CONSEIL DE L'EUROPE

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COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (PLENARY)

CASE OF OLSSON v. SWEDEN (No. 1)

(Application no. 10465/83)

JUDGMENT

STRASBOURG

24 March 1988

In the Olsson case*,

The European Court of Human Rights, taking its decision in plenary session in pursuance of Rule 50 of the Rules of Court and composed of the following judges:

Mr. R. RYSSDAL, *President*,
Mr. J. CREMONA,
Mr. Thór VILHJÁLMSSON,
Mr. G. LAGERGREN,
Mr. F. GÖLCÜKLÜ,
Mr. F. MATSCHER,
Mr. J. PINHEIRO FARINHA,
Mr. L.-E. PETTITI,
Mr. B. WALSH,
Sir Vincent EVANS,
Mr. R. MACDONALD,
Mr. C. RUSSO,
Mr. R. BERNHARDT,
Mr. A. SPIELMANN,
Mr. J. DE MEYER,

and also of Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 23 September 1987 and 25 February 1988,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 13 March 1987 and by the Government of the Kingdom of Sweden ("the Government") on 13 April 1987, within the three-month period laid down by Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). The case originated in an application (no. 10465/83) against the Kingdom of Sweden lodged with the Commission on 10 June 1983 under Article 25 (art. 25) by two Swedish citizens, Mr. Stig and Mrs. Gun Olsson.

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* Note by the Registrar: The case is numbered 2/1987/125/176. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Sweden recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); its purpose was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 3, 6, 8, 13 and 14 (art. 3, art. 6, art. 8, art. 13, art. 14) of the Convention and Article 2 of Protocol No. 1 (P1-2). The Government's application sought the Court's ruling on the interpretation of Article 8 (art. 8) of the Convention in relation to those facts.

2. In response to the inquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicants stated that they wished to take part in the proceedings pending before the Court and designated the lawyer who would represent them (Rule 30).

3. The Chamber of seven judges to be constituted included, as ex officio members, Mr. G. Lagergren, the elected judge of Swedish nationality (Article 43 of the Convention) (art. 43), and Mr. R. Ryssdal, the President of the Court (Rule 21 § 3 (b)). On 23 April 1987, the President drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr. Thór Vilhjálmsson, Mrs. D. Bindschedler-Robert, Mr. R. Macdonald, Mr. R. Bernhardt and Mr. J.A. Carrillo Salcedo (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43).

4. On 25 June 1987, the Chamber decided under Rule 50 to relinquish jurisdiction forthwith in favour of the plenary Court.

5. Having consulted, through the Registrar, the Agent of the Government, the Commission's Delegate and the applicants' lawyer regarding the need for a written procedure, the President of the Court decided, on 2 July 1987, that it was not necessary for memorials to be filed (Rule 37 § 1) and directed that the oral proceedings should open on 21 September 1987 (Rule 38).

6. The hearing was held in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

- for the Government

Mr. H. CORELL, Ambassador,
Under-Secretary for Legal and Consular Affairs, Ministry for Foreign Affairs, *Agent*,
Mr. K. RUNDQVIST, Under-Secretary for Legal Affairs,
Ministry of Health and Social Affairs,
Mr. P. BOQVIST, Legal Adviser,
Ministry for Foreign Affairs,
Mrs. A.-M. HOLMSTEDT, Legal Adviser,
Gothenburg Municipality, *Advisers*;

- for the Commission

Mrs. G.H. THUNE, *Delegate*;

- for the applicants

Mrs. S. WESTERBERG, lawyer, *Counsel*.

The Court heard addresses by Mr. Corell for the Government, by Mrs. Thune for the Commission and by Mrs. Westerberg for the applicants, as well as their replies to the questions put by the Court and its President.

7. On 27 July 1987, the applicants had lodged their claims for just satisfaction under Article 50 (Rule 49), which they supplemented with further particulars on 19 October. Written comments on those claims were received from the Government on 7 September and 23 November 1987 and from the Commission on 15 December 1987.

On 3 September and 16 November 1987, the Government, either on their own initiative or at the Court's request, filed various documents.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

A. Background

8. The applicants, Mr. Stig and Mrs. Gun Olsson, who are husband and wife, were born in 1941 and 1944 respectively. They are Swedish citizens and live in Gothenburg in Sweden. The case concerns three children of the marriage, namely Stefan, born in June 1971, Helena, born in December 1976, and Thomas, born in January 1979 (hereinafter together referred to as "the children"). The applicants and the children belong to the Church of Sweden; the applicants' membership is purely nominal, as they describe themselves as atheists.

9. In their youth, both Mr. and Mrs. Olsson had spent some time at Stretered, a home for the mentally retarded. However, an examination by a psychologist in 1982 revealed that they then had an average level of intelligence. Other children of theirs had been in social care and Stefan has been subject to various forms of special education since 1975, when he was registered with the Social Welfare Administration for the Handicapped by reason of his being mentally retarded.

Prior to the events giving rise to the present case, a number of different social authorities had been individually involved with the family; they co-ordinated their activities from 1979 onwards. Mr. Olsson - who is in receipt of a disability pension - and Mrs. Olsson were both given certain additional social assistance between 1971 and 1976. They stated that they lived apart on two occasions, the first time for three months and the second for eight months. From May 1977 to December 1979, they were provided with the support of a

home-therapist, and a psychiatric team was in touch with the family as from 1979. It appears that the applicants had difficulty in co-operating with the social authorities.

B. Taking of the children into public care and related judicial proceedings

10. The family's situation was discussed by representatives of the various social authorities concerned at case conferences held on 26 October 1979, 29 November 1979 and 10 January 1980. The applicants were present on the last occasion, when different preventive measures for the children were agreed upon. According to the Government, nothing came of this agreement because the applicants abandoned it.

On 22 January 1980, Social District Council No. 6 in Gothenburg ("the Council") decided, pursuant to sections 25(a) and 26(4) of the Child Welfare Act 1960 (barnavårdslagen 1960:97 - "the 1960 Act"; see paragraphs 35 and 43 below), that the children should be placed under supervision in view of their parents' inability to satisfy their need for care and supervision.

11. Further case conferences, at which the applicants were present, were held on 13 March and 29 May 1980. On 22 August, at which time the parents were living apart, the Chairman of the Council decided, pursuant to section 30 of the 1960 Act (see paragraph 43 below), that the children should be provisionally taken into care so that their situation could be investigated. This decision, which had been prompted by the fact that Stefan and Helena had been found cycling around and unable to make their way home, was confirmed on 26 August by the Council after a meeting on the same day at which the applicants were present and made oral submissions.

12. On 16 September 1980, the Council decided, at a meeting at which the applicants were present and had an opportunity to submit their views, that the children should be taken into care, pursuant to sections 25(a) and 29 of the 1960 Act (see paragraphs 35 and 43 below). This decision was based, inter alia, on a report compiled by the social administration and dated 11 September 1980, which was produced at the meeting. The report reviewed the family history and background; recorded the applicants' opposition to the children's being taken into care; concluded that the latter's development was in danger since they were living in an environment which was unsatisfactory due to their parents' inability to satisfy their need for care, stimulation and supervision; noted that preventive measures had been taken, but with no result; and recommended the taking into care. Appended to the report were statements from Stefan's former teacher, from Child Welfare Clinic No. 60 (concerning Helena and Thomas) and from the home where the children had been placed for investigation, together with a medical report dated 12 September 1980 and issued by Children's Psychiatric Clinic 2B at a hospital ("Östra sjukhuset") in Gothenburg. The medical report was signed by chief

doctor Elisabeth Bosaeus, a consultant at the above-mentioned home, and by Helena Fagerberg-Moss, a psychologist, both of whom were members of the team that was in touch with the family. It read as follows (translation from the Swedish):

"The above-mentioned children have been assessed at the children's psychiatric clinic at Östra sjukhuset on 10 September 1980. Both parents have been summoned to separate doctor's discussions but have not appeared. The family has been known at the children's psychiatric clinic since October 1979, when the social worker requested observation and an assessment of the development of Thomas following his admittance to that clinic for pneumonia and an investigation for urinary infection. After referral from the doctor responsible, the assessment of Thomas' development was made on 5 October 1979 by a psychologist, Helena Fagerberg-Moss. This psychologist and welfare officer (kurator) Birgitta Stéen thereafter participated in conferences at social welfare office no. 6 on 26 October and 29 November 1979 with all those involved in the case, concerning the supportive measures the family had received previously and for the planning of further measures. Social welfare office conferences, together with the parents, also took place on 10 January 1980, at which an application for a day-centre placement for Thomas and Helena was decided upon, and on 13 March and 29 May 1980, at which a holiday in a summer home or camp was planned for Helena and Stefan. During a home visit on 25 March 1980, Helena was also the subject of an assessment of her development by the psychologist Helena Fagerberg-Moss. Thomas was also the subject of a new assessment of his development on 11 September 1980. During Thomas' stay at the hospital, welfare officer Birgitta Stéen had contact with the parents. I have taken note of the investigation report of 18 January 1980, with proposals concerning supervision, and the report of 26 August 1980, with proposals concerning a care order. I have also taken note of the children's medical files. On 10 September 1980, Kerstin Lindsten, welfare officer at the school for retarded children, provided certain information by telephone concerning Stefan.

