AS TO THE ADMISSIBILITY OF

Application No. 12402/86
by Angela and Rodney PRICE
against the United Kingdom

The European Commission of Human Rights sitting in private on 14 July 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.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY

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

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

Having regard to the application introduced on 18 September 1986 by Angela and Rodney PRICE against the United Kingdom and registered on 22 September 1986 under file No. 12402/86;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicants are both British citizens, born respectively in 1939 and 1952. The first applicant is a district nurse; the second applicant is a market trader by profession. They are represented by Ms. Mary Ryan, solicitor, of the Family Rights Group, London. The facts as they have been submitted on behalf of the parties may be summarised as follows.

The applicants are the adoptive paternal grandparents of a child, D., born on 24 July 1984. D. is the son of the applicants' adopted son and daughter-in-law. The first applicant adopted her son during her first marriage, and following the first applicant's marriage to the second applicant, the second applicant also adopted her son. The applicants visited D. regularly after his birth and were concerned that he did not seem to be very well. In particular it appeared that he had difficulty feeding.

On 4 September 1984 D. was admitted to hospital with serious injuries, including a fractured skull and fractures in the legs. The local authority was not satisfied with the explanations offered in respect of the injuries and suspected they were non-accidental. At this time, the social services department of the local authority obtained a place of safety order in respect of D. under Section 28(1) of the Children and Young Persons Act 1969. D. was in hospital for three weeks, during which time both applicants visited him daily, the first applicant often staying for several hours. Both applicants were very concerned about their grandson.

On 21 September 1984 the social services department of the local authority placed D. with short-term foster parents, where the applicants were refused the opportunity to visit him despite their request. On 7 November 1984 the Wigan Juvenile Court granted a care order in respect of D. to the social services department of the local authority under Section 1(2)(a) of the Children and Young Persons Act 1969. The applicants were not legally entitled to be parties to those proceedings, or to make representations or any application in respect of their grandson.

The local authority from the outset had decided on pursuing the course of rehabilitating D. with his parents. The programme of rehabilitation began at the end of November 1984 when the child began to spend days at home. The applicants were then able to visit him at his parents' home. As the rehabilitation programme developed, so contact with the applicants also increased. On 1 March 1985 the child returned to the care of his parents on a full-time basis and the applicants saw him about twice a week.

On 12 June 1985 the child was admitted to hospital with bruises under his eyes. The applicants visited the child in hospital every day until his discharge on 21 June. The local authority considered these injuries to be non-accidental and when he was discharged from hospital placed him with foster parents. The applicants asked for access, which was initially refused. Subsequently the social services department of the local authority allowed the first applicant to visit the child with the child's mother once a week, but refused to make arrangements for both applicants to visit the child together.

In August 1985 the applicants consulted their current representative, and on 9 August 1985 their representative wrote to the social services department of the local authority, in part in the following terms:

> "Unfortunately <the applicants'> concern, which arises from their natural love of their grandchild, has been interpreted by your department as interference in the case and they have had great difficulty in communicating with your department and in making arrangements to have access to [the child] while he has been living with foster parents. [The applicants] have therefore sought my assistance in opening up communications with your department."

The letter requested further access to the child, if possible at the applicants' home at weekends, and referred to paragraph 8 of the Statutory Code of Practice on Access issued by the Department of Health and Social Security which stresses the importance of considering the wider family when making arrangements for access to a child in care. The letter then added that, if the decision was taken by the local authority not to continue to attempt to rehabilitate the child with his parents, the grandparents offered themselves as potential long-term carers for the child.

The social services department of the local authority continued to refuse to make any fuller arrangements for access for the applicants but did agree to consider the applicants' offer of a home for D.

On 8 November 1985, a case conference held by the social services department of the local authority decided to rehabilitate D. with his parents. It was specifically concluded that if further non-accidental injury occurred rehabilitation would be terminated and consideration given to alternative placement for D. away from his parents. On 17 December 1985 both sets of grandparents were seen by social workers concerning their involvement in the rehabilitation programme. D. again started to spend days at the home of his parents, where the applicants were able to visit him. Once again, with increasing time spent at home, the child's contact with the applicants increased.

On 1 February 1986 the first applicant's son telephoned the first applicant to say that the child had a bruise on his leg. The first applicant advised him to contact the social services department, and on 4 February 1986 the child was again admitted to hospital where the first applicant visited him. D. was found to have bruising on the thigh and buttocks. Both injuries were unexplained and D.'s parents gave different reasons as to how the bruising could have been caused. On or about 6 February 1986 the child was placed with foster parents.

Following a case conference on 7 February 1986 and in line with the conclusions of the case conference on 8 November 1985, rehabilitation plans ceased and long-term placement away from his family was sought for D. At the same time it was decided that access by members of the family was to cease. The applicants have not been allowed to see D. since then.

On 11 February 1986 a social worker from the Family Rights Group advising the applicants wrote to the social services department of the local authority asking them for a meeting with the applicants, before any decisions were made to the child's future. No reply was received to this letter, but on 25 March 1986 the applicants were invited to meet with the representatives of the social services department of the local authority. They were told that on 7 February 1986 the social services department of the local authority had decided to place the child for adoption in a new family. The applicants had not been informed of this decision and had not been invited to make representations about it.

On 19 February 1986 and 4 March 1986 case conferences concerning access to children in care had been held by the social services department of the local authority. It was confirmed that the applicants should have no access to the child and found that they were not suitable to care for him full-time. They had not been informed that these meetings were taking place, nor had they been asked to make any representations, and had not been informed of the decision prior to 25 March 1986.

