg. It would therefore not be a serious risk if Björn came home.

Nancy de Sousa met Björn in September 1984 and March 1986 during his visits to the spouses Nyberg. She indicated what she saw during these visits and stated that they were favourable and without any problems.

The Deputy Chief Doctor Frank Ståhl at the Sankt Göran's hospital, who is a specialist in children's and juvenile psychiatry, has been heard as an expert. Ståhl stated mainly the following: As a result of the separations during Björn's first years, he is more sensitive than others to a break-up from the environment in which he now finds himself, and it involves as such a considerable risk of damage to his psychological health, which is not of a minor nature. The foster parents are the most important persons for Björn in his life. Birgitt Nyberg does not sufficiently understand Björn's need of his foster parents. Björn is now settled in the foster home and to move him would involve strain. Björn must now get a clear message as to where he belongs. It is important that he may have a relationship with his natural parents. What is at present particularly damaging for Björn is the conflict between the foster parents and the natural parents.

Under Section 28 of the Social Service Act the Social Council may, when the child's best interests so require, for a certain period, or until further notice, prohibit the person who has the care of the minor from taking the child away from a foster home if there is a risk which is not considered to be of a minor nature that the child's physical or mental health would be jeopardised if he is separated from the home. Only a temporary disturbance or any other temporary inconvenience is not a sufficient reason for issuing a prohibition. When placing a child in a foster home the normal objective should be the reunification of the natural parents and the child. A prohibition under Section 28 of the Social Services Act ought to be seen as a temporary measure, valid until such time as a child, without risk for any damage which is indicated in the said prohibition, can be separated from the foster home. The facts which should be considered in cases concerning prohibitions on removal are inter alia the child's age, his or her degree of development, abilities and emotional relationships, the time the child has been cared for in other places than with the parents, the present living conditions of the child, and those which he or she would have after a removal, as well as the contact between the parents and the child during the time they have been separated.

The County Administrative Court makes the following assessment.

Björn will be 5 years old in September. During his first eight months he stayed with Birgitt Nyberg. As from the age of one year he has lived in the foster home. The spouses Nyberg's suitability to take care of Björn is not questioned. Since the circumstances which led to Björn being placed in the foster home have ceased to exist, the aim must be that Björn should be reunited with his parents.

The experts who have submitted their opinions in the case have by and large jointly expressed themselves against Björn's removal to the natural parents. They have based themselves on the emotional bond which has arisen between Björn and the foster parents and the long time he has lived in the foster home. The facts of the case show that the spouses Nyberg have maintained contact with Björn but that

the contact has been made more difficult during recent times. There is now a situation filled with conflicts between the spouses Nyberg and the foster parents which is to Björn's detriment. The Court finds it established in the case that there is a risk, which is not of a minor nature, that Björn's mental health would be jeopardised if he were now separated from the foster home. The prohibition on removal should therefore at present be maintained.

Irrespective of whether a prohibition on removal is limited in time or not, it is the obligation of the Social Council to see to it that appropriate preparations are made promptly with a view to the reunification in order that the child should not become more attached to the family which it should leave. From the facts of the case it appears that Björn is a normally developed boy without any disturbances. If he does not in the near future live with his natural parents and his brother, the prohibition on removal can, in the long run, turn out to be in conflict with Björn's best interests. The County Administrative Court considers that if Björn as soon as possible receives a clear message that after a certain time he should move home to his parents and his brother and that preparations are made with frequent contacts with his parents, Björn would not run any risk of more than temporary disturbances when moving. The conflicts between the foster parents and the spouses Nyberg must not be an absolute impediment to active measures of preparations for Björn's removal. Making an overall assessment, the County Administrative Court finds that there are reasons to limit the prohibition on removal in time for no longer than half a year. The Court takes it for granted that the Social Council will actively further the reunification of Björn and the natural parents and that the Council will intensify its work in this respect. Great responsibility is incumbent upon the foster parents. They must participate positively and actively and help and support Björn. The spouses Nyberg and the foster parents must try to reach agreement and see to the best interests of Björn."

Both the applicants and the Social Council appealed to the Administrative Court of Appeal of Stockholm. The Court held a hearing in the case on 17 September 1986 and delivered judgment on 7 October 1986. The Court ordered that the prohibition on removal should apply no longer than to 1 March 1987. In the reasons for its judgment the Court stated inter alia the following:

"The Administrative Court of Appeal finds, as did the County Administrative Court, that there is a risk which is not of a minor nature that Björn's health and development would be jeopardised if he immediately were to move from the foster home. The County Administrative Court has therefore had reasons to issue a prohibition on removal.

From the investigation in the case it appears that the contacts between the parents and the child have been good most of the time when Björn lived in the foster home. It furthermore appears from the investigation, inter alia from the testimony of Dr. Hörnqvist, that it has been possible to maintain a rather deep emotional contact between Björn and, in the first place, his mother, during the time he has stayed in the foster home. In view of this, and having regard to the other facts of the case, there is reason to believe that it is possible to arrange for a relatively quick reunification without there being any risk for Björn's health.

When deciding on the date until which the prohibition on removal should be valid, it must be kept in mind that Björn, on some occasions, has shown that he does not wish to visit the parents and that two visits in May 1986 could not take place as a result of his refusal to follow them to Stockholm. It should further be observed that Björn has not met his parents since the end of May 1986. On the other hand, great importance must be attached to the fact that Björn, according to the medical certificates which have been invoked in the case, is in all respects a normally developed child both physically and mentally.

The measures taken by the Social Council so far, in order to create the basis for a reunification between Björn and his natural parents, have been insufficient. Thus it must be considered that the occasions on which there have been contacts between them have been too few and too short and that, also in other respects, they have been designed in a way which has not been favourable to strengthening the links between Björn and his parents. Nor has sufficient regard been had to the conflicts which have arisen between, in particular, Birgitt Nyberg and the foster parents. The Administrative Court of Appeal takes it for granted that the Social Council, in pursuing the objective of reuniting Björn with his natural parents will, through different measures, intensify its work in this respect. Furthermore, the Court also takes it for granted that the spouses Nyberg will completely and fully co-operate in order to make the removal as smooth as possible for Björn and that the foster parents will also co-operate for this purpose.

In view of what has been said above, the Court finds that some further time is necessary for the preparatory measures before the prohibition on removal can be terminated."

The applicants and the Social Council appealed to the Supreme Administrative Court, which in a decision of 7 November 1986 refused to grant leave to appeal.

Following complaints from the applicants the Parliamentary Ombudsman (justitieombudsmannen) stated in a decision of 19 June 1986 that the Social Council's examination of the applicants' request for an extended right of contact with Björn had been unduly long (more than one year), thereby depriving the applicants of the right to have this request examined by a court, and that the fact that the applicants' request for a termination of the care order had only been dealt with after almost one and a half years was unacceptable.

On 18 December 1986 the Social Council decided to institute civil proceedings before the Stockholm District Court (tingsrätt) requesting that the legal custody of Björn be transferred from the applicants to the foster parents in accordance with Chapter 6 Section 8 of the Parental Code (föräldrabalken). The Social Council invoked an investigation, made by a welfare officer, of 5 December 1986 and the written consent of the foster parents. In the Social Council's application for a summons, dated 25 November 1986, it is stated that there was a risk that Björn's mental health would be harmed if he was separated from his foster parents and that it would obviously be in his best interests to stay with them.

In the investigation it is inter alia stated that Björn, during the period January 1986 to May 1986, by strong emotional reactions in connection with the meetings with his parents, showed that he did not want to see them. The following conclusion was reached:

"Even though Birgitt Nyberg has been Björn's primary

parental figure for the first eight months of his life, through his long separation from her, Björn has lost an essential part of his emotional attachment to her. For natural reasons Björn is identifying himself with his foster parents and feels that he belongs in his foster family. A separation from the foster parents would inevitably involve a crisis for Björn."