It appears from the medical file that at the age of four months Stefan was admitted to the Gothenburg children's hospital for assessment of his development and already at that stage he was found to be considerably retarded. At the age of six months he was retarded by two months. During a new test at the age of three years he was found to be at the developmental level of a 15 to 20 month old child. The psychologist Barbro Wikman considered him at that time to be passive, afraid and cautious. He was withdrawn and was most significantly retarded as regards his linguistic development. He was considered to be in great need of stimulation and the psychologist questioned whether there were sufficient opportunities for this in his home environment. He could not feed himself, could not run properly and he was not accustomed to playing with other children. According to the file, the parents were 'not interested in taking him to a special play-centre'. On 4 May 1976, it was noted that he never had cooked food, could not construct sentences, did not play outside, cried easily, could feed himself but did it rarely, and seemed pale and lethargic. Stefan now attends the third year in a school for the retarded. It appears that he is one of the weakest pupils. At the beginning of his time at this school, the home conditions appeared to be acceptable since the family had a home-therapist. Subsequently, however, there were alarming reports that Stefan ran around outside and was often taken care of by the police. He could not control his urine and bowels, was teased by his friends because he smelled badly, and he was even undressed by them, according to the school welfare officer Kerstin Lindsten. Food problems have also occurred, according to the school nurse. Stefan mostly ate only sandwiches. The boy is short-sighted and needs to wear glasses, but he does not do so. Since the parents have also had difficulties in supervising and caring for Stefan,

different ways of placing him have been discussed. A placement in an educational home appeared to be a good solution, but the parents withdrew at the last moment. Placement in a foster home has also been proposed, but the father reacted with depressive symptoms and kept the boy at home and away from school.

During a medical assessment on 10 September 1980 Stefan gave the impression of being very retarded in his development but, in addition, he was cut off in his personal contacts, did not hear questions, did not treat play material in an adequate manner and seemed to have a limited concentration and attention span. His behaviour was clumsy. He could not write his own name and, when drawing with a pencil, he folded the paper at an angle of 90°. He did not wear his glasses.

During a development assessment in her home on 25 March 1980, carried out by Helena Fagerberg-Moss, Helena Olsson attained a level comparable to that expected of her age. During a visit to the children's welfare clinic, however, Helena was considered passive, looked afraid and had an undeveloped use of language. She has been going to a clinic since September 1979 for stomach problems, but this has not led to any measure being taken. During an assessment on 10 September 1980 she was shy when there were several persons in the same room, did not say anything and behaved as a mother towards Thomas, giving him toys and embracing him now and then. The same behaviour has been noted at the children's home.

Thomas' development has been assessed on 5 October 1979 and 11 September 1980 by Helena Fagerberg-Moss. During the first assessment he was somewhat below the level of development which was expected and was also somewhat passive and withdrawn in his contacts. During the second assessment he was seriously quiet, cautious and his face was without expression. His development was four to six months behind. His language (at the age of 20 months) corresponded to a degree of development of a six to eight month old child. He became clearly stimulated by play and test material and seemed to have development potential. He gave a clear impression that he had not received sufficient stimulation at home. In the medical file it has been noted in August 1979 that the mother's way of feeding Thomas was clearly abnormal. She held the feeding bottle at a distance and, even after having been asked to pick him up, there was no natural close contact. At the children's home it has been observed that the father still treats Thomas as a baby.

In summary, Stefan, Helena and Thomas are three children whose parents have been registered as being retarded. The father has retired early. In addition, the parents' inter-relations are bad. They have separated for a long period and are now separated again. The family has moved four times in two and a half years. Stefan and Thomas show clear signs of backwardness, probably of different origins. Furthermore, there is a lack of care for the children on the part of the parents, and the children's behaviour is disturbed. Stefan has had enuresis and encopresis, feeding difficulties, social difficulties with other children and has shown vagrancy tendencies. His special need of clean clothes, glasses (he is myopic), and extra care and stimulation because of his backwardness, has not been met by his parents. The linguistic development of all the children is retarded. Such backwardness is the most frequent sign of under-stimulation. Helena, who is of average intelligence, is inclined to take too great a responsibility for her brother Thomas. Thomas has not had any opportunity of adequate training either physically or psychologically.

> Since measures taken up to now in the form of a home-therapist, day-care nursery-home placement, supervision, etc. have not improved the situation, we recommend that Stefan, Helena and Thomas be taken into care and be given foster homes."

The applicants alleged that, before this medical report was prepared, Dr. Bosaeus had never met them and had never visited their home. They also complained of the fact that she did not herself examine the children until 10 September 1980, after they had been placed in care for investigation on 22 August 1980; at that time they were in a state of shock as a result of violent police action on their removal from their home and of their completely new environment. It appears, however, that the psychologist Helena Fagerberg-Moss assessed Thomas on 5 October 1979 and had visited the parents' home on 25 March 1980, when she assessed the development of Helena.

13. Since the applicants did not consent to the Council's decision of 16 September 1980, the matter was submitted, pursuant to section 24 of the 1960 Act (see paragraph 44 below), to the County Administrative Court (länsrätten) at Gothenburg. It held a hearing on 18 December 1980, at which Mrs. Olsson was represented by a lawyer under the Legal Aid Act (rättshjälpslagen) and the children by official counsel (offentligt biträde); Dr. Bosaeus was heard as an expert.

By judgment of 30 December 1980, the County Administrative Court confirmed the Council's decision. It stated (translation from the Swedish):

> "It appears from the investigation of the case that the children, Stefan, Helena and Thomas, who all place specially high demands on those who care for them, have for several years been living in an unsatisfactory home environment as a result of the parents' inability to satisfy the children's need of care, stimulation and supervision.
>
> Stefan and Thomas disclose a clear retardation in their development and all three children are backward in language development.
>
> According to Dr. Bosaeus, who issued a medical report on 12 September 1980 and was heard as an expert in the oral proceedings, there is a great risk that Helena will develop negatively if she stays in the parents' home. It is therefore as important to place her in a foster home as it is for Stefan and Thomas. Dr. Bosaeus has accordingly recommended taking the three children into care.
>
> Preventive measures with a home-therapist have been tried for several years and supervision has been arranged without any resulting improvement.
>
> It must therefore be considered as proved that the health and development of the children are jeopardised as a result of the parents' present inability to give them satisfactory care and education.
>
> The decision submitted is therefore compatible with the provisions in section 25(a) and section 29 of the 1960 Act."

14. Mrs. Olsson appealed to the Administrative Court of Appeal in Gothenburg (kammarrätten; see paragraph 50 below); her husband concurred in the appeal. The Council and official counsel for the children moved that

the appeal be rejected. The Administrative Court of Appeal held a hearing and then, on 8 July 1981, confirmed the judgment of the County Administrative Court. However, one of the three judges and one of the two laymen sitting in the Court of Appeal, whilst agreeing with the taking of Helena into care, dissented as regards Stefan and Thomas.

15. Mrs. Olsson sought to appeal to the Supreme Administrative Court (regeringsrätten; see paragraph 50 below), but on 27 August 1981 it refused her leave to appeal.

C. Implementation of the care decisions

1. Placement of the children

16. On 22 August 1980, following the decision of the Chairman of the Council (see paragraph 11 above), the children were placed in a children's home in Gothenburg for an investigation of their situation. They remained there until their subsequent placement in separate homes, as described below.

(a) Stefan

17. Around 1 October 1980, the applicants removed Stefan from the children's home and hid him for approximately one month. He was then placed in an educational home in Gothenburg run by the Board for the Retarded, but his parents again took him away and hid him for about two months.

As from 28 February 1981, Stefan was placed, with the assistance of the police, with a foster family of the name of Ek - where he had previously spent some summers - at Tibro, approximately 100 kilometers from the applicants' home.

By decision of 28 June 1983, prompted by conflicts between the natural and the foster parents, the Council moved Stefan to a children's home, Viggen, at Vänersborg, which was run by the Board for the Retarded and situated about 80 kilometers to the north of Gothenburg.

(b) Helena and Thomas

18. Helena and Thomas were placed in separate foster homes - Helena with the Larsson family at Näsåker, in the vicinity of the town of Hudiksvall, on 21 October 1980 and Thomas with the Bäckius family at Maråker, south of Söderhamn, on 10 November 1980. These localities, which lie to the north-east of Gothenburg, are about 100 kilometers from each other. The distances by road from Hudiksvall and Söderhamn to Gothenburg are 637 and 590 kilometers, respectively (see M·KAK, Bilatlas, Sverige, 1981).

19. The Government stated that the original intention had been to place Helena and Thomas with separate families in the same village, but that this

had proved impossible at the last minute. They added that the Larsson and Bäckius families were in continuous contact, gave each other much support and met, together with Helena and Thomas, approximately every six weeks.

20. Thomas' foster parents and their own children are members of the Church of Sweden and attended church with him - regularly, according to the applicants, or two or three times a year, according to the foster parents.

2. Restrictions on the applicants' access to the children

21. Since the children were taken into care, their parents' access to them has been the subject of various decisions, including the following.

(a) Stefan

22. Stefan spent some three to four weeks with his parents in the summer of 1982. However, on 10 August 1982 the Council decided, pursuant to section 16(1) of the 1980 Act (see paragraph 48 below), to limit their access to him to one visit every six weeks. They appealed to the County Administrative Court, but on 17 November 1982 it confirmed the restrictions (see paragraph 28 below).

23. After 22 April 1984, Mr. and Mrs. Olsson were allowed to see Stefan every week, mostly at their home. He spent some weeks with them in the summer of 1986.

(b) Helena and Thomas

24. On 21 October 1980, the Council decided to ban access by the applicants to Helena and Thomas at their foster homes, in accordance with section 41 of the 1960 Act (see paragraph 48 below), and to prohibit disclosure of their whereabouts. However, the applicants were allowed to meet the children elsewhere, every second month. The decision was designed to protect the children's chances of settling down and was prompted by the fact that Stefan had previously been removed from his home and hidden by his parents (see paragraph 17 above).