At their meeting with the local authority on 25 March 1986 the applicants referred to the Code of Practice on Access to Children in Care issued by the Secretary of State under Section 12G of the Child Care Act 1980, and in particular to paragraph 28 of the Code of Practice which is in the following terms:

"Disagreement with parents

28. Local authorities should ensure that they have clear procedures which will enable parents to pursue complaints about access and ask for decisions to be reviewed. Local authorities should also be prepared to use these procedures to deal with complaints about access decisions from other

relatives of children in care."

On 26 March 1986, the local authority sent a letter to the applicants explaining the local authority's decision concerning access and adoption. On 2 April 1986, the applicants attended a meeting with the local authority to discuss this letter.

Subsequently, on 6 May 1986 the applicants attended another meeting of the social services committee of the local authority and presented their request for access to the child. Their request was refused.

In May 1986 the first applicant's adopted son and daughter-in-law issued a summons in the Wigan Juvenile Court under Section 21(2) Children and Young Persons Act 1969, to discharge the care order in respect of their child. The applicants had no locus standi in those proceedings and were not entitled to be represented or to make any applications on their own behalf. The Juvenile Court also had no power to make any order in respect of the child's access to his grandparents. In the meantime, on 12 May 1986, the applicants submitted a letter to the adoption panel of the local authority requesting that they be considered as prospective adopters for the child. They pointed out in their letter that they considered that it would be very hard for the social workers who had been involved in the case up to date to examine their offer with the objectivity which was necessary. They therefore suggested that an independent social worker should make an assessment of their suitability.

The child's parents' summons to discharge the care order and to request access came before the Juvenile Court on 22 October 1986 and lasted four days. The application was refused.

The local authority placed D. for adoption.

Relevant domestic law and practice

Care proceedings under the Children and Young Persons Act 1969

By Section 1 of the 1969 Act the local authority may apply to the Juvenile Court, which is a specially constituted magistrates court, for the child to be placed in its care. The local authority has a duty so to do under Section 2(2) of the 1969 Act. The conditions to be satisfied following an application are set out in Section 1(2)(a)-(f): section 1(2)a provides for a (care) order in circumstances where

> "(a) <the child's> proper development is being avoidably prevented or neglected or his health is being avoidably impaired or neglected or he is being ill treated...."

In the application before the Juvenile Court the local authority has to show the existence of one of the conditions in Section 1(2)(a)-(f) and show that the child is in need of care or control which he will not receive unless one of the orders specified in Section 1(3) is made. It is provided by Section 44 of the Children and Young Persons Act 1933, as amended by the Children and Young Persons Act 1969, that every court in care proceedings shall have regard to the welfare of the child in question and shall in a proper case take steps for removing him from undesirable surroundings or for securing that proper provision is made for his education and training.

One of the orders under Section 1(3) of the 1969 Act is a care order. The effect of a care order is that the rights of the parents, except the rights to agree to adoption and to influence the child's religious beliefs, are taken from them and given to the local authority. The powers and duties of local authorities with respect to children and young persons committed to their care are contained in

Section 10 and Part III of the Child Care Act 1980. The local authority have "the same powers and duties with respect to a person in their care by virtue of a care order ... as his parents or guardian would have apart from the order ..." (Section 10 of the 1980 Act). They also have power to keep the child in their care notwithstanding any claim by his parent or guardian while the order is in force. Where a child is committed to the care of a local authority that authority has the right to control access by other persons to that child. In consequence of the child being in the care of a local authority the local authority are required to give first consideration to safeguarding and promoting the welfare of that child throughout his childhood (Section 18 of the Child Care Act 1980). Thus the local authority must apply this test in relation to decisions concerning access to the child.

The care proceedings are, unless ground (f) is alleged, civil proceedings; they are governed by the Magistrates' Courts (Children and Young Persons) Rules 1970 (S.I.1970/1792) ("the 1970 Rules") as amended and the law of evidence in civil cases applies. The parties to the proceedings are the local authority and the child. It is open to the child to have his parent or guardian to conduct his case on his behalf either directly or indirectly through a lawyer in which case the parent or guardian can apply for legal aid on the child's behalf (Section 40(2) of the Legal Aid Act 1974). Where the court thinks there may be a conflict of interest between the child and the parent or guardian, the court may make an order that those interests be separately represented (Section 32A of the 1969 Act as inserted by Section 64 of the Children Act 1975). In that case legal aid will be available for the child and separately for the parent or guardian (Section 28(6A) of the Legal Aid Act 1974 as amended by Section 65 of the Children Act 1975).

Under Section 2(12) of the 1969 Act, appeals from a juvenile court decision in care proceedings lie to the Crown Court. The Crown Court reviews the decision by way of rehearing. The local authority has no direct right of appeal where no order is made under Section 1(3) or where the one made was not the order sought. Appeal on a point of law lies to the Divisional Court of the High Court.

Judicial review

A person affected by the decision of an administrative body may apply to have that decision set aside on the ground that the body has acted in excess of its legal authority or that the decision taken is one which nobody acting reasonably could have taken.