On 26 January 1987 the applicants applied to the County Administrative Court for the enforcement of the return to them of their son Björn in accordance with the provisions of Chapter 21 of the Parental Code.

On 30 January 1987 the County Administrative Court of Jönköping ordered that the Head of Section at the social authorities of Jönköping, Mrs. Ingrid Westerlund-Henja, should try to achieve a voluntary transfer of the child from his foster parents to the applicants.

On 9 February 1987 the Social Council requested the District Court to transfer, by a provisional decision, the legal custody of Björn to the foster parents. The reasons given for the request was the applicants' application of 26 January 1987 for the enforcement of the return to them of Björn and the fact that according to the Social Council they had not, in the way the Administrative Court of Appeal of Stockholm had provided in its judgment of 7 October 1986, completely co-operated in order to make the removal as smooth as possible for Björn.

On 23 February 1987 the Social Council requested an opinion from the Children's and Juveniles' Psychiatric Clinic of Jönköping as to whether Björn would be able to endure the meetings with his parents without becoming mentally injured. In the opinion, which was issued on 25 February 1987 by the doctors who had issued the opinion of 9 September 1985, the following was stated:

"Since measures to create contact have not been brought about until 3 February 1987, in spite of the judgment of the Administrative Court of Appeal of 7 October 1986, it has been necessary under considerable lack of time and in a doubtful manner to try to create contact between Björn and his natural parents in such a way that, in our opinion, it has not facilitated Björn's attachment to his natural parents. To continue trying to create contact in the same manner is considered by the under-signed to be directly harmful to Björn's mental health and development.
...
It is our unambiguous opinion that until a functioning contact and a positive attachment can be brought about between Björn and his natural parents and all those involved have done what is possible to help Björn with the separation from the foster parents, who naturally are his psychological parents, a transfer of Björn to his natural parents will bring about an apparent risk that Björn's mental health and development will be seriously harmed."

In view of this certificate the Chairman of the Social Council decided on 26 February 1987 to issue a new prohibition on removal, this time valid until further notice.

On 5 March 1987 the Social Council provisionally upheld the Chairman's decision.

On 10 March 1987 the County Administrative Court held a hearing in the case concerning enforcement under Chapter 21 of the Parental Code and on 16 March 1987 it delivered judgment. The applicants' request for enforcement was granted. The Court ordered

that the child be temporarily placed for a maximum of five days at the Children's and Juveniles' Psychiatric Clinic of Jönköping and that thereafter the child should be transferred to the applicants. The foster parents were ordered to leave the child with the Clinic not later than 24 March at 10.00 hours. In the judgment the following reasons are indicated:

"In the situation which is at hand in the present case, the Court may under Chapter 21 Section 7 second paragraph of the Parental Code refuse enforcement if, in view of the child's best interest, it is necessary that the question of the legal custody of the child be examined by an ordinary court.

It appears from the investigation that (the applicants), with some exceptions, have had continuous and good contact with Björn and that they have all the time had the intention of taking care of him themselves. In view of this and of the

other facts, there is no obstacle to the enforcement on the ground that it would be necessary to re-examine the question of the legal custody of Björn. The fact that proceedings concerning this question are now pending does not affect this conclusion.

It can be established that the preparatory measures which according to the judgment of the Administrative Court of Appeal were necessary in order to terminate the prohibition on removal have not been implemented to the extent or in the manner envisaged. The Social Council's measure to request before the District Court a transfer of the custody of Björn within a rather short time after the judgment of the Administrative Court of Appeal appears remarkable and has not been designed to facilitate the preparatory measures. The manner in which contacts took place between Björn and his natural parents during the month of February did not facilitate his relations to them either.

At least during the last year there has been a conflict between the natural parents and the foster parents. The conflict has become worse recently. In the opinion of the Court the result is that it will presumably be very difficult to achieve Björn's gradual adaptation to his natural parents as intended in the judgments concerning the prohibition on removal.

The issue in the case is therefore whether nevertheless the conditions for enforcement are fulfilled. According to Chapter 21 Section 6 second paragraph of the Parental Code, the County Administrative Court may refuse enforcement if there is a risk, which is not of a minor character, that the child's bodily or mental health may be harmed. In that context not only should the risks of the actual transfer and the resulting problems of adaptation be taken into account, but also what in the long run must be considered to be in the best interest of the child. In view of the statements of Mrs. Ingrid Laurell and Mr. John Erik Ottosson and the other facts, it appears clear that there is a risk that Björn's mental health might be harmed by a transfer. In the case before the County Administrative Court of Stockholm concerning prohibition on removal the expert on children's and juveniles' psychiatry, Mr. Frank Ståhl, stated inter alia that Björn must receive a clear message as to where he belongs and that what is most harmful to him is the conflict between the foster parents and the natural parents. The Court concurs with this opinion. There is thus also a risk that Björn's mental health may be harmed if the conflict and the uncertainty as to where he belongs continue.

Björn, who is not yet six years old, is a normally developed boy. It is established that there were previously good contacts between him and his natural parents. The certified doctor Mrs. Gunnel Hörnqvist stated in the case concerning the prohibition on removal that Björn had close contact and deep relations, in particular with Mrs. Nyberg. Even if the

contact between them has not been so good in the special circumstances which have prevailed recently, there is good reason to believe that the previous good relations will be restored. The numerous proceedings which have been instituted and which are still going on concerning Björn have resulted in great strain for all the parties involved, and have evidently worsened the conflict between the natural parents and the foster parents. This, of course, affects Björn. It must, from his point of view, be important to terminate the 'fight' over him. As long as he stays in the foster home it is likely that the 'fight' will continue.

The natural parents have, of course, a justified claim to have their child back. As has been said above, it appears impossible to achieve Björn's gradual adaptation to them. Making an overall assessment of the risk to him which a transfer would involve compared to the risks which continued uncertainty and continued conflicts would involve, the Court finds that the most weighty arguments are in favour of enforcement now."

On 19 March 1987 the Social District Council decided, thereby confirming their provisional decision of 5 March 1987, to prohibit the applicants from moving Björn from the foster home since there was a risk which was not of a minor character that Björn's mental health and development would be harmed if he was separated from the foster home. The decision was based on an investigation made by Social District Council No. 6 in Stockholm and completed on 9 March 1987. The investigation contains a report on the different occasions in February 1987 when Björn met his parents. In the investigation it is stated inter alia that when the meetings started Björn had not seen his parents since June 1987, that the conditions at the meetings had been strained particularly for Björn, that Birgitt Nyberg had stated that she found it hard to establish a good contact with Björn when the welfare officers were present and that the scheduled meetings were interrupted on 25 February 1987 after a recommendation from the Children's and Juveniles' Psychiatric Clinic in Jönköping.

Both the applicants and the foster parents appealed to the Administrative Court of Appeal against the judgment of the County Administrative Court of 16 March 1987. Before the Administrative Court of Appeal preparatory sessions were held in order to try to solve the dispute on a voluntary basis. In the course of these sessions the parties agreed to co-operate for the purpose of transferring Björn to the applicants. The foster parents promised to endeavour to have the case on legal custody before the District Court withdrawn. Mrs. Nyberg promised to endeavour to have a police report in Germany against the foster father withdrawn. Following these sessions the Administrative Court of Appeal of Jönköping decided on 1 April 1987 to adjourn its examination of the case.

On 2 April 1987 the Social Council decided to maintain its action before the District Court of Stockholm concerning the transfer of the legal custody of Björn from the applicants to the foster parents and to maintain the prohibition on removal under Section 28 of the Social Services Act. The decision was not unanimous and the chairman expressed a separate opinion.