The foregoing restriction was lifted in September 1981, but in February 1983 the Council decided, having regard to the attitude of confrontation adopted by the applicants towards the foster parents, to confine the former's contacts with Helena and Thomas to one visit at the foster homes every third month. This new restriction was confirmed by the County Administrative Court, on appeal, on 25 March 1983 and again by the Council in decisions of 2 August 1983, 6 December 1983 and 30 October 1984. On 3 October 1985, the County Administrative Court dismissed an appeal by the applicants against the last-mentioned decision; they withdrew their appeal on this point in subsequent proceedings before the Administrative Court of Appeal (see paragraph 31 below) and the restriction therefore continued in force for the remainder of the period during which these children were in public care.

25. According to Mr. and Mrs. Olsson, Helena and Thomas were permitted to visit the family home only once - in 1982 - whilst they were in care, for a few hours and under the strict supervision of the foster mothers and one or two social workers. The applicants added that they were allowed to visit these children only a couple of times a year, under the supervision of social workers, teachers or foster parents; it appears that as time went by they tended to avoid such visits, which they considered humiliating, notably on account of the visiting conditions.

The material before the Court reveals that Mr. and/or Mrs. Olsson saw Helena and Thomas in March 1981 at a neutral place in Gothenburg; in September 1981 at their foster homes; in December 1981 at Stefan's foster home; and just before Easter 1982 at Helena's foster home. The Commission's report contains a more general statement to the effect that the applicants met the two younger children "three times a year during the first years". The applicants do not appear to have paid any visits to them between June 1984 and the spring of 1987.

3. Attitude of the applicants

26. Before the Commission, the Government referred to problems that had arisen as regards co-operation between the applicants on the one hand and the children's foster parents and the social authorities on the other (see paragraphs 100, 101, 109, 110 and 111 of the Commission's report). The applicants' submissions to the Commission on this point are summarised as follows:

> "That the applicants would co-operate with the social workers is completely unthinkable. The action of these social workers is completely in conflict with the applicants' own understanding of how children and adults and family members and others ought to show respect and consideration. ... It must be added that if the applicants were to co-operate with the foster parents and the social workers they would risk passing on to their children the totally wrong impression that the separation of children and parents and the placement of the children in foster homes had occurred with the consent of the applicants. This would be completely disastrous to the self-respect of the applicants' children if they had the wrong impression that their natural parents did not wish them to be at home with them." (ibid., paragraph 80 in fine)

D. Requests for termination of care

27. Following a request by the applicants for termination of the care of the children, a meeting was held on 1 June 1982 at the Council's office, at which the applicants, their lawyer and official counsel for the children were present.

On the same day, the Council rejected the request. It based its decision on reports compiled by the social administration and dated 24, 25 and 26 May 1982, which concluded that the parents were then incapable of giving the children the necessary support and encouragement. Annexed to the reports were statements from the psychologist Helena Fagerberg-Moss, social workers and a school teacher, indicating that the children had made satisfactory progress since being taken into care.

28. The applicants thereupon appealed to the County Administrative Court. It held a hearing on 4 November 1982, at which the applicants were present and assisted by a lawyer; the Council was represented by a lawyer and two social workers and the children by official counsel. Dr. Bosaeus and a social expert from the County Administrative Board (länsstyrelsen; see paragraph 41 below) gave evidence - the former at the request of the applicants' lawyer - and various written opinions from a psychologist, a welfare officer, a school teacher of Stefan and his school doctor were read out. The President of the Court also summarised the documents on which the Council's decision had been based.

The applicants submitted that the medical report of 12 September 1980 (see paragraph 12 above) contained clearly false information, by affirming that they were mentally retarded, and did not indicate any concrete facts showing that the children would have been in danger if they had continued to live with their parents. The Council, for its part, asserted that its refusal to terminate care had been based not on the applicants' being mentally retarded but on their inability to satisfy the children's need for care, stimulation and supervision.

In its judgment of 17 November 1982, the County Administrative Court, in addition to confirming the restrictions on parental access to Stefan (see paragraph 22 above), held as follows (translation from the Swedish):

> "The facts of the case show that the children suffered to a greater or lesser extent from different types of disturbance when they were taken into care. Stefan was disturbed in his development at a level comparable to special lower class. Following the placement in a foster home, his social abilities have improved and his language development has accelerated. His incontinence has to a large extent disappeared. In the special lower school Stefan has developed favourably having regard to his abilities. As regards Helena and Thomas, they have developed favourably in the foster homes. The assessment of these two children's psychological development undertaken in the spring of 1982 shows that the previous delays and disturbances have now been caught up or have disappeared, and that their development is now completely at the same level as that to be expected for their age.
>
> As far as the applicants are concerned, their circumstances seem to have stabilised in recent times. Thus, the couple moved from Angered in January 1981 and since then have been living in a more child-adapted environment in the community of Ale. The dispute which prevailed in the marriage at the time when the children were taken into care has been overcome, and it seems now as if the relations between the applicants are better. Following a request from their representative, the applicants have been examined

by psychologist Gudrun Olsson from Gothenburg. This investigation shows that both applicants have an average level of intelligence.

Under section 5 of the 1980 Act [see paragraph 49 below], the decisive issue in determining whether care under the Act in question should be terminated is whether it is no longer necessary. Facts such as the apparent improvement and stabilising of the applicants' situation and the children's favourable development in their foster homes are an argument in favour of the termination of care. However, there are several circumstances militating in the opposite direction. Stefan, who during 1982 has had several permissions to visit the parents' home, has been disturbed in various ways upon his return to the foster home and has relapsed into his previous negative behaviour. Stefan's return trip to the foster home on 28 June 1982 does not seem to have been well planned and it developed in an unfortunate way for him. In addition, the applicants have so far had difficulties in co-operating in a satisfactory manner with Stefan's foster home and the Social Council. In making an assessment of all the facts of the case, the Court finds that the applicants still show a lack of comprehension and ability to give the children satisfactory care and education. It must therefore be feared that a termination of care under the Act can at present involve great risks for the health and development of the children. Care is therefore to continue and the appeal is rejected."

29. The applicants then appealed to the Administrative Court of Appeal. After a hearing on 20 December 1982, at which they were present and assisted by counsel, the appeal was dismissed on 28 December 1982. The applicants had unsuccessfully requested that Dr. Bosaeus be called as a witness at the hearing.

Mr. and Mrs. Olsson sought to appeal to the Supreme Administrative Court, but on 11 March 1983 it refused them leave to appeal.

30. A fresh request by the applicants to the Council for termination of the care of the children was refused on 6 December 1983.

31. On 30 October 1984 and 17 September 1985, the Council rejected further requests by the applicants for termination of the care of Helena and Thomas and of Stefan, respectively; on the first of these dates it also declined to lift the restriction on visits to Helena and Thomas (see paragraph 24 above). Appeals by the parents against these decisions were dismissed by the County Administrative Court on 3 October 1985 and 3 February 1986, respectively.

The applicants thereupon appealed to the Administrative Court of Appeal, which joined the two cases. After holding a hearing at which Mr. and Mrs. Olsson were present and gave evidence, the Administrative Court of Appeal, by judgment of 16 February 1987, directed that the public care of Stefan be terminated: it took into consideration his recent positive development, his parents' increased understanding of his needs and their agreement that he should complete his current term of schooling at Vänersborg (see paragraph 17 above). However, the appeal concerning Helena and Thomas - the scope of which was confined by Mr. and Mrs. Olsson themselves at the hearing to the care issue, to the exclusion of the access issue - was dismissed. The Administrative Court of Appeal's opinion that the public care of these two children should continue was based primarily on the fact that the applicants

were unable to understand and satisfy the special needs arising in connection with re-uniting parents and children after so long a period of separation.

Following an appeal by the parents, the Supreme Administrative Court, by judgment of 18 June 1987, directed that the public care of Helena and Thomas should terminate, there being no sufficiently serious circumstances to warrant its continuation. The Supreme Administrative Court pointed out that the question to be determined in deciding whether care should be discontinued pursuant to section 5 of the 1980 Act (see paragraph 49 below) was whether there was still a need for care. The problems associated with the removal of a child from a foster home and its possible detrimental effects on him and with his reunification with his natural parents - on which the Administrative Court of Appeal had relied - were matters to be considered not under section 5 but in separate proceedings, namely an investigation under section 28 of the Social Services Act 1980 (socialtjänstlagen 1980:620). The latter section empowers a Social District Council to prohibit, for a certain period of time or until further notice, the removal from a foster home of a minor who is not or is no longer in public care, if there is thereby a risk, which is not of a minor nature, of harming his physical or mental health.

32. Stefan is now reunited with his parents.

However, on 23 June 1987 the Council, acting pursuant to section 28 of the Social Services Act 1980, prohibited them until further notice from removing Helena and Thomas from their respective foster homes. An application by Mr. and Mrs. Olsson for the interim suspension of this prohibition was refused by the County Administrative Court on 25 June 1987; this decision was confirmed by the Administrative Court of Appeal on 2 July 1987 and, on 17 August 1987, the Supreme Administrative Court refused leave to appeal. On 3 November 1987, the County Administrative Court rejected on the merits the applicants' appeal against the prohibition; it expressed the opinion that "a prohibition against removal should not be valid for too long a period" and that "a precondition for the rescission of the prohibition ... is that efforts should be made to improve contacts between the parents and children, both through Mr. and Mrs. Olsson and through the Social District Council". According to information supplied to the European Court by the Government on 16 November 1987, an appeal by the applicants to the Administrative Court of Appeal against this judgment was then pending; in the meantime, they remained free to visit Helena and Thomas at the foster homes.

II. RELEVANT DOMESTIC LAW

A. Introduction

33. According to Swedish child-welfare legislation, each municipality is responsible for promoting the favourable development of children and young persons by taking, if necessary, supportive or preventive measures (see paragraph 43 below). It may also take a child into care and place him in a foster home, a children's home or another suitable institution.

The legislation divides measures of the latter kind into two categories: the first concerns "voluntary care", enabling a parent to place his child into the care of a local authority; the second provides for "compulsory care", by establishing machinery whereby a local authority can obtain a court decision or order committing a child to its care. It was recourse to this machinery that was in issue in the present case.