Wardship

Wardship jurisdiction is exercised by the Family Division of the High Court or, since 28 April 1986, to a limited extent by County Courts. It is a prerogative jurisdiction at common law and is largely independent of statutory provisions. When a child becomes a ward of court a court assumes responsibility for all aspects of his welfare. It may, for example, make orders as to where the child has to live, with whom, who may have access to him, and as to his religion, education and marriage if under 18. In determining what orders to make, the High Court is required by Section 1 of the Guardianship of Minors Act 1971 to have regard to the child's welfare as the first and paramount consideration. A court may grant care and control of the child to a person or body, for example a local authority, but that person or body may only act in accordance with the court's directions. The court may also give care and control to one person or body and make a supervision order, at its own discretion or under Section 7(4) of the Family Law Reform Act 1969, in favour of another person or body. A child remains a ward of court until either he has attained his majority or the court orders that he shall cease to be a ward of court. No important step can be taken in the child's life without the

court's consent (Re S (1967) 1 All ER 202 at 209).

Anyone, not merely a parent or a local authority, who can show an appropriate interest in a child's welfare can apply for a child to be made a ward of court. Section 41(1) of the Supreme Court Act 1981 provides that no child may be made a ward of court other than by a court order. The application for the order must be made by originating summons in the High Court. The procedure is set out in Order 90 of the Rules of Supreme Court. The child becomes a ward of court immediately the originating summons is issued. However, unless an appointment for the hearing of the summons is made within 21 days, the wardship automatically lapses. The appointment will generally be before a registrar who gives directions as to what is to be done before the case may be heard before a judge. He may also make an order as to access if the person with the physical custody of the child agrees. The registrar may also decide if any other interested parties to the proceedings should be so joined. Any party dissatisfied with the decision of the registrar may appeal to a judge in chambers. When the proceedings are heard before the judge he either confirms the wardship or makes an order terminating wardship.

There is a right of appeal from the judge in chambers to the Court of Appeal, and thereafter (with leave) to the House of Lords. In exceptional circumstances an appeal may be direct to the House of Lords. Interested persons with insufficient means are able under Section 7 of the Legal Aid Act 1974 to obtain legal aid for the representation of their interests in wardship proceedings.

Once a child has become a ward of court, it remains open to any party to bring the case back to the court for a variation of the original order granting wardship or for directions on matters such as access or education.

The courts have emphasised that the wardship jurisdiction is not an alternative form of appeal from the decision of a juvenile court concerning the care of a child under the 1969 Act. The relationship between the responsibilities for the care of children given by statute to local authorities and those exercised by the High Court under wardship jurisdiction was explained in the leading judgment of Lord Wilberforce in the House of Lords case A v. Liverpool City Council (1981) 2 All ER 385 in particular at pages 388-9 in which it was stated that wardship jurisdiction could not be exercised by the courts to review the merits of local authorities decisions within the field of discretion committed by statute to the local authority.

Code of Practice on Access

The Code of Practice on Access is a statutory code issued under Section 12G of the Child Care Act 1980. Particular emphasis is placed on the need for local authorities to make provision for contact to be maintained, where this is consistent with the welfare of children, with the wider members of the family in addition to the child's parents (paras. 8 and 9 of the Code). The Code also requires local authorities to ensure that they have clear procedures to enable complaints about access to be pursued and for decisions to be reviewed where relatives are concerned as well as parents. The provisions introduced by the Health and Social Services and Social Security Adjudications Act 1983 which provide a court procedure giving parents a right to apply for access where a child is subject to a care order do not apply to grandparent applications. Thus domestic legislation does not recognise that grandparents have a right to access or a right to apply for access to a child when that child is in the care of a local authority under a compulsory care order.

Grandparents and grandchildren

Under domestic legislation grandparents generally do not have

legal rights over their grandchildren. Any rights which may exist over children are normally vested jointly in the children's parents if they are married. In considering the award of custody of a child to any person or an issue relating to a child's upbringing such as access a court must give first and paramount consideration to the welfare of the child (Section 1 of the Guardianship of Minors Act 1971). Where a child is in the care of a local authority by virtue of a compulsory care order a grandparent of that child does not have a right to apply for custody or access but must rely on the local authority's discretion to afford contact with the child (which could include access or the child living with the grandparents) where this would be in the child's best interests. Section 18 of the Child Care Act 1980 requires the local authority to give first consideration to safeguarding and promoting the welfare of the child throughout his childhood and such contact with the grandparents would therefore have to be consistent with the child's welfare.

Under domestic legislation grandparents may be parties to or involved in the following proceedings in relation to their grandchildren:

(i) Pursuant to Section 14A of the Guardianship of Minors Act 1971, where, under Section 9(1) of the Act, an order giving access or custody to the father or mother is in force, the Court may, on application of a grandparent of the minor, make an order requiring access to the minor to be given to the grandparent.

(ii) Grandparents may commence wardship proceedings, or apply to be joined as parties to wardship proceedings commenced by any other person, and may ask for any order which is in the interest of their grandchild. However, as stated above, wardship proceedings cannot be used to challenge the decisions of local authorities taken under their statutory powers.

(iii) Where the child concerned is living with the grandparents they may apply for a custodianship order in respect of him under the Children Act 1975. This provision is applicable to any relative of the child with whom the child has been living for the preceding three months where the person with legal custody of the child gives his consent. The provision also applies to any person with whom the child has been living for a period of 12 months (including the preceding three months) where the person with legal custody consents.

(iv) In cases where the child is living with the grandparents and various statutory requirements have been satisfied grandparents may apply for an adoption order. These requirements apply to any prospective adopter.