On 3 April 1987 the foster parents wrote a letter to the

District Court repeating the agreement reached with the natural parents before the Administrative Court of Appeal and expressed their surprise over the Social Council's decision.

On 15 April 1987 the Social Council decided to withdraw its action before the District Court concerning the transfer of the legal custody and to revoke the prohibition on removal. The application before the District Court was withdrawn by the Social Council on 21 April 1987 and removed from the Court's case list on 13 July 1987.

The applicants claimed that the District Court should oblige the Council to pay their legal costs. The reason given for this was that the Council intentionally or by neglect had caused unnecessary proceedings. The Court rejected the applicants' claim. The applicants appealed to the Court of Appeal, which found that there were special reasons to oblige the Council to pay their legal costs since the Council withdrew its action after a considerable delay.

The social authority covered the foster parents' costs for legal aid in the custody proceedings out of its expense account. This was decided on 26 March and 26 May 1987 by two social welfare officers.

On 21 April 1987 the foster parents and Björn arrived at the applicants' home at Neukirchen. On 23 April the foster parents left Björn with the applicants and the family is since then re-united.

On 14 May 1987 the Administrative Court of Appeal removed the case concerning the enforcement of the return of Björn to his parents from its list of cases.

Previously, on 29 May 1986, the applicants had been allowed to meet their son Björn for the day in order to have some contact with him. In view of the fact that the child's grandmother had not had the opportunity of meeting the child for a long time, the parents decided, thereby violating the conditions for the right of contact with the child, to travel to the Federal Republic of Germany on a visit and took the child with them.

When the foster mother came to pick up Björn at his parents' home in the evening nobody was there. She informed the social authorities.

On 29 May 1986 the Deputy Chairman of the Social Council decided to take Björn into public care and to ask for assistance from the police authority in order to have the decision enforced. The applicants were reported to the police for having taken Björn away without permission, but no action was taken against them.

The social authorities contacted the Ministry for Foreign Affairs in order to find out if there was any possibility to have Björn returned to Sweden and were informed that there were no treaties or conventions between Sweden and Germany regarding a situation like the one in question.

On 30 May 1986 the foster parents talked to Björn's father over the telephone. They were informed that Björn's parents intended to spend some time in Germany.

On 31 May 1986 the foster father went to Germany with a friend. Before he left he had contact with one of the social welfare officers dealing with the case of Björn. She ordered air tickets, in the social authority's name, for the foster father and his brother. She also ordered return tickets, including one for Björn. She booked tickets on a flight to Amsterdam. The bill was sent to the social

authority but forwarded to the foster parents. The reason why the social welfare officer helped to book the tickets was that it was Saturday and the foster father could not raise the money needed for the trip. She also understood that the foster parents were concerned about Björn. It is disputed between the parties whether the authorities were aware of the foster father's intention to take Björn away from the applicants.

The foster father arrived at Neukirchen-Vluyn, where Björn was staying with the applicants, on 31 May 1986. On the following day, late in the afternoon, the applicants took a walk with their two sons. A car approached them from behind. Out of the car came the foster father, apprehended Björn and took him into the car, which then disappeared quickly. Thereafter the foster father went to Sweden with Björn via Amsterdam.

This incident was reported to the police. On 1 August 1986 the Regional Prosecutor (regionåklagaren) of Jönköping decided not to institute criminal proceedings since it was considered that the foster father's action was founded on his care for Björn and that criminal proceedings were not required in the general interest. In view of this decision no investigation was initiated by the prosecutor regarding the officials at the Social District Council. Upon appeal the Prosecutor-General (riksåklagaren) saw no reason to amend the decision of the Regional Prosecutor and on 27 October 1986 he decided not to take any action.

When Björn had returned to Sweden the foster parents paid the money back that the social authorities had advanced for the air ticket.

A social welfare officer on 10 June 1986 decided to grant the foster parents an allowance of 5,825 SEK. The only note made about the allowance was that it was a special measure of support. When asked about the allowance by the Parliamentary Ombudsman, in the course of her investigation, the social welfare officer said that it was a special measure of support in view of the difficulties the foster parents experienced when Björn had returned to them. In an application for compensation to the foster parents for their travel expenses, submitted by the social authority to the Berg-Rolanska Foundation, it appears that the entire cost for the travel, including air tickets, hotel and a rented car, was 12,825 SEK and that the social authority had granted an allowance of 5,825 SEK. The foster parents had their expenses fully covered by financial contributions from the Swedish Save the Children Federation and from the Berg-Rolanska Foundation.

On 24 May 1988 the Parliamentary Ombudsman took a decision concerning the social welfare officers' and the Social District Council's handling of Björn's case from 29 May 1986 and onwards.

The Ombudsman considered that the assistance by the social welfare officer was crucial when Björn's return to Sweden was brought about and that it cannot be accepted that the social authorities facilitate illegal actions. However, she did not find it substantiated that the social welfare officer's intention when assisting the foster father was that he should take Björn back to Sweden but she seriously criticised the action of the social authorities.

The Ombudsman further considered that, whether the contribution of 5,825 SEK to the foster parents was supposed to cover their travel expenses or not, the social authority had through its actions, after the foster father had brought Björn back, shown that it supported his action. She found this inappropriate.

From the Ombudsman's investigation it appears that the reasons

the social authorities have given for the decision of the chairman of 29 May 1986 to take Björn into care on a provisional basis were, inter alia, that the social authorities wanted to make it possible to ask for assistance from the police to bring Björn back to Sweden, that Björn's parents, by abruptly separating him from the foster parents, had shown that they lacked understanding for his needs, that they had prevented the preparation for their reunification with Björn as it had been envisaged by the County Administrative Court in its judgment on prohibition on removal and, finally, that Björn's strong reactions when he met his parents in spring 1986 might be detrimental to his health and development.

In this respect the Ombudsman pointed out that only the last reason was valid and that it was not likely that the provisional care decision would have been upheld by the County Administrative Court. She did not pursue the issue as the decision was never enforced. She added that the decision ought to have been brought before the Council for re-examination when it had a meeting a few days later and Björn was back in Sweden. This was never done.

As for the remaining part of the examination the Ombudsman has stressed that the Social District Council, in view of the judgments of the Courts on 6 June and 7 October 1986, was under a special obligation - besides what normally rests with a social authority in this regard - to be active in seeing to it that contacts were created between the child and his natural parents. She found no indication that serious efforts were made in order to improve the relations to the natural parents. On the contrary, she said, the application of December 1986, for having the custody of Björn transferred to the foster parents, proved that the Social District Council had taken the view that Björn was not to be reunited with his parents. For this she expressed strong criticism.

She further could not accept the subsequent measures such as the decision on a new prohibition on removal concerning Björn taken a few days before he should be returned to his parents according to the judgment of the Administrative Court of Appeal of 7 October 1986, the fact that the social authority covered the foster parents' costs for legal aid in the custody proceedings and the decision of the Social Council of 2 April 1987 to maintain the action on transfer of custody and the prohibition on removal. The latter decision was contrary to the judgment of the County Administrative Court of 16 March 1987, according to which Björn should be returned to his parents.

Generally the Ombudsman observed that the handling of the case showed that the social welfare officers had engaged themselves strongly in it for the benefit of the foster parents. She found it doubtful whether the Social District Council and the social welfare officers realised that respect for court decisions is a fundamental and indispensable requirement of legal security.

Further particulars concerning the contacts between the applicants and Björn

During Björn's first year in the foster home Mrs. Nyberg visited him once a month. Every second time she visited him she was accompanied by Lars Erik Nyberg and the visit lasted for a day, and every second time she came alone and the visit lasted two days. After some time the spouses Nyberg visited Björn together every sixth week.