34. Decisions concerning the applicants' children were taken under the 1960 Act and under the Act containing Special Provisions on the Care of Young Persons 1980 (lag 1980: 621 med särskilda bestämmelser om vård av unga - "the 1980 Act"). The 1980 Act complements the Social Services Act 1980, which deals with voluntary care; on entering into force on 1 January 1982, they together replaced the 1960 Act. In general, decisions taken under the 1960 Act which were still in force on 31 December 1981 were considered to be decisions taken under the 1980 Act.

B. Conditions for compulsory care

1. Under the 1960 Act

35. Under section 25(a) of the 1960 Act, the competent local authority in child-care matters - the Child Welfare Board (barnavårdsnämnden) or, in Stockholm and Gothenburg, the Social District Council - was obliged to intervene (translation from the Swedish):

> "[if] a person, not yet eighteen years of age, is maltreated in his home or otherwise treated there in a manner endangering his bodily or mental health, or if his development is jeopardised by the unfitness of his parents or other guardians responsible for his upbringing, or by their inability to raise the child."

Section 25(b) of the 1960 Act (which was not applied in the present case) provided that the local authority also had to intervene if a minor needed corrective measures because of his criminal, immoral or otherwise asocial behaviour.

36. As regards section 25(a), the preparatory work to the 1960 Act stated, inter alia, the following (translation from the Swedish):

> "In the future too, an important reason for intervention must be that a minor is exposed to physical maltreatment. The specific reference to this in the text of the statute seems to some extent to obscure the importance of the fact that children and young persons must also be protected from other kinds of treatment which may be harmful to their bodily or mental health. For this reason, the Bill instead makes it a prerequisite for intervention that the minor is being maltreated in his home or that he is otherwise treated

there in such a way as to endanger his bodily or mental health. This amendment in relation to the law now in force does not aim at bringing about any material change. Reasons for intervention, except for physical maltreatment, may be such as are given as examples in the preparatory work to the legislation now in force: for instance, that a child, who is perhaps being cared for with great tenderness, is all the same continuously exposed to mortal danger owing to his mother's mental illness, or that an infant is being cared for by a mother who is suffering from tuberculosis in a contagious state. Further examples may be that the minor is obliged to do work that is unreasonably hard considering his age or his strength, that he does not get enough to eat and is for that reason clearly undernourished, or that his home environment is marked by a considerable lack of hygiene. According to the practice that has been applied hitherto, it should also be possible to intervene in those instances where the parents - perhaps because of their religious convictions - omit to give the child the medical care and treatment that he needs. Among the cases where children are exposed to mental injury or danger may be mentioned the one where parents - with evident symptoms of mental abnormalities or of pathological attitudes - bring up their children in a way, as the committee puts it, that includes a kind of spiritual error and which often in the end causes their personality to develop in an undesirable way. When such upbringing has the result that the child's mental health is endangered, it comes under the section now dealt with.

For an intervention under section [25(a)] of the 1960 Act to be permitted, there must be a danger of the child's becoming a misfit because of his parents' vicious way of life or their negligence or inability to educate the child. The provision in question thus concerns abnormalities in the parents or in their capacity to educate; it lays down that those abnormalities should be such as to endanger the child's social development. Parents and other custodians should be treated on equal terms in this respect. Otherwise only amendments of a formal nature seem to be required. Thus, it is suggested that the words 'vicious' and 'negligence' be replaced by the expression 'unsuitability as custodians', which seems more appropriate in this context. Obviously, the scope of this expression is somewhat wider than the one currently in use. Apart from 'vicious' and 'negligent' custodians, it thus also covers those suffering from serious mental abnormalities. There seems to be no reason to object to this enlargement of the field of application of this rule. Society should be entitled to intervene as soon as there is a danger of a young person's unfavourable social development owing to shortcomings in the custodian. Since the notion of 'misfit', as the committee has found, should be excluded from this legislation, the intervention of the Child Welfare Board has instead been made subject to the prerequisite that the development of the young person is in jeopardy. This means that intervention shall take place whenever needed to prevent such abnormalities of behaviour as are indicated under section [25(a)]. It should be pointed out that, just as is the case under the law now in force, an intervention does not require that there have so far been any signs of maladaptation in the young person in question." (Reproduced in NJA II - Nytt Juridiskt Arkiv, "Journal for Legislation" - 1960, pp. 456 et seq.)

2. Under the 1980 Act

37. Conditions for compulsory care under the 1980 Act are set out in section 1, which reads (translation from the Swedish):

"Care is to be provided pursuant to this Act for persons under eighteen years of age if it may be presumed that the necessary care cannot be given to the young person with

the consent of the person or persons having custody of him and, in the case of a young person aged fifteen or more, with the consent of the young person.

Care is to be provided for a young person if:

1. lack of care for him or any other condition in the home entails a danger to his health or development; or

2. the young person is seriously endangering his health or development by abuse of habit-forming agents, criminal behaviour or any other comparable behaviour.

..."

38. The following are extracts from the preparatory work to the 1980 Act, as reproduced in NJA II 1980, pp. 545 et seq. (translation from the Swedish).

The Parliamentary Standing Committee on Social Questions stated:

"An important point of departure for the reform of the social services is that salient features in the handling of individual cases should be respect for liberty and the right of the individual to decide about his own life. The aim of the social services should be to co-operate with the client as far as possible, in order to make him take part in decisions as to the planning of treatment and make him co-operate actively in carrying it out. The social services should offer help and support, but not take over the individual's responsibility for his own life. Personal initiative and responsibility must be made part of care and treatment. In this manner the social services may work more actively in a preventive way, and the opportunity to achieve more long-lasting results will be improved.

This fundamental principle of the new legislation has been laid down in section 9 of the Social Services Bill, which stipulates that the measures taken by the Social Council in regard to any individual person should be conceived and carried out in co-operation with the person concerned. Consequently, all social services' opportunities to use coercive measures on adults have been abolished. It is true that, regarding young people and children, the possibility of providing care outside their home contrary to the wishes of the young person or his parents is retained. In this field too, the reform means, however, that the right of the individual to be a party to those decisions that concern his own fate is more strongly stressed. The individual should be able to turn to the social services confidently and ask for help, without risking undesired effects in the form of various coercive measures.

At the same time there is unanimity in considering that in certain cases society must be able to use coercive measures against an individual, whenever this is needed to avoid an immediate risk to somebody's life or health."

The Minister of Health and Social Affairs stated:

"Section 1, second paragraph, point 1, indicates that one ground for measures on the part of society is that lack of care for a young person in his home or some other situation in his home constitutes a danger to his health or development. This rule refers to situations where the young person does not receive sufficient care in his home or is exposed to treatment in his home that means there is a danger to his mental or physical health or to his social development. By the word 'home' is to be understood the home of the parents, as well as any other home where the young person is residing permanently. Under this description come, inter alia, cases where the young person is

subject to maltreatment in his home. Even a slight degree of maltreatment must be supposed to cause danger to the health or development of the young person. If, in such a case, the parents oppose such measures as the Social Council may consider necessary to assure the protection of the young person, application of the law may come into focus. In case there has been maltreatment of a more serious kind, the young person should as a matter of course be provided with care outside his home, at least for some time.

As with the 1960 Act, this provision may also be applied in those instances where the parents intend to place the young person in an environment that will endanger his health or his development, or where they do not prevent him from being in such an environment.

This section thus embraces all those situations where the child is being exposed to physical maltreatment or negligent care. This legislation may also be applicable if parents endanger the mental health of a child by their personal characteristics. If the child's mental health or development is being endangered because of parental behaviour - for instance, by way of continuously recurring scenes at home owing to abuse of alcohol or narcotics - or because of the mental abnormality or state of the parents, it should be possible to provide care for the child under this Act.

...

The Act is primarily aimed at enabling the social services to provide for the young person's need of care. It is the current need of care, and what can be done at the moment and in the future to see to it that this need is met, that will govern the measures taken by the Social Council. As I have pointed out in my general statement concerning this Bill, this legislation can, however, not be used to provide for society's need for protection. It is a different matter that, in those instances where a young person needs to be taken into care according to this Act, this measure will also have the effect of protecting society.

The Social Council is to take appropriate measures as soon as it considers that a situation such as has been indicated in the second paragraph under points 1 and 2 arises. It may, for instance, have come to the knowledge of the Council that a child is being exposed to unsuitable treatment or even to actual danger at home. During an inquiry the situation may appear to be such that the child ought to be provided with care outside his home. The Council should then in the first place try to meet the need for care by reaching an understanding with the parents. In case the parents and the Council cannot reach an agreement as to the question of how the child should be cared for, the Council must turn to the County Administrative Court to obtain a decision on care under the Act, with an inherent authorisation permitting the Council to make decisions regarding the way in which the care should be implemented."

C. Organisation and administration of child care

39. The Child Welfare Board was empowered to exercise functions and make decisions in child-welfare matters within a municipality (sections 1 and 2 of the 1960 Act). In doing so, it had to give particular attention to minors who were exposed to the risk of unfavourable development due to their physical and mental health, home and family conditions and other

circumstances (section 3). The Board was composed of lay members who were assisted by social workers.

40. Since the 1980 social-services legislation entered into force, the functions of the Child Welfare Boards have been taken over by Social Councils, which are composed in the same way as the former Boards but are responsible for social welfare in general.

The tasks of the Social Council may, as is the case in Gothenburg, be performed by two or more Social District Councils, each being responsible for a designated area. In child-care matters, a District Council has the same powers and duties as a Social Council.

41. As were the Child Welfare Boards, the Social Councils are under the supervision and control of the County Administrative Board and the National Board of Health and Welfare (socialstyrelsen).