COMPLAINTS

1. The applicants complain of a violation of their rights under Article 6 (Art. 6) of the Convention. They contend that their right to apply for custody of and/or access to their grandchild is a civil right, but that they do not have any right under English law to apply for custody or access because their grandchild is subject to a care order made under the Children and Young Persons Act 1969. In the care proceedings the applicants have no locus standi and no right to apply for the discharge of the care order. Similarly, the applicants have no right to make an application in respect of their grandchild in wardship proceedings in view of the decisions of the House of Lords in A v. Liverpool City Council (1981) 2 All ER 385 and W and others v. Hertfordshire County Council (1985) 2 All ER 301. Hence the applicants contend that they had no independent and impartial tribunal established by law from which they could obtain a fair hearing within a reasonable time in respect of the determination of their civil

rights as regards their grandchild.

2. The applicants also complain of a violation of their rights under Article 8 (Art. 8) of the Convention. They submit that they had substantial access to their grandchild from his birth in July 1984 until his final placement with foster parents in February 1986.

They complain that by restricting and ultimately terminating access and refusing to allow them custody of their grandchild, the social services department of the local authority have interfered with their right to respect for their family life.

They further contend that the process of decision-making within the social services department of the local authority provided insufficient safeguards and showed a total lack of respect for family life (*).

3. The applicants lastly contend that they had no effective remedy before a national tribunal as required by Article 13 (Art. 13) of the Convention since they had no standing in the care proceedings and wardship would have been ineffective.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 18 September 1986 and registered on 22 September 1986.

On 4 December 1986, the Commission decided to bring the application to the notice of the respondent Government and to invite them to submit written observations on its admissibility and merits pursuant to Rule 42(2)b of the Rules of Procedure.

The observations of the respondent Government were submitted on 5 June 1987 after an extension in the time-limit and the observations in reply submitted by the applicants on 16 September 1987, also after an extension in the time-limit.

(*) The applicants' complaints under Article 8 (Art. 8) are set out in full on pp. 9-10 of the Partial Decision on Admissibility.

The applicants were granted legal aid by the President of the Commission on 25 June 1987.

On 9 March 1988, the Commission declared the applicants' complaints under Article 8 (Art. 8) of the Convention inadmissible as manifestly ill-founded in a partial decision on admissibility.

SUBMISSIONS OF THE PARTIES

A. The respondent Government

1. The facts

Background

Following D.'s first hospitalisation, the local authority's records note that, in discussion with the health visitor on 7 September 1984, the first applicant mentioned that she was not surprised that there had been injuries on D.

From the outset, the local authority sought to rehabilitate D. with his parents as being in his best interests. The efforts of the local authority therefore concentrated on the relationship between D.

and his parents, and although this at times restricted the applicants' access to D., this was done for D.'s benefit. It had been noted at case conferences on 11 September and 13 November 1984 that the first applicant tended to overshadow D.'s mother, thus providing an obstacle to the proposed rehabilitation of D. with his parents.

While the applicants were not entitled to be parties in the case proceedings on 7 November 1984, the Juvenile Court has an inherent discretion to allow persons such as the applicants to participate in the proceedings: indeed the first applicant did give evidence at the hearing. Representations could have been made that the Court should make a supervision order with a condition attached that D. live with the applicants.

The applicants met with the local authority on 25 March 1986, 2 April 1986 and 6 May 1986 and the applicants were able to put their case for access. Following full consideration, the request for access to D. by the applicants was refused.

In the proceedings before the Juvenile Court in October 1986, neither the applicants nor D.'s parents asked that a supervision order be made with a condition that D. reside with the applicants. Both the guardian ad litem's reports of 20 and 22 October 1986 and the local authority's report of 16 October 1986, which were before the Court, considered and rejected the further contact between the applicants and D. It is submitted that the Court had ample evidence before it to come to the conclusion that it did, namely that the care order should not be discharged and that there should be no access. It was brought to the attention of the Court that the local authority's intention was to place D. for adoption. This has now taken place.

It should also be noted that on 13 May 1986 a letter from the local ombudsman was received by the local authority enclosing a letter of complaint from the applicants concerning their treatment by the local authority. This was investigated by the ombudsman and no evidence of maladministration was found.

Throughout this case the local authority social workers were concerned that not all the members of the family were being fully open with the various authorities as to how injuries to D. occurred. As mentioned above the first applicant was recorded by a health visitor as saying that she was not surprised at the injuries which occurred to D. resulting in his admission to hospital on 4 September 1984. On 19 September 1984 the health authority records note that D.'s mother admitted holding D.'s face while winding him after a feed and that a "potty" and shampoo bottle had been thrown at him by his sister. Following attempts to rehabilitate D. with his family when he was examined on 22 January 1985, 27 February 1985, 12 June 1985 and 4 February 1986 the explanations given by the various members of the family, including the applicants, for the injuries recorded were not accepted as satisfactory by the doctor who examined D. In particular the explanations given by members of D.'s family for the injuries on 12 June 1985 were not consistent. On the final occasion when rehabilitation was attempted not only was there concern among the local authority social workers that one of the applicants could have caused the injuries but again the explanations provided by D.'s parents and the second applicant were inconsistent. From the second applicant's statement of 4 February 1986 it would appear that he could have caused the bruising to D. According to the guardian ad litem's report of 20 October 1986 the doctor who examined D. said that the bruising on D.'s buttocks was due to an "extremely hard slap". The local authority's letter of 26 June 1986 to the local ombudsman states on page 3:

> "The officers felt it was difficult for them to find out exactly and precisely how D. had been injured, which had occurred on a number of occasions. There seemed to be

conflicting stories being told or, to use the (applicants') own phrase, a muddying of the picture. This is called collusion and it could have been created deliberately or it could have been created unknowingly, without being aware of the effect.