During the period 4 November 1983 to 23 September 1984 the applicants did not meet Björn as they had gone to Germany in order for Mrs. Nyberg to give birth to their second child. They met Björn again on 23 September 1984.

In the period between their request of 19 October 1984 that the care of Björn be terminated, and the decision of the Social

Council of 6 February 1986 to terminate the care, the applicants met Björn on the following occasions, alternately in their home and at the foster parents' home:

4 November 1984	14 August 1985
22-23 December 1984	19 October 1985
2 February 1985	7 November 1985
13 March 1985	1 December 1985
22 April 1985	21 December 1985
2 June 1985	12 January 1986
12-13 July 1985	

After the care had been terminated and during the spring of 1986, until the time when Björn was brought to Germany by the applicants, they met him on the following occasions:

8-9 February 1986	16 May 1986
22-23 March 1986	29 May - 1 June 1986

The applicants returned to Sweden from Germany in January 1987. A plan was made by the social authorities, in co-operation with the applicants and the foster parents, according to which the applicants were to meet Björn 17 times in February. The first meeting took place on 3 February 1987 and the last one on 24 February 1987. The meetings were interrupted by the social authorities on 25 February 1987 due to a medical opinion of the same date. There were in total 13 meetings between Björn and his parents in February 1987. Björn further met his parents on a number of occasions in March and April 1987.

COMPLAINTS

1. The applicants allege that the refusal until April 1987 to allow them to take Björn home was a breach of Article 8 of the Convention. The only reason appeared to be that the social authorities considered the foster home to be a better home than the applicants' home, a reason which is unacceptable.

The applicants maintain that a prohibition on removal is formally a decision which aims at a smooth transfer of the child from the foster parents to the natural parents. In practice, however, such a decision is taken for the opposite purpose, namely to obstruct the return of the child to his or her home. In the present case, the social authorities did nothing to reunite the applicants with their son. The applicants' right of contact with their son has been obstructed. They were given insufficient access to their son, and reunification was thereby not in any way promoted.

2. The applicants further allege that the delay in the reunification of their family, partly through administrative slowness, partly through successive delays by different authorities, constitutes a breach of Article 6 of the Convention in that a "civil right" has not been determined "within a reasonable time".

3. The applicants allege that the kidnapping of the child in the mother's and child's home country, in conflict with international law, and without any subsequent criminal proceedings being instituted, is a breach of Article 3 of the Convention. They allege that the social authorities accepted this kidnapping.

4. The applicants allege that the same facts show disrespect for family life in breach of Article 8 of the Convention, since no measures were taken by the authorities.

5. The applicants also allege a breach of Article 13 of the Convention, contending that there exists no effective remedy for the alleged violations of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced with the Commission on 9 June 1986 and registered on 2 December 1986.

Refusing a request from the applicants, the Commission decided on 13 March 1987 not to take any action under Rule 36 of the Rules of Procedure.

On 7 May 1987 the Commission decided to invite the respondent Government to submit written observations on the admissibility and merits of the application.

The Government's observations were dated 4 September 1987 and the applicants' observations in reply were dated 17 November 1987.

On 16 October 1987 the Commission granted legal aid to the applicants.

On 6 July 1988 the Commission decided to invite the parties to a hearing on the admissibility and merits of the application.

At the hearing, which was held on 4 October 1988, the parties were represented as follows:

The Government

Mr. Hans Corell	Ambassador, Under-Secretary for Legal and Consular Affairs, Ministry for Foreign Affairs, Agent
Mrs. Christina Bergenstrand	Legal Adviser, Ministry of Health and Social Affairs
Mr. Carl-Henrik Ehrenkrona	Legal Adviser, Ministry for Foreign Affairs

The Applicants

Mr. Lennart Hane	Lawyer
Mrs. Gunilla Hane	Assistant

The applicants, Mr. and Mrs. Nyberg, were also present.

SUBMISSIONS OF THE PARTIES

A. The Government

1. The Admissibility

Regarding the complaints, under Articles 3 and 8 of the Convention, concerning Björn's return to Sweden with his foster father in May 1986, the Government are of the opinion that the suffering to which the applicants might have been subjected was caused by an individual towards another individual. This does not raise an issue under international law but should be taken care of within the legal system within the States concerned. For that reason the Government maintain that this part of the application should be declared inadmissible for being incompatible ratione personae with the provisions of the Convention.

The Government question whether Article 3 could apply at all even if the way Björn was brought back to Sweden had been authorised by a Swedish authority. The contents of Article 3 must be seen in the light of the atrocities that took place in Europe the years before the Convention was drafted. It must have been the severer forms of ill-treatment that the Contracting Parties had in mind (cf. Eur. Court H.R., Case of Ireland v. United Kingdom, judgment of 18 January 1978, separate opinion, Series A no. 25, p. 117, para. 17). The suffering to which a person can be subject due to actions taken by the authority, when these actions are based on a serious concern for a child's welfare, is far from reaching that level and of a totally different nature.

The Government maintain that the complaints under Article 3 should for this reason be declared inadmissible for being incompatible ratione materiae with the provisions of the Convention.

The Government furthermore maintain that the complaint under Article 8 should be declared inadmissible for being incompatible ratione materiae with the provisions of the Convention.

It is added that, if the applicants had refused to send Björn back to the foster parents while in Sweden, the authorities could have asked for assistance from the police in order to enforce Björn's return to the foster home from which he, according to a decision by the Social Council then in force, was not to be moved. The fact that the foster father's action in this case was contrary to the law does not make any difference as far as the application of Article 3 is concerned.

Should the Commission be of another opinion, the Government maintain that the complaints in this regard are manifestly ill-founded.

As to the complaints under Article 6 of the Convention the Government admit that Article 6 is applicable. With reference to what is said below on the merits the Government are of the opinion that the complaints should be declared inadmissible since they are manifestly ill-founded.

Regarding the remaining complaints as to Article 8 and the complaints as to Article 13 of the Convention the Government, with reference to their observations below on the merits, maintain that these should be declared inadmissible since they are manifestly ill-founded.

2. The Merits

2.1 Article 3 of the Convention

The Government observe that the complaints under Article 3 refer to the event in May 1986 when Björn was brought back to Sweden by his foster father without the consent of his parents.

According to what has been submitted to the Government by the Social Council in this regard the Council was not informed about the foster father's journey to Germany before he left. However, one of the officers within the social welfare administration, who was responsible for Björn's case, was informed by the foster father that he was going to Germany to talk to Björn's parents. The officer helped him to arrange his journey. She advised him not to go even if she symphatised with his intention to try to persuade the parents to let Björn return to Sweden.

The Government point out that the events to which this part of the complaints relates have been examined by the Parliamentary Ombudsman and that she concluded that it was not possible, through further investigations, to get a clear idea of the full truth in the

matter. The Government cannot make any other assessment. They stress that, regardless of what the truth in the matter is, the only thing the responsible social welfare officer had in mind was to assist Björn in what she considered to be a difficult situation for him. However, it is beyond doubt that any participation in the foster father's action would clearly have been contrary to Swedish law, if the social welfare officer had been aware of his intention. The Government maintain that this question cannot be solved without taking evidence before a court.

The Government submit that, since the action was neither initiated nor authorised by Swedish authorities, it can hardly be said that it involves a violation of Article 3. The applicant's complaints in this regard are manifestly ill-founded.

The measures taken by the foster father must also be seen in the light of the fact that Björn's parents had brought him to Germany without informing the foster parents or the social authorities. Björn's parents thus neglected the prohibition on removal then in force and their agreement with the foster parents to let them pick up Björn late in the afternoon of 29 May.