D. Care decisions

42. Child Welfare Boards sought and received information about ill-treatment of children or their unsatisfactory living conditions through various officials having frequent contacts with children, such as social workers, doctors, nurses and teachers. Matters of this kind could also be reported to the Boards by private citizens. Upon receipt of such information, a Board had to undertake, without delay, a comprehensive investigation, including interviews, medical examinations and visits to the child's home.

43. If the Board found that the child's situation corresponded to that described in section 25 of the 1960 Act (see paragraph 35 above), it had, before resorting to care, to endeavour to remedy the matter by preventive measures (förebyggande åtgärder). These could consist of one or more of the following steps: advice, material support, admonition or warning, orders pertaining to the child's living conditions, or supervision (section 26). If such measures proved insufficient or were considered pointless, the Board had to place the child in care (section 29).

However, a child had to be taken provisionally into care for investigation (without the need for prior preventive measures) if there was a probable cause for intervention under section 25 and if there would otherwise be a risk of deterioration in his situation. Such a decision was valid for a maximum period of four weeks (section 30).

In urgent situations where the decision of the Board under section 29 or 30 could not be awaited, section 11 of the 1960 Act empowered the Chairman of the Board to take interim action alone. If he did so, he had to convene a meeting of the Board within ten days in order that a decision be taken in the matter.

44. Further procedural requirements for placing a child in care under section 29 or 30 of the 1960 Act were set out in section 24; in particular, the decision had to be notified without delay to the parents concerned. If they

disagreed, the matter had to be referred for review to the County Administrative Court within ten days.

45. Under the 1980 Act, if a Social Council considers that certain action is necessary, it has to apply to the County Administrative Court for a decision; unlike Child Welfare Boards under the 1960 Act, it cannot take the decision itself.

In urgent cases, however, the Council or its Chairman may place a child in care as a provisional measure; such a step must be referred within a week to the County Administrative Court, for decision within the following week.

E. Implementation of care decisions

46. When a care decision has been taken, the Social Council (formerly the Child Welfare Board) has to implement it, by attending to the practical details of such matters as where to place the child and what education and other treatment to give him (sections 35-36 and 38-41 of the 1960 Act and sections 11-16 of the 1980 Act).

1. Requirements as to placement

47. The 1960 Act provided that a child who had been taken into care was entitled to good care and upbringing as well as the education that was necessary in the light of his personal capacity and other circumstances. The child had preferably to be placed in a foster home or, if that was not possible, in a suitable institution, such as a children's home or school (sections 35 and 36). The Child Welfare Board had to supervise the care and the development of the child and, if necessary, take decisions concerning his or her personal affairs (sections 39 and 41).

During the course of the preparatory work to the 1980 Act, the Parliamentary Standing Committee on Social Questions stressed that it was essential for the development of the child that the parents had regular contacts with him; this was also of decisive importance so as to ensure that his return to his original home could be effected smoothly. In fact, section 11 of the 1980 Act provides that he may be allowed, after a period, to return to live there, if it appears that such a course is the best in order to further the aims of the care decision.

2. Regulation of the parents' right of access

48. The 1960 Act provided that the Child Welfare Board could regulate a parent's right of access to his child in care to the extent that it found this reasonable in the light of the aims of the care decision, the upbringing of the child or other circumstances (section 41).

Under the 1980 Act, restrictions on access can be imposed by the Social Council, in so far as this is necessary for the purposes of the care decision

(section 16). Unlike the 1960 Act, the 1980 Act expressly empowers the authority concerned to refuse to disclose the child's whereabouts.

F. Reconsideration and termination of compulsory care

49. Under section 42(1) of the 1960 Act, compulsory care had to be discontinued as soon as the aims of the care decision had been achieved. The corresponding rule in the 1980 Act provides that the Social Council shall terminate care when it is no longer necessary (section 5, first paragraph). The preparatory work to this provision, as reproduced in the Government's Bill (1979/80:1, p. 587), stated (translation from the Swedish):

> "It follows that an important task of the Council is to see to it that ... care does not continue for longer than is necessary in the circumstances. Care is to be discontinued as soon as there is no longer any need for the special prerogatives granted to the Council by the Act. It is true that it is part of the custodian's responsibility resting with the Council to pay close attention to the care provided by other people on the Council's behalf. However, against the background of, inter alia, the way the 1960 Act is today applied, it has been considered important that the supervisory duties of the Council are clearly laid down in the text of the [new] Act."

Section 41 of the Social Services Ordinance 1981 (socialtjänst-förordningen 1981:750) lays down that a care decision based on unsatisfactory conditions in the child's home must be reconsidered by the Social Council regularly and at least once a year.

Both before and after the entry into force of the 1980 Act, a parent could, under the general principles of Swedish administrative law, at any time request that the compulsory care of his child be terminated.

G. Appeals

50. Decisions of the County Administrative Court that a child be taken into care might (under the 1960 Act) or may (under the 1980 Act) be the subject of an appeal to the Administrative Court of Appeal and, with leave, to the Supreme Administrative Court.

A parent could or can also appeal to the County Administrative Court (and then to the Administrative Court of Appeal and, with leave, to the Supreme Administrative Court) against:

(a) refusals by a Child Welfare Board or a Social Council to terminate care ordered under the 1960 or the 1980 Act (see paragraph 49 in fine above);

(b) decisions taken by a Child Welfare Board under the 1960 Act relating, inter alia, to the visiting rights of the parents;

(c) decisions taken by a Social Council under the 1980 Act as to where the care should commence; to change a placement decision; regulating the parents' right of access; and not to disclose the child's whereabouts to them (section 20 of the 1980 Act).

According to the Government, the 1960 Act did not entitle a parent to appeal to the County Administrative Court against a placement decision as such, but the 1980 Act does. The Government maintained, however, that the applicants could at any time have raised before the County Administrative Board (see paragraph 41 above) - with the possibility of a subsequent appeal to the Administrative Court of Appeal and thence to the Supreme Administrative Court - a plea that, as a result of their placement and contrary to the requirements of the 1960 Act, the children were not receiving proper care and education.

PROCEEDINGS BEFORE THE COMMISSION

51. In their application of 10 June 1983 to the Commission (no. 10465/83), Mr. and Mrs. Olsson alleged that the care decision and the subsequent placement of the children constituted a breach of Article 8 (art. 8) of the Convention. They also invoked Articles 3, 6, 13 and 14 (art. 3, art. 6, art. 13, art. 14), as well as Article 2 of Protocol No. 1 (P1-2), and complained that, contrary to Article 25 (art. 25) of the Convention, the exercise of their right to petition the Commission had been hindered.

52. On 15 May 1985, the Commission declared the application admissible, but decided to take no action with respect to the complaint under Article 25 (art. 25).

In its report adopted on 2 December 1986 (Article 31) (art. 31), the Commission expressed the opinion that:

(a) the care decisions concerning the applicants' children in combination with their placement in separate foster homes and far away from the applicants constituted a violation of Article 8 (art. 8) of the Convention (eight votes to five);

(b) there had been no violation of Articles 3, 6, 13 or 14 (art. 3, art. 6, art. 13, art. 14) of the Convention or of Article 2 of Protocol No. 1 (P1-2) (unanimous).

The full text of the Commission's opinion and of the partly dissenting opinion contained in the report is reproduced as an annex to the present judgment.

FINAL SUBMISSIONS MADE TO THE COURT BY THE GOVERNMENT

53. At the hearing on 21 September 1987, the Government requested the Court to hold "that there has been no violation of the Convention in the present case".

AS TO THE LAW

I. SCOPE OF THE ISSUES BEFORE THE COURT

54. In the course of their submissions, the applicants made a number of general complaints concerning the alleged incompatibility with the Convention of, firstly, Swedish child-care law and, secondly, the practice of the Swedish courts.

The Court recalls that in proceedings originating in an application lodged under Article 25 (art. 25) of the Convention it has to confine itself, as far as possible, to an examination of the concrete case before it (see, as the most recent authority, the F v. Switzerland judgment of 18 December 1987, Series A no. 128, p. 16, § 31). Its task is accordingly not to review the aforesaid law and practice in abstracto, but to determine whether the manner in which they were applied to or affected Mr. and Mrs. Olsson gave rise to a violation of the Convention.

55. At the Court's hearing, the Government contended that in its report the Commission had gone beyond the limits of its admissibility decision of 15 May 1985 by considering a number of decisions not examined therein or in respect of which domestic remedies had not been exhausted at that date. In their submission, the Court should not deal with the decisions in question, which were: firstly, those taken by the Council on 21 October 1980, 10 August 1982, 2 August 1983, 6 December 1983 and 30 October 1984 and by the County Administrative Court on 17 November 1982, in so far as they related to visits by the applicants to the children (see paragraphs 22 and 24 above); and secondly, those taken by the Council on 6 December 1983 and 30 October 1984, refusing the applicants' requests for termination of care (see paragraphs 30-31 above).

The Commission replied that it had followed its constant practice of considering the facts of the case as they stood at the time of the establishment of its report and that, during the course of its proceedings, the Government had not pleaded a failure to exhaust domestic remedies in respect of any of the said decisions.

56. The Court observes that all those decisions pre-dated the Commission's hearing on the admissibility and merits of the case (15 May 1985) and that in the circumstances there was nothing to prevent the Government from raising a plea of non-exhaustion at that time (see, as the most recent authority, the Bozano judgment of 18 December 1986, Series A no. 111, p. 19, § 44). Furthermore, the questions of the applicants' visiting rights and of the requests for discontinuance of care were referred to during that hearing.

In addition, Rule 47 of the Rules of Court provides that "a Party wishing to raise a preliminary objection must file a statement setting out the objection

and the grounds therefor not later than the time when that Party informs the President of its intention not to submit a memorial ...". In the present case - where no memorials on the merits were lodged (see paragraph 5 above) - the Government filed no such statement and raised their plea solely at the Court's hearing. It must therefore be rejected as out of time.