The officers genuinely felt and still feel that such a smoke screen or muddying of the picture existed, hence, the reference in the telephone conversation (to collusion). That view is still felt and it is not appropriate to apologise for using the phrase."

The local authority's version of events was accepted by the local ombudsman.

The view that members of the family had been less than fully open with the local authority is supported by the first applicant's comments (noted in the local authority's records on 27 March 1986) when she explained to a social worker that D.'s mother had injured D. If she had known this before she could presumably have come forward and discussed it openly with the local authority officials concerned.

2. Domestic law and practice

Adoption legislation

Before a child can be placed for adoption the Adoption Agencies Regulations 1983 which govern pre-placement procedure require a full investigation of each case where adoption is under consideration. This will include consideration of the wider family. Before a local authority can make adoption placement decisions they must receive their Adoption Panel's recommendations. Adoption orders can only be made after consideration by the adoption Court of the question of whether the parents agree to the making of an adoption order or the Court dispenses with their agreement in accordance with Section 12 of the Children Act 1975. In a case such as the present one the parties to the proceedings would include the prospective adopters, the local authority and the child's parents and may include any other person (including grandparents) as the Court may at any time direct (Rule 15(3) of the Adoption Rules 1984). The Court will have before it in addition to any other evidence which any of the parties may wish to introduce a report from the local authority as the placing agency covering the matters specified in Schedule 2 to those rules which will include relevant information concerning the grandparent. It should cover the nature of the relationship between the grandparents and the child and possible alternatives to adoption which have been or should be considered. In considering whether to make an adoption order in any case the Court is required to have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare of the child throughout his childhood, and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding (Section 3 of the Children Act 1975).

Children and Young Persons (Amendment) Act 1986

Since proceedings were taken in the present case the above Act has been passed. It amends the 1969 Act to the effect that any grandparent of a child in respect of whom care proceedings are brought may make an application to the Court and the Court may in such circumstances as may be specified in rules of Court give leave for the grandparent to be made a party to the proceedings. These provisions of the Act have not yet been brought into operation. The Act does not affect the orders which the Court may make in care proceedings where the grandparent is a party. Thus the Court cannot make a custody order or access order in favour of the grandparent.

3. Admissibility and merits

Article 6 para. 1 (Art. 6-1) of the Convention

The respondent Government do not accept that the applicants' civil rights were involved in the present case. Grandparents do not under English law have any rights of access to their children. At most, a child's grandparents have the right, in certain circumstances, to make an application to the courts in the hope that the courts might, in the exercise of their discretion, permit them access to their grandchild. It is therefore submitted that there is no legal basis in English law for the proposition that grandparents have "rights" in relation to their grandchildren of a type to which Article 6 (Art. 6) of the Convention has any relevance.

Insofar as it is true to say that the grandparents had a hope or expectation that access might have been granted to them by the local authority, it is submitted that any such hope or expectation cannot be classed as a right and that the possibility that a discretion right be exercised in a certain way cannot be characterised as a right.

If, which is not accepted, the applicants' civil rights were involved it is submitted that they did have access to court for determination of that right. Local authority action can be challenged in wardship proceedings in conjunction with proceedings for judicial review or in proceedings for judicial review alone. If the local authority had acted improperly in restricting access to the applicants or in their refusal to grant access after 7 February 1986, it would have been open to the applicants to apply both for judicial review of the local authority's actions and to bring wardship proceedings at the same time. If, for example, it could have been shown that the local authority did not take proper account of the applicants as possible carers for D. and persons who should have continued to be involved in D.'s life or if the local authority had failed to act in accordance with the principles set out in the Code of Practice on Access there would have been good grounds for such applications to have been made. In fact, the local authority went to considerable efforts to enable the applicants to put their case before a specially convened meeting of elected members in accordance with the procedures recommended under the Code of Practice and there were a number of meetings between the applicants and the local authority's social workers to discuss both access and the applicants' further involvement with D.

In the present case, any "right" to access which the applicants had stemmed from the possibility of the local authority exercising their discretion in the applicants' favour. In such cases, the case-law of the Court and the Commission indicates that the possibility of judicial review of the exercise of such discretion satisfies the requirements of Article 6 para. 1 (Art. 6-1). The recent case of Agosi (Eur. Court H.R., Agosi judgment of 24 October 1986, Series A No. 108) indicates that the remedy of judicial review, which in this case could be used alone or supported by a wardship application, would be a satisfactory remedy having regard to the requirements of Article 6 (Art. 6). The Government also refer to the case of Van Marle (Series A No. 101 para. 35) as indicating that the existence of such proceedings is relevant in particular when it is alleged that an authority has exercised its powers improperly. The Government further rely on the Report of the Commission in Application No. 7598/76, Kaplan v. the United Kingdom (Comm. Rep. 17.7.80, D.R. 21 p. 5),

It is submitted that the applicants could not show, on the facts, that they had a proper basis for challenging the actions of the local authority, as the local authority did not act improperly. However, if this is alleged, it is submitted that in this regard the applicants have failed to exhaust domestic remedies for the purposes

of Article 26 (Art. 26) of the Convention.