2.2 Article 6 of the Convention

As to the alleged slowness of the proceedings the Government submit that a decision to take a child into public care or to return a child, who has been living in a foster home for a long time, to its parents involves psychological and sometimes medical assessments which can be very difficult. A parent's legitimate wish to live and be with his or her child must be weighed against the child's welfare when the two interests cannot be reconciled. But the interest of the child must prevail when a conflict occurs. In order to establish the child's interest the social authorities as well as the courts have, to a great extent, to rely on evidence of doctors and psychologists. These specialists have to base their assessments on careful investigations of the child and often regarding its parents. These investigations cannot be carried out too hastily.

It is uncontested that the application of 19 October 1984 was not finally decided upon until 7 November 1986 when the Supreme Administrative Court refused to grant leave to appeal. It is also uncontested that Björn was returned to his parents on 21 April 1987. However, it took the Social Council more than one year to get sufficient information from different experts in order to be able to determine the matter. This could be said to be one of the main reasons for the delay. The Council's handling of the matter was criticised by the Parliamentary Ombudsman in his decision of 19 June 1986. The measures taken by the Social Council at the end of 1986 and in 1987 also affected the time-limit that was set by the courts. According to the judgment by the Administrative Court of Appeal the prohibition on removal should be terminated on 1 March 1987, which would have been the case if the Social Council had not acted the way it did.

In the Government's opinion it is the period from 19 October 1984 till 7 November 1986 that should be taken into account when the condition "within a reasonable time" is examined. The Government consider that this does not exceed the time-limit laid down in Article 6. Even if the period until Björn was returned to his parents is added the Government maintain that this condition is satisfied.

The case has been very complex and strong emotions are involved. Consulted experts have been of different opinions and one of them has withdrawn the opinion that he had first submitted to the Social Council.

In the cases where Article 6 has been considered to be violated,

the period of time to be examined has been of considerable length. It even seems clear that the European Court of Human Rights has accepted periods of time which have been longer than the one in the present case.

The Government are aware that a case like the present one should and must be decided upon without delay and that necessary psychological investigations should be carried out as soon as possible.

The Government maintain that, even if the Social Council's dealing with the matter has been criticised by the Parliamentary Ombudsman as far as the duration of the proceedings is concerned, the length of the period looked upon as a whole cannot be considered as violating Article 6. The complaints in this regard are manifestly ill-founded.

2.3 Article 8 of the Convention

The Government admit that a prohibition on removal issued when a care order is lifted constitutes an interference with the individual's right to respect for family life as guaranteed in Article 8 para. 1 of the Convention as does the care order itself. In view of the opinion expressed by the Parliamentary Ombudsman the Government admit that the social authorities have not been able to fulfil their task in creating such conditions as to make a smooth transfer of Björn to his parents possible. In the Government's view, however, the whole responsibility for the failure cannot be placed on the social authorities.

From the files of the social authorities it appears for instance that the applicants have created difficulties themselves when they were to meet with Björn in 1983 and 1984.

In order to be justified under Article 8 para. 2 of the Convention an interference must satisfy three conditions: it must be in accordance with law, it must pursue one or more of the legitimate aims enumerated in Article 8 para. 2 and it must be necessary "in a democratic society" for that or those legitimate aims.

The Government submit that the measures and the decisions taken up to and including 6 February 1986, when the care order was lifted, were clearly in accordance with Swedish law, as was the decision to lift the care order and issue a prohibition on removal. In the Government's view the decisions of all the courts which have examined the case from different points of view after that date were also in accordance with the law within the meaning of the Convention.

The different actions taken by the social authorities in spring 1986 and onwards have been carefully examined by the Parliamentary Ombudsman. The Government cannot make any other assessment of these actions than was made by the Ombudsman. She has severely criticised the Social District Council and its officers regarding the way the matter was handled during this period.

However, as the Ombudsman has stated, nothing indicates that the social authorities had any other motives for their actions than what they believed would be the best solution for Björn. It should be noted that the Ombudsman has chosen not to take further actions against the Social District Council and its officers.

The Government recall that the whole legislation aims at protecting the interest of the child. They maintain that the interference that has taken place was made in the interest of the child. This is a legitimate aim under Article 8 para. 2, as falling under the expression "for the protection of health or morals" and "for the protection of the rights and freedoms of others".

Regarding the third condition the Government submit that it is

not the Commission's task to take the place of the competent national courts and make a fresh examination of all the facts and evidence of a case brought before it in the same way as may be done by a domestic court. The Commission should review under Article 8 the decisions taken while analysing the criteria applied and the reasons and evidence on which each decision was based. Thus, the examination of this case should be made with a view to establishing whether it was necessary within the meaning of the Convention not to return Björn to his parents and to issue the prohibition on removal when the care order was lifted later on.

In the Government's opinion such an examination does not imply that any misjudgment that may be considered in this regard must constitute a violation of the Convention. An area must be provided within which no violation can be found even if the decisions taken can be questioned or even considered wrong provided that there are fair reasons for the conclusions at which the competent authorities have arrived. If this borderline is not properly fixed, the procedure under the Convention will constitute an extra instance with a function very similar to an extra instance within the State concerned.

In the Government's opinion this leads to the conclusion that the Commission's examination of the present case should be limited mainly to establishing whether the decisions taken have been based on irrelevant circumstances, unacceptable criteria or standards or on other reasons which cannot be considered fair. Another approach could lead to consequences that were not foreseen by the authors of the Convention. The examination aimed at establishing whether the interference corresponds to "a pressing social need" can of course result in different opinions. But the important thing in this case is that such different opinions relate to the question whether a separation from the foster parents could endanger Björn's mental health or development. The condition "necessary in a democratic society" should not be applied in such a way that a serious concern with the aim of protecting a child's mental health from being endangered could be considered a violation of the Convention. Such an interpretation does not conform with the spirit of the Convention.

From the reasons given by the courts it is evident that the best possible solution in Björn's interest, doing him as little harm as possible, has been aimed at. This aim permeates the reasoning in all the judgments. It has been an extremely difficult task since psychiatric experts and doctors have taken different positions in what should be done and how. In this case opinions can be divided but it seems obvious that it was not possible to entrust Björn to his parents without giving him some time. It is evident that one cannot return a child that has lived for several years in a foster home to his parents if one has not been successful in establishing a trustful relationship between the child and his parents. If one does, there is a serious risk of damage to the child's mental health and of infliction of unnecessary suffering on the child.

In the Government's opinion the decisions of the courts clearly satisfy the condition of being necessary within the meaning of the Convention. Although there could be different opinions as to the necessity of not letting Björn be reunited with his parents at an earlier stage, the decisive question was when this could be done

without exposing Björn to unnecessary suffering. The Government consider that differing opinions in this regard clearly fall within the wide margin of appreciation afforded to the Contracting States.

As regards the measures taken by the social authorities after the decision to lift the care order the Government find it difficult to maintain, in view of the decisions of the Courts and the Parliamentary Ombudsman, that the measures were necessary within the meaning of the Convention. However, it must be emphasised that Björn

had lived nearly his whole life with his foster parents and the investigations show that he had become very attached to them. There were great problems in establishing a trustful relationship between Björn and his parents. The social authorities and the courts therefore had to carefully seek the best solution for Björn. The Government refer to the documents upon which the courts and the social authorities have based their assessments. The strong emotional reactions which Björn seems to have shown when he should meet his parents are pointed out. They made the organising of the meetings between Björn and his parents an extremely difficult task.

In view of the special circumstances of the case the Government leave it to the Commission to decide whether the actions taken by the Social District Council, or the lack of actions, reveal a violation of Article 8. In the Government's view, however, the decisions taken by the courts do not amount to a violation of Article 8. The complaints in this regard are manifestly ill-founded.

The applicants have alleged that the circumstances concerning Björn's return to Sweden also constitute a violation of Article 8. With reference to what has been said above the Government maintain that the complaints in this regard are also manifestly ill-founded.