Furthermore, whilst the Court's jurisdiction in contentious matters is determined by the Commission's decision declaring the originating application admissible, it is competent, in the interests of the economy of the procedure, to take into account facts occurring during the course of the proceedings in so far as they constitute a continuation of the facts underlying the complaints declared admissible (see, as the most recent authority, the Weeks judgment of 2 March 1987, Series A no. 114, p. 21, § 37). In the Court's view, the decisions in question can be regarded as falling into this category and the Commission acted properly in taking them into account.

57. On the other hand, the 1987 decisions concerning the prohibition on the removal of Helena and Thomas from their respective foster homes (see paragraph 32 above) are the subject of a further application which Mr. and Mrs. Olsson lodged with the Commission on 23 October 1987. Any new question raised therein cannot be settled by the Court in the present judgment (see the Swedish Engine Drivers' Union judgment of 6 February 1976, Series A no. 20, p. 13, § 34, and the above-mentioned Weeks judgment, loc. cit.).

II. ALLEGED VIOLATION OF ARTICLE 8 (art. 8) OF THE CONVENTION

A. Introduction

58. The applicants asserted that the decision to take the children into care, the manner in which it had been implemented and the refusals to terminate care had given rise to violations of Article 8 (art. 8) of the Convention, which 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."

This allegation was contested by the Government, but accepted by a majority of the Commission.

59. The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life; furthermore, the natural family relationship is not terminated by reason of the fact that the child is taken into public care (see the W v. the United Kingdom judgment of 8 July 1987, Series A no. 121, p. 27, § 59). It follows - and this was not contested by the Government - that the measures at issue amounted to interferences with the applicants' right to respect for their family life.

Such an interference entails a violation of Article 8 (art. 8) unless it was "in accordance with the law", had an aim or aims that is or are legitimate under Article 8 § 2 (art. 8-2) and was "necessary in a democratic society" for the aforesaid aim or aims (ibid., p. 27, § 60 (a)).

B. "In accordance with the law"

60. The applicants did not deny that the authorities had acted in accordance with Swedish law. However, they alleged that the measures taken were not "in accordance with the law" within the meaning of Article 8 (art. 8), notably because the relevant legislation set no limits on the discretion which it conferred and was drafted in terms so vague that its results were unforeseeable.

The Government contested this claim, which was not accepted by the Commission.

61. Requirements which the Court has identified as flowing from the phrase "in accordance with the law" include the following.

(a) A norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen - if need be, with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail; however, experience shows that absolute precision is unattainable and the need to avoid excessive rigidity and to keep pace with changing circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague (see, for example, the Sunday Times judgment of 26 April 1979, Series A no. 30, p. 31, § 49).

(b) The phrase "in accordance with the law" does not merely refer back to domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law; it thus implies that there must be a measure of protection in domestic law against arbitrary interferences by public authorities with the rights safeguarded by, inter alia, paragraph 1 of Article 8 (art. 8-1) (see the Malone judgment of 2 August 1984, Series A no. 82, p. 32, § 67).

(c) A law which confers a discretion is not in itself inconsistent with the requirement of foreseeability, provided that the scope of the discretion and

the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference (see the Gillow judgment of 24 November 1986, Series A no. 109, p. 21, § 51).

62. The Swedish legislation applied in the present case is admittedly rather general in terms and confers a wide measure of discretion, especially as regards the implementation of care decisions. In particular, it provides for intervention by the authorities where a child's health or development is jeopardised or in danger, without requiring proof of actual harm to him (see paragraphs 35 and 37 above).

On the other hand, the circumstances in which it may be necessary to take a child into public care and in which a care decision may fall to be implemented are so variable that it would scarcely be possible to formulate a law to cover every eventuality. To confine the authorities' entitlement to act to cases where actual harm to the child has already occurred might well unduly reduce the effectiveness of the protection which he requires. Moreover, in interpreting and applying the legislation, the relevant preparatory work (see paragraphs 36 and 38 above) provides guidance as to the exercise of the discretion it confers. Again, safeguards against arbitrary interference are provided by the fact that the exercise of nearly all the statutory powers is either entrusted to or is subject to review by the administrative courts at several levels; this is true of the taking of a child into care, a refusal to terminate care and most steps taken in the implementation of care decisions (see paragraphs 44, 45 and 50 above). Taking these safeguards into consideration, the scope of the discretion conferred on the authorities by the laws in question appears to the Court to be reasonable and acceptable for the purposes of Article 8 (art. 8).

63. The Court thus concludes that the interferences in question were "in accordance with the law".

C. Legitimate aim

64. The applicants submitted that, of the aims listed in paragraph 2 of Article 8 (art. 8-2), only the "protection of health or morals" could have justified the decision to take the children into care, but that their health or morals were not in fact endangered when it was adopted.

The Commission, on the other hand, considered that the decisions concerning the care and the placement of the children were taken in their interests and had the legitimate aims of protecting health or morals and protecting the "rights and freedoms of others".

65. In the Court's view, the relevant Swedish legislation is clearly designed to protect children and there is nothing to suggest that it was applied in the present case for any other purpose. The interferences in question - intended as they were to safeguard the development of Stefan, Helena and

Thomas - therefore had, for the purposes of paragraph 2 of Article 8 (art. 8-2), the legitimate aims attributed to them by the Commission.

D. "Necessary in a democratic society"

66. The applicants maintained that the measures at issue could not be regarded as "necessary in a democratic society". This submission was contested by the Government, but accepted by a majority of the Commission.

1. Introduction

67. According to the Court's established case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued; in determining whether an interference is "necessary in a democratic society", the Court will take into account that a margin of appreciation is left to the Contracting States (see, amongst many authorities, the above-mentioned W v. the United Kingdom judgment, Series A no. 121, p. 27, § 60 (b) and (d)).

68. There was considerable discussion during the hearing before the Court as to the approach to be adopted by the Convention institutions in resolving the necessity issue.

The Commission's Delegate summarised the approach taken by the majority of the Commission as being: "to stay ... within the judgments of the domestic courts and, after making a detailed study of the relevant judgments, conclude whether or not [their] contents ... reveal sufficient reasons for taking a child into public care." She summarised the minority's approach as being: "to stay within the judgments of the domestic courts and to examine whether the reasons [therein] seem to indicate that [they] have based themselves on irrelevant circumstances or that they have applied unacceptable criteria or standards for the justification of a public-care order. In essence the question is whether the national court has misjudged the necessity." The Government favoured the minority's approach, adding that a wide margin of appreciation should be afforded to the national authorities so long as there was no reason to believe that the decisions were not taken in good faith, with due care and in a reasonable manner.

The approach which the Court has consistently adopted - and from which it sees no reason to depart on the present occasion - differs somewhat from those described above. In the first place, its review is not limited to ascertaining whether a respondent State exercised its discretion reasonably, carefully and in good faith (see, inter alia, the above-mentioned Sunday Times judgment, Series A no. 30, p. 36, § 59). In the second place, in exercising its supervisory jurisdiction, the Court cannot confine itself to considering the impugned decisions in isolation, but must look at them in the light of the case as a whole; it must determine whether the reasons adduced to justify the interferences at issue are "relevant and sufficient" (see, amongst

other authorities, mutatis mutandis, the Lingens judgment of 8 July 1986, Series A no. 103, pp. 25-26, § 40).

69. In concluding that there had been a violation of Article 8 (art. 8), the majority of the Commission based itself on the care decisions concerning the applicants' children in combination with the placement of the children in separate foster homes and far away from the applicants.

In this respect, the Court shares the view of the Government that these are matters which should be examined separately: the factors and considerations which are relevant to an assessment of their necessity may not be the same.

2. The taking of the children into care and the refusals to terminate care

70. The applicants contended that it was not necessary to take the children into and maintain them in care; they alleged, inter alia, that no concrete facts had been established showing that the children were in danger, that there were no substantiated reasons justifying the taking into care and that there were no valid motives for refusing the requests for termination of care.

The Government contested this allegation. The majority of the Commission, on the other hand, was not convinced that the factual basis was so grave as to justify the taking into care, although it did observe that it was "understandable that the care order was not lifted".

71. Before turning to the substance of this issue, it is convenient to deal with an initial point. In its above-mentioned W v. the United Kingdom judgment, the Court held that certain procedural requirements were implicit in Article 8 (art. 8): as regards decisions in child-care matters, the parents must "have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests" (Series A no. 121, p. 29, § 64).

The Court agrees with the Commission that this requirement was satisfied as regards the care decisions themselves. Mr. and Mrs. Olsson attended a number of case conferences and were present at the meetings which preceded the Council's decision of 16 September 1980 to take the children into care and its decision of 1 June 1982 not to terminate care (see paragraphs 10, 11, 12 and 27 above). They also attended hearings before the County Administrative Court and the Administrative Court of Appeal. Furthermore, they were legally represented during all the relevant judicial proceedings.

(a) The taking into care

72. In its judgment of 30 December 1980 (see paragraph 13 above), the County Administrative Court set out the following reasons for confirming the Council's decision of 16 September 1980 to take the children into care:

(a) the children had for several years been living in an unsatisfactory home environment as a result of the parents' inability to satisfy the children's need of care, stimulation and supervision;

(b) Stefan and Thomas disclosed a clear retardation in their development and all three children were backward in language development;

(c) there was a great risk that Helena would develop negatively if she stayed in the parents' home;

(d) preventive measures had been tried for several years, but without any resulting improvement;

(e) the health and development of the children were jeopardised as a result of the parents' present inability to give them satisfactory care and education.