As regards the care proceedings, the applicants could have requested the Court, in the exercise of its inherent jurisdiction, to allow them to make representations. For example, they could have made representations, in conjunction with D.'s mother and her husband, that a supervision order be made with a requirement that D. be placed with the applicants.

Article 13 (Art. 13) of the Convention

If, contrary to the respondent Government's submission, the Commission is of the opinion that Article 6 (Art. 6) is applicable, the Government would submit that no separate issue arises under Article 13 (Art. 13). The Government would refer to the constant case-law of the Convention organs to the effect that the requirements of Article 13 (Art. 13) are less strict than and accordingly absorbed by Article 6 (Art. 6) (e.g. Eur. Court H.R., Silver and Others judgment of 25 March 1983, Series A No. 61 para. 110).

If the Commission are of the opinion that Article 6 (Art. 6) is not applicable, the respondent Government first suggest that the applicants do not have an arguable claim for the purposes of Article 13 (Art. 13). In the case of Rice and Boyle (Applications Nos. 9658/82 and 9659/82, Comm. Rep. 7.5.86) the Commission identified three elements of a claim which was "arguable": the claim should concern a right or freedom guaranteed by the Convention; the claim should not be wholly unsubstantiated on the facts; and the claim should give rise to a prima facie issue under the Convention. The Commission did not amplify what it meant by the words "prima facie issue" in this context. However, it is noted that in respect of the two applicants' complaints in that case the Commission equated the concept of manifestly ill-founded with the absence of a prima facie issue; in particular, in paragraph 91 of its Report, the Commission held that, since the supervision of prisoners' correspondence was justified under Article 8 para. 2 (Art. 8-2), the complaint did not give rise to a prima facie issue and thus to an arguable claim under the Convention.

In the present case, the Government argue that the applicants' claim under Article 8 (Art. 8) is manifestly ill-founded. In these circumstances the Government submit that no issue under Article 13 (Art. 13) arises.

Alternatively, the applicants had an effective remedy before a national authority through the procedure adopted by the local authority in respect of access and subsequently by taking wardship and/or judicial review proceedings in respect of the decisions made by the local authority pursuant to that procedure in relation to the applicants. There is no evidence to indicate that any decision of the local authority in this case was improperly taken, but, if it had been, the remedies available through judicial review and wardship would have allowed such a decision to be challenged and afforded an effective remedy in accordance with the requirements of the Convention. In these circumstances the Court could have declared that the decisions that had been taken did not have a proper legal basis, or required the local authority to make its decision again taking account of proper considerations. In conjunction with its wardship jurisdiction the Court could have awarded care and control to the applicants or directed that access be granted.

The Government would also observe that the applicants have already put their case to the Adoption Panel. Their request that they be considered as suitable for an adoption placement for D. was in fact rejected, but they will be entitled to apply to be made parties to any court proceedings which consider adoption of D. by the prospective adopters with whom the child is presently placed. The applicants will therefore be able to make representations to that court on such

matters as they see fit. For example it would be open to the applicants to argue against the making of an adoption order. Again this procedure indicates that the applicants do have an effective remedy before a national authority as required by Article 13 (Art. 13).

B. The applicants

1. The facts

The applicants submit that they were denied any access to D. from 21 September 1984 until a date in mid-November 1984. The applicants do not accept that access was denied to them in order to facilitate D.'s rehabilitation with his parents. The applicants' access restarted once the rehabilitation programme commenced when they were able to see D. at his parents' home.

The applicants deny that in June 1985 arrangements were made for the first applicant to visit D. on her own. The first applicant was occasionally allowed to visit D. together with his mother, but the local authority refused to allow the applicants to visit either alone or together with each other.

The local authority's letter to the applicants of 27 August 1985 stated that a social worker would investigate the applicants' offer of a home for D. and that the matter would be considered "most carefully and in great detail". Shortly afterwards the applicants were visited at home by a social worker. She stayed about 45 minutes and asked the applicants some questions about themselves. She said that if D. did not return home to his parents it was most unlikely that he would be placed with the applicants as they lived too near the parents. The applicants said they would be prepared to move to another area. The social worker mentioned adoption and said that the local authority had no finances to maintain D. in foster care. The applicants said they would be prepared if necessary to contribute to his upkeep. The social worker did not visit the applicants again. The applicants were not invited to the case conferences on 18 October and 8 November 1985.

The applicants submit that the Code of Practice on Access encourages local authorities to make provision for access to members of the child's extended family. Paragraph 28 of the Code states that local authorities should have clear procedures to deal with complaints about access from relatives of children in care. Paragraph 33 states that parents should be informed in writing if termination of access is being considered and should be told how to make their views known and how any decisions will be conveyed to them. It is submitted that the spirit of the Code is that concerned relatives should be in no worse a position than parents. In this case the local authority decided to terminate D.'s access to his grandparents on 7 February 1986. The applicants were not informed in advance that such termination of access was being considered. The decision on 7 February 1986 was confirmed at the meeting held on 19 February and 4 March 1986. Though the local authority were well aware that the applicants wished to make representation about access to and care of their grandchild, the applicants were not told about the meetings or invited to make their views known. The applicants note that the report of the meeting of 6 May 1986 does not state the reasons for refusing access.