2.4 Article 13 of the Convention

The applicants have alleged violations of Articles 3, 6 and 8.

The complaints under Article 6 concern the duration of the proceedings before the Social Council and the courts. The courts as well as the social authorities are supervised by the Parlimentary Ombudsman and the Chancellor of Justice. Complaints regarding slowness in dealing with a case can be submitted to these organs. If there are reasons for the complaints the authority concerned can be criticised and in serious cases the person responsible for the delay can be prosecuted. Disciplinary actions can also be instituted against civil servants and officials who do not carry out their task properly.

The Social Council is also supervised by the County Administrative Board which is obliged to see to it that the Council carry out its tasks properly. Complaints can be lodged with the Board which can take proper actions after having made necessary investigations. This remedy was used by the applicants.

As far as Articles 3 and 8 are concerned the Government submit that the court proceedings as such constitute an effective remedy. Everyone is free to refer to the contents of an Article of the Convention if he so wishes when arguing a case. The Convention is not incorporated into Swedish law. However, arguments based on Articles in the Convention must be taken into account and be examined by the court as any other argument. An alleged violation of the Convention

is thus examined and will affect a decision on the matter even if a Swedish court normally does not express its opinion regarding the interpretation of a Convention Article explicitly.

The Government also point out that an official responsible for a decision or action violating the law which also could involve a violation of the Convention can be prosecuted. It is possible to prosecute a person for misuse of office or negligence in office. If the circumstances call for such measures they usually appear from investigations carried out by the Parliamentary Ombudsman or by the Chancellor of Justice since such cases normally are reported to these organs.

The Government submit that there has been no violation of Article 13 and that the complaints in this regard are manifestly ill-founded.

3. Conclusions

The Government conclude:

- concerning the admissibility

that the application should be declared inadmissible, partly for being incompatible ratione materiae with the Convention, partly for being incompatible ratione personae with the Convention and partly for being manifestly ill-founded, and

- concerning the merits

that there has been no violation of the Convention.

B. The Applicants

1. The Admissibility

As to their complaints concerning Björn's return to Sweden the applicants submit that Swedish foster parents would never kidnap their foster child, a German citizen, in Germany, especially after having been instructed to co-operate in the reunification of the foster child with his parents, if they had not been assured that there would be no reaction against the kidnapping from the Swedish authorities. In addition the authorities took part in the kidnapping through the Chairman's decision to take Björn into public care, by reporting the incident to the police and by financing the foster father's trip to Germany. The financing was essential for the kidnapping before the prohibition on removal of Björn from the foster parents would be revoked.

To kidnap human beings and take them from their native country to a remote country is in the applicants' view inhuman and degrading since a six year old child has been kidnapped from his legitimate parents for the purpose of an illegal pseudo-adoption. The co-operation between the social workers, the Social Council and the foster parents throughout the whole procedure clearly shows that their aim has never been to let Björn be reunited with his parents.

The Government's submission that these measures were taken out of serious concern for a child's well-being shows an astounding cynicism.

The Government incorrectly state that Swedish authorities could have asked for police assistance to enforce Björn's return to the foster home. This could obviously not have been the case if the Government are referring to the German police authorities. If the Government are referring to the Swedish police authorities their statement is also misleading. The Deputy Chairman's decision to take Björn into public care was contrary to the law and would have been quashed by the County Administrative Court. Some time after this, probably just a few days or a week later, the prohibition to remove Björn would have appeared ridiculous and would have been nullified. A correct description of the legal conditions underlines the breach of Article 3 of the Convention.

2. The Merits

2.1 Article 3 of the Convention

The kidnapping of Björn must in the applicant's view be seen in the light of the fact that the Ministry for Foreign Affairs had informed the social authorities about the possibilities to have Björn returned to his foster parents in Sweden. The information must have

made it clear to the social welfare officer in charge and to the foster parents that the case was out of the hands of the Swedish authorities and that, even if the action of the applicants was prohibited, nothing could be done about it. The kidnapping was the only remaining alternative.

The applicants do not accept that the social welfare officer, who had dealt with Björn's case for several years, believed that Björn's foster father would have a chance to persuade Björn's parents to let Björn go back to Sweden with him. If the foster father had been concerned about Björn's well-being, he could of course have discussed this with Björn's parents in a civilised manner when he came to Germany. But had he done that, his chances to kidnap Björn would have been spoilt. He must have realised this since he chose to act quickly and secretly.

The social welfare officers not only sympathised with the foster father's plan to kidnap Björn but they encouraged it. They knew the address of the Nyberg family in Germany and their telephone number. They could have phoned Björn's parents if they wanted to talk to them. The hurry to arrange the air tickets was caused by the intention to kidnap Björn. It is likely that the Social Council would have revoked the prohibition on removal if Björn had stayed with his parents a few days more.

The foster parents naturally had no independent right to Björn and were well aware of that. They obviously acted the way they did because they had been guaranteed to keep Björn if the kidnapping was successful.

The logical reason for the decision of 29 May 1986 of the Deputy Chairman of the Social Council to take Björn into care must have been that the Social Council wanted to correct the information given by the Ministry for Foreign Affairs. In case the kidnapping would be a failure or cause an interference by the German police the decision

could be used to deceive the German authorities. The decision is a strong indication that the social officers and the Social Council knew about the plans to kidnap Björn. In addition the money advanced for the air tickets was a condition for the realisation of the kidnapping.

As has been mentioned above, the kidnapping of a six year old child from his legitimate parents is a cruel, inhuman and degrading action.

2.2 Article 6 of the Convention

The applicants submit that Björn has unnecessarily been detained in a foster home for a long period of time, at least from 1983. There have during that period been many occasions and reasons to reunite Björn quickly and smoothly with his family. The reunification did not take place until April 1987 because of the energetic resistance from the Swedish authorities. Important years of Björn's childhood have been wasted and turned into suffering for him and his family. This has been said to have been done in Björn's interest which has been alleged to be in conflict with that of his parents.

The Swedish philosophy concerning the taking of children into care is in the applicants' view a primitive expert cult with catastrophic consequences for children and parents. It only brings joy to the continuously growing autocratic bureaucracy. The Government admit that the authorities, to a great extent, have to trust the evidence given by doctors and psychiatrists. This of course does not mean that the courts and the lawyers must let them completely out of control. If the children in question are healthy and the parents healthy and loving, it is naturally necessary in the relation

between them to leave some room for common sense, but also for unknown and valuable influences. This is not knowledge that is reserved for psychiatrists or psychologists.

The Swedish model for examinations with its many primitive methods and unscientific theories seems to be unique in the western world. The assessments made are an abuse of psychiatry and psychology. The examinations that have been made of Björn have, apart from their primitive and speculative contents, no substance of a kind that would have prevented them from being carried out far earlier and in a considerably shorter time.

Björn was taken into public care because of an incorrect prognosis of his mother's mental health and of how the spouses Nyberg would function as a family. Already in 1984 the misjudgments had been corrected by adult psychiatrists involved in the case. If Björn had not been definitely replaced it would have been easy to arrange a child psychiatric opinion about him at that time, whatever purpose it would have served. What reveals the mentality of the social authorities is, not only their efforts to have the prohibitions on removal prolonged by the courts, but also their abuse of the time they gained thereby. Any reasonable step leading to a family reunification was neglected.

The breaches of the Nyberg family's rights started in August 1982 when a psychiatrist made the assessment that Birgitt Nyberg soon would recover and be able to take care of her son. Since then the applicants have unceasingly and persistently, with strong support from

the adult psychiatrists, tried to get their child back. Only because of fortunate circumstances they finally succeeded after four and a half years in having Björn returned to them.