These reasons are clearly "relevant" to a decision to take a child into public care. However, it is an interference of a very serious order to split up a family. Such a step must be supported by sufficiently sound and weighty considerations in the interests of the child; as the Commission rightly observed, it is not enough that the child would be better off if placed in care. In order to determine whether the foregoing reasons can be considered "sufficient" for the purposes of Article 8 (art. 8), the Court must have regard to the case as a whole (see paragraph 68 above) and notably to the circumstances in which the decision was taken.

73. Prior to the Council's care decision of 16 September 1980, a number of different social authorities had been individually involved with the Olsson family; they had co-ordinated their activities in 1979, from which time a psychiatric team had followed the case (see paragraph 9 above). Various measures had been taken with a view to assisting the family and a number of case conferences had been held (see paragraphs 9, 10 and 11 above). It cannot therefore be said that the authorities intervened without adequate knowledge of the background.

The Council's decision was based on a substantial report, compiled by the social administration after the children had been placed in care for investigation, which concluded that their development was in danger since they were living in an environment which was unsatisfactory due to their parents' inability to satisfy their need for care, stimulation and supervision (see paragraph 12 above). That report was in turn supported by a number of statements from persons well acquainted with the case, including a medical report signed not only by Dr. Bosaeus but also by a psychologist, Helena Fagerberg-Moss; both were members of a team which was in touch with the family and the latter had, before the decision to place the children in care for investigation was taken, seen Helena and Thomas in order to assess their development and also visited the applicants' home (ibid.).

It is true that the medical report referred to the applicants' having been registered as retarded, whereas a subsequent examination revealed that they were of average intelligence (see paragraphs 9 and 12 above). However, as the Administrative Court of Appeal stated in its judgment of 16 February 1987 (see paragraph 31 above):

> "As far as can be ascertained from the decision to take the Olsson children into care, the primary reason for this action was not any alleged mental retardation on the part of

> Mr. and Mrs. Olsson. The main reason cited in support of forced intervention was instead the parents' 'inability to give the children satisfactory care and upbringing' - in view of Stefan's obviously retarded development, for instance, and the retarded linguistic development of all the children."

In addition, as the minority of the Commission pointed out, the County Administrative Court's judgment of 30 December 1980 was not founded solely on the documentation that had been before the Council. It had previously held a hearing, at which Mrs. Olsson and the children were represented and Dr. Bosaeus was heard as an expert (see paragraph 13 above), and it thus had the benefit of its own personal impression of the case. This was, moreover, a judgment which was referred on appeal to both the Administrative Court of Appeal and the Supreme Administrative Court, without being reversed (see paragraphs 14 and 15 above).

74. In the light of the foregoing, the Court has come to the conclusion that the impugned decision was supported by "sufficient" reasons and that, having regard to their margin of appreciation, the Swedish authorities were reasonably entitled to think that it was necessary to take the children into care, especially since preventive measures had proved unsuccessful.

(b) The refusals to terminate care

75. In its judgment of 17 November 1982 (see paragraph 28 above), the County Administrative Court set out the following reasons for confirming the Council's decision of 1 June 1982 to refuse the applicants' request for termination of the care of the children:

(a) on returning to his foster home after visits to his parents, Stefan had been disturbed in various ways and had relapsed into his previous negative behaviour; his return trip on 28 June 1982 had developed in an unfortunate way for him;

(b) the applicants had had difficulties in co-operating with Stefan's foster home and the Council;

(c) the applicants still showed a lack of comprehension and ability to give the children satisfactory care and education, so that it had to be feared that termination of care could at that time involve great risks for their health and development.

Here again, these reasons are clearly "relevant" to a decision to maintain a child in care. However, whether they were "sufficient" in the present case calls for further scrutiny.

76. It has to be recalled that the Council's refusal to terminate care was based on reports compiled by the social administration which concluded that the parents were at the time incapable of giving the children the necessary support and encouragement (see paragraph 27 above). These reports were in turn supported by statements from persons well acquainted with the case, including the psychologist, Helena Fagerberg-Moss (ibid.). Above all, on this occasion as well, the County Administrative Court's judgment - like that of

the Administrative Court of Appeal which confirmed it - was founded not only on written material but also on a hearing in the presence of the applicants (see paragraphs 28 and 29 above). And again, the judgment of the Administrative Court of Appeal was not reversed (see paragraph 29 above).

It could be thought that the children's favourable development whilst in care and especially the apparent improvement and stabilising by 1982 of the applicants' situation - both of which were recorded in the County Administrative Court's judgment - militated against continuation of care. However, the Court considers that it is justifiable not to terminate public care unless the improvement in the circumstances that occasioned it appears with reasonable certainty to be stable; it would clearly be contrary to the interests of the child concerned to be restored to his parents, only to be taken into care again shortly afterwards.

77. In the light of the foregoing, the Court has come to the conclusion that in 1982 the Swedish authorities had "sufficient" reasons for thinking that it was necessary for the care decision to remain in force. Neither has it been established that a different situation obtained when they subsequently maintained the care decision until its final reversal on different dates in the first half of 1987 (see paragraphs 30 and 31 above).

3. The implementation of the care decision

78. According to the applicants, the implementation of the care decision also gave rise to a violation of Article 8 (art. 8). They relied, inter alia, on the placement of the children separately and at a long distance from each other and their parents, on the restrictions on and the conditions of visits and on the conditions in the homes where the children were placed.

79. In contesting this claim, the Government argued that the measures relating to the placement of the children had been taken in good faith, were not unreasonable and were justified by the special circumstances. They adverted in particular to the following matters: the fear that the parents might remove the children, as they had previously done with Stefan (see paragraph 17 above); the desire to avoid keeping the children in institutions for too long, coupled with the limited supply of suitable foster homes; the special needs of Stefan, which led to his being placed with the Ek family whom he already knew, his subsequent move having been motivated solely by conflicts between the natural and the foster parents (see paragraph 17 above); the view that, having regard to Helena's inclination "to take too great a responsibility for her brother Thomas" (see paragraph 12 above) and to the special needs of these two children, it would not have been realistic or "psychologically appropriate" to place them in the same foster home; and the last-minute impossibility of fulfilling the original intention to place these two children in the same village (see paragraph 19 above).

The Government further submitted that the applicants' previous removal of Stefan from his home and their attitude of confrontation towards the foster

parents, respectively, justified the initial and the later restrictions on their access to Helena and Thomas (see paragraph 24 above). They added that Mr. and Mrs. Olsson had in any event not made full use of their entitlement to visit all three children.

80. The Court finds, like the Commission, that it is not established that the quality of the care given to the children in the homes where they were placed was not satisfactory. The applicants' complaint on this score must therefore be rejected.

81. As for the remaining aspects of the implementation of the care decision, the Court would first observe that there appears to have been no question of the children's being adopted. The care decision should therefore have been regarded as a temporary measure, to be discontinued as soon as circumstances permitted, and any measures of implementation should have been consistent with the ultimate aim of reuniting the Olsson family.

In point of fact, the steps taken by the Swedish authorities ran counter to such an aim. The ties between members of a family and the prospects of their successful reunification will perforce be weakened if impediments are placed in the way of their having easy and regular access to each other. Yet the very placement of Helena and Thomas at so great a distance from their parents and from Stefan (see paragraph 18 above) must have adversely affected the possibility of contacts between them. This situation was compounded by the restrictions imposed by the authorities on parental access; whilst those restrictions may to a certain extent have been warranted by the applicants' attitude towards the foster families (see paragraph 26 above), it is not to be excluded that the failure to establish a harmonious relationship was partly due to the distances involved. It is true that regular contacts were maintained between Helena and Thomas, but the reasons given by the Government for not placing them together (see paragraph 79 above) are not convincing. It is also true that Stefan had special needs, but this is not sufficient to justify the distance that separated him from the other two children.

The Administrative Court of Appeal, in its judgment of 16 February 1987 (see paragraph 31 above), itself commented as follows on the applicants' access to Helena and Thomas:

> "Of course, the extremely bad relations between Mr. and Mrs. Olsson on the one hand and Helena and Thomas and their respective foster parents on the other hand are not due only to the Olssons. However, the Administrative Court of Appeal considers it strange that the parents' negative attitude to the foster parents resulted in their not meeting the youngest children for over two years, nor even showing any particular interest in talking to the children on the telephone, for instance. Even if there has been some difficulty for the social council to assist in establishing better relations - due to the action of the parents' representative, for instance, and the children's own attitude - it would have been desirable for the social council to have been more active and not, for instance, to have limited the right of access to once every three months."

82. There is nothing to suggest that the Swedish authorities did not act in good faith in implementing the care decision. However, this does not suffice

to render a measure "necessary" in Convention terms (see paragraph 68 above): an objective standard has to be applied in this connection. Examination of the Government's arguments suggests that it was partly administrative difficulties that prompted the authorities' decisions; yet, in so fundamental an area as respect for family life, such considerations cannot be allowed to play more than a secondary role.

83. In conclusion, in the respects indicated above and despite the applicants' unco-operative attitude (see paragraph 26 above), the measures taken in implementation of the care decision were not supported by "sufficient" reasons justifying them as proportionate to the legitimate aim pursued. They were therefore, notwithstanding the domestic authorities' margin of appreciation, not "necessary in a democratic society".

E. Overall conclusion

84. To sum up, the implementation of the care decision, but not that decision itself or its maintenance in force, gave rise to a breach of Article 8 (art. 8).

III. ALLEGED VIOLATION OF ARTICLE 3 (art. 3) OF THE CONVENTION

85. The applicants alleged that they had been victims of a violation of Article 3 (art. 3) of the Convention, which provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

In their view, there had been "inhuman treatment" as a result of:

(a) the taking away of the children without sufficient reason;

(b) the frequent moving of Stefan from one home to another, his ill-treatment at the hands of the Ek family and his placement in an institution run by the Board for the Retarded (see paragraph 17 above);

(c) the manner in which, on one occasion, Stefan and Thomas had been removed, with police assistance, from the applicants' home.