The applicants deny that they were not fully open with the local authority about D.'s injuries or that they deliberately "muddied the picture". In February 1986 D. was admitted to hospital with certain injuries. At first the applicants did not know the details or extent of his injuries. The second applicant was concerned that he might have been responsible for the injuries as he had smacked D. to make him let go of an electrical plug and socket. He sent a statement detailing the incident to the local authority. When the second

applicant was made aware of the extent of D.'s injuries he accepted he could not have caused them.

The applicants also emphatically deny that they were "implicated directly or indirectly in the abuse of D". There is no evidence to suggest that the applicants abused or neglected D. during their contact with him. The first applicant also denies that she stated that she was aware that D.'s mother had abused him although she did acknowledge that D.'s mother found difficulty in coping.

2. Domestic law and practice

Adoption

Grandparents are not automatically made parties to adoption proceedings involving their grandchildren. It is true that Rule 15(3) of the Adoption Rules 1984 provides that the Court may direct that any person be made a party to the proceedings. However, this is a matter for the Court's discretion and in practice grandparents and other relatives of children in care are rarely successful in applying to be joined as parties. No adoption proceedings are commenced until the child has been successfully placed with prospective adopters. In the overwhelming majority of cases access to the parents and relatives will have been terminated sometime before placement. In cases where the child is in care under the Children and Young Persons Act 1969 the Court in adoption proceedings has no power to make any order for custody or access in favour of grandparents. For all these reasons it is only in exceptional cases that the Court in adoption proceedings will give leave for grandparents to be involved.

3. Admissibility and merits

Article 6 (Art. 6) of the Convention

The applicants' civil rights

The applicants submit that there is a civil right of a grandparent to have access to his grandchild. The applicants would adopt the view of the Commission in the case of Sporrong and Lönnroth (loc. cit) referred to by the Government that a given privilege or interest which exist in a domestic legal system may constitute a civil right, even though it is not described as such by that system.

The applicants reject the Government's submission that, under domestic law, grandparents have no rights as regards access to their grandchildren who are not in public care. Legislation such as the Guardianship of Minors Act 1971 specifically gives grandparents the right to apply for access to their grandchildren and in the applicants' submission domestic law recognises the importance to children of grandparental contact. Though it is not stated in any statute that grandparents have a "right" of access the applicants would submit that domestic law by implication recognises that right as grandparents are permitted to apply for access where it is denied.

The applicants would further submit that any right of access they had to their grandchild was not extinguished once he was received into care. Although the continuation of access became a matter within the discretionary power of the local authority once D. had been received into care, this did not mean that they no longer had any right in regard to access, since the Code of Practice on Access makes express reference to preserving contact with a child's natural family, including grandparents. It would be inconsistent with this aim if the making of a care order were automatically to divest the grandparent of all further rights in regard to access.

The applicants submit that they have no access to any independent and impartial tribunal established by law to determine

their civil rights. It was not open to them to commence proceedings for judicial review. The applicants were not invited to the meetings at which the local authority made their decisions and have no access to the relevant minutes and reports arising from those meetings. The applicants do not know why they were rejected as possible carers for D. or why it was considered to be in his interest that access to them should cease. The applicants are unaware of the principles upon which the local authority acted and of the matters the local authority took into account. The applicants could not have obtained leave to commence proceedings for judicial review without some concrete evidence that the local authority had acted on wrong principles or taken irrelevant matters into account.

The applicants would further submit that proceedings for judicial review would not have constituted an effective remedy for the determination of their civil rights. They would refer to the judgment of the Court in W v. the United Kingdom (loc. cit.) where the Court found that the powers of the English courts as regards access did not satisfy the requirements of Article 6 (Art. 6).

The applicants disagree that they could have requested the Juvenile Court to allow them to make representations. The applicants further submit that, as the Juvenile Court in care proceedings has no power to adjudicate upon an application by grandparents for access to or custody of their grandchild, any right of grandparents to make representations to the Court would not constitute a remedy which satisfies the requirements of Article 6 para. 1 (Art. 6-1) of the Convention.

Article 13 (Art. 13) of the Convention

The applicants submit above that (1) the lack of procedural safeguards whereby the necessity of the local authority's actions could be tested and (2) the absence of effective remedies whereby the applicants could challenge the local authority's decisions constituted breaches of Article 8 (Art. 8). These matters when taken in conjunction with Article 13 (Art. 13) constitute a breach of that article also.

As regards the Government's submissions that the applicants could have intervened in any adoption proceedings, the applicants do not accept that the applicants could have successfully intervened in adoption proceedings. However, even if they had been made parties to the proceedings the Court on hearing the application for adoption would have had no power to make any order for access or custody in the applicants' favour. The applicants therefore submit that this procedure does not constitute an effective remedy which satisfies the requirements of Article 13 (Art. 13).

THE LAW

1. Article 6 (Art. 6) of the Convention

The applicants complain that they have no effective access to court to apply for custody of and/or access to their grandchild contrary to Article 6 (Art. 6) of the Convention.