The applicants' case was in fact very simple. There was a good relation between the parents and their second son, who was a fine healthy child that had been well looked after. Mrs. Nyberg had made an extremely stable recovery not long after she had been taken ill. Mr. Nyberg suffered from some minor mental problems but co-operated closely with and received support from adult psychiatrists. He further took care of the housework while his wife was at work. In short, a well-functioning family, well-suited for having the full responsibility for small children.

The difficulties in this case have been created by the bureaucrats involved. The family's main problem was the definite placement of Björn in a foster family and the intervention in the case by child psychiatrists. The experts who claim to know such a lot about children's needs and the relations between children and parents are in opposition to adult psychiatry and common sense. The need for those experts and their assessments must be questioned.

The extent and the contents of the child psychiatric opinions - irrespective of being unscientific and of giving meaningless motivations - show that they could have been prepared in a considerably shorter time. If the social welfare officers had the intention not to accept the assessments made by the adult psychiatrists they should have ordered the child psychiatric opinion immediately. When delaying the matter, the welfare officers again showed that they use child psychiatry as a weapon against parents. The only way to stop the reunification of the Nyberg family was to let time pass.

It was unfortunate that the reunification should be the matter of legal procedure of an apparently serious nature for nine months and that the prohibition on removal was made valid for a year without any clear directions as to what would happen when that time had expired. Such arrangements aim at preventing a reunification.

The criticism put forward by the Parliamentary Ombudsman as to the District Council's slow handling of Björn's case is tragi-comical in view of the continued delays of the matter by appeals both to the Administrtive Court of Appeal and to the Supreme Administrative Court and by the failure to take any measures for the reunification of the family while the courts examined the appeals.

The abuse of child psychiatry and the delaying of the reunification of the Nyberg family violated Article 6 of the Convention.

2.3 Article 8 of the Convention

The prohibition on removal of Björn interfered with the applicants' right to respect for family life as guaranteed in Article 8 para. 1 of the Convention. Legislation should allow the social authorities and the courts the use of this measure only when certain well-defined criteria are fulfilled and for a short period of time.

A decision to discontinue the public care of a child is made when the child's parents are again considered to be able to take care of it. It should be followed by a reunification of the parents and the child. Prohibitions on removal have no support in law but are based on general and completely unlimited authority to exercise power arbitrarily. Court procedure is a farce, when the speculations of psychology are not only superior to law, but interpreted by bureaucrats and those supported by them. The prohibition to remove Björn from his foster parents was not necessary in a democratic society, but was in breach of one of the most fundamental aims of the Convention, i.e. the principle of the rule of law, and contrary to ideals concerning freedom of the individual that are common to the Convention States.

A prohibition on removal is a weapon against the human rights of parents especially if obtained under the lordship of psychological terminology. The difference between a prohibition valid until further notice and a prohibition valid for a certain period of time is revealed in the present case. The social authorities prefer a prohibition valid until further notice since it leaves them unlimited time during which they do not have to arrange a reunification of the child with its parents. The position of the parents is not stronger when the prohibition is valid for a certain period of time. The only difference is that the parents can point out that no measures have been taken to reunite them with their child. An effect of a prohibition on removal is that, since the child is no longer in public care, the parents have no right of access to the child.

In March 1987 the Social Council issued a new prohibition on removal of Björn, although the prohibition decided by the courts had been valid for more than one year. This shows that the prohibitions on removal are used for completely alien purposes. It would be hard, not to say impossible, to find cases where the prohibitions on removal have not been valid for so long that they effectively prevented the parents from having their children back.

It is in principle of no importance who is accused of having done something wrong as concerns the placing of Björn in the foster home and the measures taken in connection with it. The system of unlawfulness covered by propaganda, even in the texts of the statutes, automatically leads to violations of family rights. The Nyberg family is not the only family to experience this. It is next to impossible for parents to have a child, who has been taken into care, returned to them if individual welfare officers are opposed to it.

Swedish law is not only vague but without contents and subordinate to psychology. The fact that the State places experts at

the parents' disposal is without importance. Since the experts move in areas where no knowledge can be obtained, their investigations are meaningless, independently of how many experts have been mobilised on each side. In Sweden there is an additional problem, namely that, since the experts, for their support, depend on commissions assigned to them by the social welfare officers, it is almost impossible for parents to engage an expert.

The social welfare officers have not been acting in good faith in this case. Already when they started their investigation they had the intention to make Björn's stay in the foster home definite and they realised the value of a time-consuming investigation. Two social

welfare officers demanded, after five long monotonous talks with the spouses Nyberg, three more talks. Nothing of what came out of those talks was accounted for in any investigation. The Nybergs found the talks degrading and bullying, the intention being to break their unity. As appears from the social authority's opinion to the County Administrative Court the authority had already made the assessment that Björn belonged in the foster home.

The social authority's determination as to where Björn belonged, in connection with the increasing work of the bureaucrats and the engagement of great numbers of them, for example in Jönköping when Björn should get to know his family, shows how the abstraction "in the child's interest" in an unpleasant way seems to coincide with the interest of bureaucracy. Björn was happy to be reunited with his family already in May 1986, and would naturally have been so if the reunification had taken place in 1984, as it should have done. Those who have unlimited power can always claim to act in the interest of their victims.

In all social districts of Sweden children are permanently placed in foster homes, which proves that the country lacks competent courts. The lack is due to psychological scales of value and prognoses concerning healthy children, based on theories which have been developed in Sweden and which are questioned in scientific literature. Thus, there is no need for the Commission to go through all the facts and evidence of a case like the present one. The Government should instead prove that relevant facts and evidence exist and not only speculative theories.

The opinion of those who have come into contact with the Nyberg family, without ambitions of power or money, is that Björn should never have been placed in a foster home in 1982 as his mother recovered so soon. After her recovery, she energetically and cleverly fought to get her child back. Björn's case does not fall within the area of incorrect but tolerable care decisions as the Government maintain. If there is respect for human beings and for life in cases like the present one, that kind of mistake need not be made and if it is made it is easily and quickly corrected by independent courts.

To set the limits for care decisions in cases where there is doubt and to correct mistakes quickly is not a delicate task. It functioned well in Sweden until psychological assessments and prognoses became the fundamental not to say the only support for care decisions.

The treatment of Björn, almost like some kind of profitable property, reveals that the decisions taken were based on irrelevant circumstances and uncivilised criteria or standards and that unjust methods were used, for example as the welfare officers circumstantially and thoroughly worked on the case with the secret aim that Björn would not be reunited with his parents. The measures taken by the social authorities clearly show that the legal criteria of the legislation, as well as the courts' judgments and decisions, have no importance.

Within the areas of forensic psychiatry and compulsory care of

mentally ill, there exist whole series of clear criteria and court control of their application and of the level of the assessments made. This is not the case in Sweden when it comes to assessing the risk that a healthy child will get a psychosis. Björn's sound reaction when he was reunited with his parents, and uninfluenced by the adults

who were trying to prevent the reunification, shows that the prognoses made of him were in fact not even art of divination, but merely bureaucratic assault.

The Government maintain that the aim of the authorities has been to do Björn as little harm as possible, i.e. in an abstract prognosticating sense. The prognoses of Björn and his parents were based on unsubstantiated facts, which shows that any parent in Sweden suffering from a minor mental insufficiency hardly has, however quickly he recovers, a chance to have a child that has been taken into care returned.

The Government also maintain that there were great problems in establishing a trustful relationship between Björn and his parents. This "trustful relationship" between a small child and its parents, who love it, seems to be a condition that can lead to a decision of any kind. The result is given beforehand, when those who try to prevent the efforts to create good relations, are also assigned to assess the relations. Both Dr. Gunnel Hörnqvist and nurse Nancy de Sousa, at the hearing in the County Adminisrative Court, confirmed the good relations Björn had with his parents when he visited them.

The described violent reactions of Björn are a tragi-comical expression of the mediocre level of the investigations. It is a well-known fact that children can be easily manipulated. Björn knew what his foster parents expected of him, and in his position of dependence, he tried to come up to their expectations when they were in the neighbourhood. A lot of bureaucrats were engaged in the measures taken to reunite Björn with his parents. It is hard to imagine more repellent arrangements than those made and it is no wonder that the stress surrounding the meetings made it impossible to create natural and calm conditions.

The spouses Nyberg have not made any accusations of faults or misunderstandings, they humbly want to expose how family life and the relation between children and parents are made bureaucratic in a basically systematised and loathsome way. An example of this is the attempts that were made in 1982 to make Birgitt Nyberg leave her husband, in order to have the care order concerning Björn revoked. These attempts could amount to a violation of Article 12 of the Convention. Björn was and still is a healthy child and his reunion with the applicants should have been undramatised and arranged much earlier.

With regard to Björn's trip to Germany with his parents the applicants argue that a decision that the public care of a child should be discontinued returns to its parents the fundamental right to decide the whereabouts of the child and in principle the child should be returned to its parents. When the Nybergs decided to keep Björn with them they in fact enforced the decision that the public care should come to an end. The Swedish police thus cannot in cases like the present one interfere and return the child to its foster parents at a request from the welfare officers. In order for the police to do that a decision taken by the County Administrative Court is required.

In the present case the social authorities evidently considered that the possibilities were small that the County Administrative Court would decide that Björn should be returned to his foster parents for continued arrangements for his return to his parents. A prohibition on removal cannot form the basis for a request for enforcement, nor can it justify a renewed decision of public care.

The kidnapping of Björn in Germany delayed his reunification with his parents for about eleven months. To let the kidnapping pass unpunished and even be successful is, looking at Björn's and his parents' situation from 2 June 1986 to 21 April 1987, a flagrant breach of Article 8 of the Convention.

2.4 Article 13 of the Convention

The applicants had no independent right to prosecute the foster father, the social welfare officers or members of the Social Council. They have addressed themselves to all instances but not one of the social welfare officers or members of the Social Council has been questioned.

The view of the Public Prosecution Authority that the foster father acted out of necessity is untenable. It shows how the human rights of parents are eliminated even within the criminal law. Penalties for parents are increased and parents are reported as wanted by the police, but concerning confessed crimes, the Prosecutor-General invents excuses.

The applicants find no legal influence of the European Convention on Human Rights in any Swedish court decision. If a Swedish lawyer invokes the Convention he will either be found to be ridiculous or annoying.

Incorporation of the Convention into Swedish law would to a great extent prevent the injustices that are now carried out with the help of psychiatry and demagogic expressions like "the interest of the child" and "children's rights".

The Government's allegation that officials can be held responsible for decisions or actions violating the law is misleading. One of the prerequisites for the crime misuse of office is intent as concerns the violation of the law and, as concerns negligence in office, a prerequisite is gross negligence.

The power concerning care decisions is with the social welfare officers working in the field. They collect information and pass it on to the Social Council. They have the right to decide over almost 98% of the money on the social authority's budget and thereby have power over the income of psychiatrists and psychologists. Through the position of power they get from provisional chairman's decisions, they can also give orders to the police when there is a question of intervention in a home to take a child away by force. At the same time it is hinted in some statutes that the position of the social welfare officers is so subordinate that they should be excluded from disciplinary punishments.

THE LAW

1. The applicants complain that they have been victims of a breach of Article 8 (Art. 8) of the Convention because of the refusal until April 1987 to allow them to take Björn home. They submit that the only reason appeared to be that the social authorities considered the foster home to be a better home than the applicants' home. A prohibition on removal, which formally is a decision aiming at a smooth transfer of a child from the foster parents to the natural parents, in practice is taken for the opposite purpose, namely to obstruct the return of the child to its natural parents. The social authorities did nothing to reunite them with their son and their contact with him has been obstructed. The access to their son was not sufficient to promote the aim of reunification. The applicants further complain that the kidnapping of Björn in the Federal Republic of Germany shows disrespect for family life in breach of Article 8

(Art. 8) of the Convention.

The Government admit that a prohibition on removal issued when a care order is lifted constitutes an interference with family life and that the social authorities have not been able to fulfil their task of arranging a smooth transfer of Björn to his parents. They submit, however, that the whole responsibility cannot be placed on the social authorities and that the measures and decisions complained of were justified under the second paragraph of Article 8 (Art. 8) as being lawful and necessary in a democratic society in the interest of Björn, as far as they were taken up to and including 6 February 1986, when the care order was lifted and the prohibition on removal issued. This is also the case with the decisions taken by the courts after that date. As regards the measures taken by the social authorities after the care order was lifted the Government refer to the strong criticism expressed by the Parliamentary Ombudsman and leave it to the Commission to decide whether they were lawful and necessary within the meaning of the Convention.

As to the complaint concerning Björn's return to Sweden the Government submit that the actions taken by the foster father were neither initiated nor authorised by Swedish authorities. The Government contend that the complaint should be declared inadmissible for being incompatible with the provisions of the Convention or, alternatively, for being manifestly ill-founded.

Article 8 (Art. 8) of the Convention reads 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."

The Commission must examine whether the acts complained of constitute an interference with the applicants' right to respect for family life as guaranteed by Article 8 para. 1 (Art. 8-1) of the Convention and, if so, whether any such interference is justified under the terms of Article 8 para. 2 (Art. 8-2) of the Convention as being "in accordance with the law" and "necessary in a democratic society" for any of the purposes enumerated in that paragraph. The Commission must also have regard, in this context, to the delay in the proceedings referred to below in relation to Article 6 (Art. 6) of the Convention (see para. 3 below).

The Commission has carried out a preliminary examination of the above issues. It finds that they raise questions of fact and law which are of such complexity that their determination requires an examination of the merits. This part of the application is therefore not manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention, but must be declared admissible, no other ground for declaring it inadmissible having been established.

2. The applicants also allege that the kidnapping of Björn in the Federal Republic of Germany is a breach of Article 3 (Art. 3) of the Convention. They contend that the social authorities condoned the kidnapping.

The Commission considers that the facts on which this allegation is based are the same as those facts declared admissible above. This part of the application must therefore also be declared

admissible.

3. The applicants further complain that the delay in the reunification of their family, partly through administrative slowness, partly through successive delays of different authorities, violated Article 6 para. 1 (Art. 6-1) of the Convention in that a "civil right" has not been determined "within a reasonable time".

The Government submit that it is the period from 19 October 1984 till 7 November 1986 that should be taken into account when the condition "within a reasonable time" is examined. They contend that this period does not exceed the time-limit laid down in Article 6 (Art. 6) . Even if the period until Björn was returned to his parents is added the Government maintain that this condition is satisfied.

The first sentence of Article 6 para. 1 (Art. 6-1) of the Convention reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The issue to be decided by the Commission is whether the applicants' "civil rights" have been determined "within a reasonable time".

The Commission has made a preliminary examination of this issue in the light of the parties' submissions. It considers that it raises questions of fact and law, which are of such a complexity that their determination requires an examination of the merits. This part of the application is therefore also admissible.

4. The applicants have finally invoked Article 13 (Art.13) of the Convention, contending that there exists no effective remedy for the alleged violations of other provisions of the Convention.

The Government submit that this complaint is manifestly ill-founded.

Article 13 (Art. 13) of the Convention provides:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission considers that this complaint is closely related to the other complaints made by the applicants and that it must therefore also be declared admissible.

For these reasons, the Commission

DECLARES THE APPLICATION ADMISSIBLE
without prejudging the merits of the case.

Secretary to the Commission — President of the Commission

(H. C. KRUGER) — (C. A. NØRGAARD)