Article 6 (Art. 6) of the Convention provides:

> "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 Commission recalls first of all that the case-law of the Commission and the Court has established that Article 6 para. 1 (Art. 6-1) of the Convention guarantees to everyone an effective right of access to the courts for the determination of their civil rights and obligations. The

Commission must therefore consider whether a right was at all involved in the present case and, if so, whether that right was a civil right within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission notes that, generally speaking, Article 6 para. 1 (Art. 6-1) of the Convention is not aimed at creating new substantive rights which have no legal basis in the State concerned but at providing procedural protection to rights which are recognised in domestic law. It is not however decisive whether a particular benefit or expectation is characterised under the domestic legal system as a right since the term right must be given an autonomous interpretation under Article 6 para. 1 (Art. 6-1) of the Convention (e.g. Eur. Court H.R., König judgment of 28 June 1986, Series A No. 27 para. 87). In W v. the United Kingdom (Eur. Court H.R., W v. the United Kingdom judgment of 8 July 1987, Series A No. 121, p. 32 para. 73) the Court stated:

> "It is true that Article 6 para. 1 (Art. 6-1) extends only to 'contestations' (disputes) over (civil) 'rights and obligations' which can be said, at least on arguable grounds, to be recognised under domestic law; it does not in itself guarantee any particular content for (civil) 'rights and obligations' in the substantive law of the Contracting States (see, amongst other authorities, the Lithgow and Others judgment of 8 July 1986, Series A No. 102, p. 70 para. 192)."

The applicants in the present case claim that their right to access and/or custody is a civil right. The Government however submit that under English law grandparents do not have any legal rights over their grandchildren and that such rights which can be said to exist in relation to children are normally vested jointly in the children's parents.

An examination of English law discloses that in certain circumstances grandparents may be able to introduce legal proceedings dealing with the welfare of their grandchildren or applying for custody of and access to their grandchildren (see Relevant domestic law and practice). However, while such possibilities do exist under the Children Act 1975, adoption legislation and the wardship procedure, the Commission notes that these provisions apply generally to any persons who fulfil the relevant criteria and are not rights which accrue to applicants as a consequence of their status as grandparents.

Section 14A of the Guardianship of Minors Act 1971 makes specific provision for grandparents but this only gives a grandparent the right to apply to a court for access where an order in relation to access or custody has already been made by the court in respect of the father or mother of the child in question and, in such circumstances, the court may in its discretion award access to a grandparent. This provision allowing grandparents to apply to the court however does not apply in respect of a child in care. Accordingly, this provision which appears to have been designed to deal with the consequences of the breakdown of marriage confers no substantive right of access by grandparents to a child in care. The Commission therefore finds that this limited procedural provision confers no substantive rights of access capable of falling within the scope of the concept of civil rights.

The Commission also recalls the Statutory Code of Practice on Access, issued pursuant to Section 12G of the Child Care Act 1980, which states that consideration of access should take into account the wider family, specific reference being made in this context to grandparents. However it appears that the Code is intended as providing guidelines to local authorities and others concerned in child care and does not lay down any binding requirements or obligations in this respect nor confer any rights of access or

custody. At most, this would appear to give relatives, including grandparents, an expectation that they should be considered in the course of reaching decisions concerning access to a child in care.

In these circumstances, the Commission concludes that the domestic law of England does not recognise any right of grandparents to access to or to custody of their grandchildren in care.

The Commission accordingly finds that the applicants' complaints do not involve a civil right or obligation within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. It follows that this part of the application must be dismissed as incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. Article 13 (Art. 13) of the Convention

The applicants also complain that they have no remedy in respect of their complaints, since they had no locus standi within the care proceedings and wardship proceedings would have been ineffective.

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."

Insofar as the applicants complain of interference with their right to respect for family life under Article 8 (Art. 8), the Commission recalls that the case-law of the Court and the Commission establishes that for Article 13 (Art. 13) to apply, an applicant's claim that a provision of the Convention has been breached must be an arguable one (see e.g. Eur. Court H.R., Leander judgment of 26 March 1987, Series A No. 116, p. 29 para. 77 and Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A No. 131 para. 52).

The Commission recalls that in its partial decision on admissibility dated 9 March 1988 it found that, in relation to the limitations on access afforded to the applicants during the periods from the end of September to the end of November 1984 and from June to November 1985, the restrictions imposed did not disclose any lack of respect for the applicants' family life, bearing in mind the relatively short duration of and background to those restrictions. In all the circumstances, the Commission does not consider that there was an arguable case that during those periods there was a violation of Article 8 (Art. 8).

The Commission also found that the decision to terminate access taken in 1986 was justified within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention as being necessary in a democratic society for the purpose of protecting the health and rights of others, namely, the child. The Commission notes that D. had been a victim of a series of non-accidental injuries since his birth and though attempts had been made to rehabilitate D. with his natural family, these had proved unsuccessful. The Commission also on examination of the facts of the case rejected the submission of the applicants that they were insufficiently involved in the decision-making process. The Commission recalls in this context that the applicants were invited to make representations at three meetings with the local authority and were then able to present their views concerning access and custody of D. and seek a review of the situation. The Commission is therefore of the opinion that the applicants have failed to establish an arguable claim that their degree of involvement was not such as to show respect for their family life.

In these circumstances, the Commission finds that the facts of the case fail to disclose that the applicants have an arguable claim that Article 8 (Art. 8) of the Convention has been breached. The Commission accordingly finds no appearance of a breach of Article 13 (Art. 13) of the Convention. It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Insofar as the applicants invoke Article 13 (Art. 13) in relation to their complaints of lack of access to court under Article 6 (Art. 6), the Commission recalls that it has found the applicants' complaints under Article 6 (Art. 6) incompatible ratione materiae with the provisions of the Convention. It therefore follows that their complaint under Article 13 (Art. 13) in this regard must also be dismissed as incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

Secretary to the Commission	President of the Commission
(H.C. KRÜGER)	(C.A. NØRGAARD)