The Government contested these claims.

86. The Commission considered that it had already dealt in its report, in the context of Article 8 (art. 8), with the essential issues raised by point (a) and that no separate issue arose under Article 3 (art. 3). The Court is of the same opinion.

The Court has also already endorsed, in paragraph 80 above, the Commission's finding that the allegation of ill-treatment of Stefan was not substantiated. As regards the other matters relied on by Mr. and Mrs. Olsson in points (b) and (c), these did not, in the Court's view, constitute "inhuman treatment".

87. There has therefore been no breach of Article 3 (art. 3).

IV. ALLEGED VIOLATION OF ARTICLE 6 (art. 6) OF THE CONVENTION

88. The applicants submitted that they had not received a "fair hearing" in the domestic judicial proceedings and had accordingly been victims of a breach of Article 6 (art. 6) of the Convention, which, so far as is relevant, provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Apart from the complaints as to the practice of the Swedish courts (see paragraph 54 above), reliance was placed on their having heard Dr. Bosaeus as an expert although she had been the Council's expert, the manner in which they took her evidence and, more generally, their alleged failure to make proper enquiries about the applicants' mental health and ability to care for the children.

These claims were contested by the Government and rejected by the Commission.

89. Dr. Bosaeus was heard by the County Administrative Court on two occasions: firstly, on 18 December 1980, as an expert (see paragraph 13 above); secondly, on 4 November 1982, as a witness called at the request of the applicants' lawyer (see paragraph 28 above).

This doctor was one of the co-signatories of the medical report on which the Council's care decision of 16 September 1980 had been partly based (see paragraph 12 above). In a case of this kind, it was reasonable that, with her extensive knowledge of the background, she should have been heard as an expert in 1980. This could have rendered the proceedings unfair only if it were established - which is not the case - that the applicants had been prevented from cross-examining her or calling a counter-expert to rebut her testimony.

The complaint concerning the manner in which Dr. Bosaeus' evidence was taken relates to the 1982 hearing. However, the Court is not satisfied that the matters cited by the applicants - her presence in the court-room before she gave evidence and the County Administrative Court's alleged failure both to remind her of her obligation to tell the truth and to insist that she answered certain questions - are sufficient to show that the proceedings were not fair.

90. As for the applicants' more general allegation, they were at all times represented by a lawyer and were able to submit such material and arguments as they saw fit. The only exception was the Administrative Court of Appeal's refusal to accept their request that Dr. Bosaeus be heard as a witness at its hearing in 1982 (see paragraph 29 above); however, she had already been heard in the County Administrative Court.

Viewing the domestic judicial proceedings as a whole, the Court finds no material to support a conclusion that they were not fair or that the Swedish courts failed to make due and proper enquiries.

91. There was therefore no breach of Article 6 (art. 6).

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, TAKEN TOGETHER WITH ARTICLE 8 (art. 14+8)

92. The applicants asserted that the interferences with their rights had been based not on objective grounds but on their "social origin" and that they had therefore been victims of discrimination contrary to Article 14 of the Convention, taken together with Article 8 (art. 14+8). The former provision reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission found nothing in the case-file to substantiate this allegation, which was contested by the Government.

93. The Court shares the view of the Commission and therefore rejects this claim.

VI. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 1 (P1-2)

94. The applicants submitted that there had been a violation of the second sentence of Article 2 of Protocol No. 1 (P1-2) to the Convention, which reads:

> "In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

They argued that the violation had arisen because:

(a) Thomas had been placed in a family who belonged to a religious denomination and attended church with him (see paragraph 20 above), whereas they did not wish their children to receive a religious upbringing;

(b) the placement of the children so far away from the parents and without consultation as to the choice of foster home deprived the latter of the possibility of influencing the former’s education.

The Government contested these claims. The Commission rejected the first and expressed no view on the second.

95. The Court agrees with the Commission that the fact that the children were taken into public care did not cause the applicants to lose all their rights under Article 2 of Protocol No. 1 (P1-2).

It notes, however, as did the Commission, that Mr. and Mrs. Olsson, though describing themselves as atheists, have not left the Church of Sweden (see paragraph 8 above) and that there is no serious indication of their being particularly concerned, except at a rather late stage, with giving the children a non-religious upbringing.

Neither have Mr. and Mrs. Olsson shown that in practice the general education of the children whilst in public care diverged from what they would have wished.

96. In these circumstances, no violation of Article 2 of Protocol No. 1 (P1-2) has been established.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION, TAKEN TOGETHER WITH ARTICLE 2 OF PROTOCOL NO. 1 (art. 13+P1-2)

97. The applicants contended that, since no remedy was available to them in respect of the breach of Article 2 of Protocol No. 1 (P1-2) allegedly resulting from Thomas' being given a religious upbringing, they were victims of a breach of Article 13 (art. 13) of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] 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."

98. The Court agrees with the Commission and the Government that this claim has to be rejected. Leaving aside the possibility of seeking redress before the County Administrative Board, a parent could, after the entry into force of the 1980 Act, appeal to the County Administrative Court against a placement decision taken by a Social Council (see paragraph 50 in fine above). Both before and after that time, the question of a child's religious upbringing could have been raised and examined in a request for termination of care (see paragraph 49 in fine above). There is nothing to suggest that these remedies, which were apparently not utilised by the applicants as regards Thomas' upbringing, would not have been "effective", within the meaning of Article 13 (art. 13).

VIII. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

99. Under Article 50 (art. 50) of the Convention,

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

The applicants claimed under this provision 30,000,000 Swedish crowns (SEK) for non-pecuniary damage, together with reimbursement of legal fees and expenses in the sum of 884,500 SEK. The first-mentioned amount was, unless the Court could order payment to the applicants only, to be paid to them and the children in five equal shares.

A. Damage

100. At the Court's hearing, the Government, whilst reserving their position, indicated that they considered the claim for damage to be excessive. The Commission's Delegate also found the amount claimed to be out of proportion; she suggested that a figure of 300,000 SEK would be reasonable and equitable.

101. The Court considers that, notwithstanding the Government's reservation, this question is ready for decision (Rule 53 § 1 of the Rules of Court). It would first observe that it cannot accept the request, contained in the claims filed by the applicants on 27 July 1987, for an award of just satisfaction to the children: it is only Mr. and Mrs. Olsson who are applicants in the present proceedings.

102. The violation of Article 8 (art. 8) of the Convention found by the Court in the instant case arose solely from the manner in which the care decision was implemented (see paragraph 84 above). It follows that the applicants are not entitled to just satisfaction for that decision and the taking away of the children as such, but only for the prejudice which they may have suffered on account of the separation of the children from each other, the placement of Helena and Thomas at a long distance from the applicants' home and the restrictions on visits.

There can be no doubt, in the Court's view, that these matters caused Mr. and Mrs. Olsson considerable inconvenience and, above all, substantial anxiety and distress. Regular and frequent contacts with the children were greatly impeded and the possibilities for the whole family to meet together were minimal. And this situation, with its deleterious effects on the applicants' family life, endured for some seven years.

These various factors do not readily lend themselves to precise quantification. Making an assessment on an equitable basis, as is required by Article 50 (art. 50), the Court awards Mr. and Mrs. Olsson together the sum of 200,000 SEK under this head.

B. Legal fees and expenses

103. The applicants' claim for legal fees and expenses, totalling 884,500 SEK, was made up of the following items:

(a) 630,700 SEK for 901 hours' work by their lawyer (at 700 SEK per hour) in the domestic proceedings and 14,600 SEK for related expenses;

(b) 234,500 SEK for 335 hours' work (at the same rate) in the proceedings before the Commission and the Court and 4,700 SEK for related expenses.

The Government contested this claim in several respects, arguing in particular that: the applicants' statement of the fees and expenses they had incurred in the domestic proceedings was insufficiently precise to permit of anything other than an equitable assessment; the amounts sought in respect of those proceedings related partly to work on questions that were not material to the case before the Strasbourg institutions and partly to work that was unnecessary; the hourly rate charged, though acceptable for the Strasbourg proceedings, was excessive for the domestic proceedings; and the time spent by the applicants' lawyer on the Strasbourg proceedings exceeded what was reasonable. The Government were willing to pay total sums of 290,000 SEK for fees and 12,800 SEK for expenses, subject to a pro rata reduction in respect of such allegations pursued by Mr. and Mrs. Olsson before the Court as it might not sustain.

The Commission's Delegate found the amounts claimed to be very high; she shared many of the observations made by the Government and considered that the sums they proposed constituted a reasonable basis for the Court's assessment.

104. An award may be made under Article 50 (art. 50) in respect of costs and expenses that (a) were actually and necessarily incurred by the injured party in order to seek, through the domestic legal system, prevention or rectification of a violation, to have the same established by the Commission and later by the Court and to obtain redress therefor; and (b) are reasonable as to quantum (see, amongst many authorities, the Feldbrugge judgment of 27 July 1987, Series A no. 124-A, p. 9, § 14).

105. (a) The Court has found that neither the care decision itself nor its maintenance in force gave rise to a breach of Article 8 (art. 8) (see paragraph 84 above). Accordingly, to the extent - which was considerable - that the steps taken by the applicants in the domestic proceedings related to these matters, as distinct from the implementation of the care decision, no award can be made under Article 50 (art. 50) in respect of the fees and expenses involved. Furthermore, some of the costs claimed - for example, those relating to contacts by the applicants' lawyer with journalists for publicity in Sweden and abroad and to her investigation of a murder allegedly committed in the children's home where Stefan was placed - cannot be regarded as "necessarily incurred". Again, others concerned issues falling outside the scope of the case before the Court, such as the prohibition on the removal of Helena and Thomas from their foster homes (see paragraph 57 above).

(b) As regards the fees and expenses referable to the Strasbourg proceedings, the Government did not contest that the applicants had incurred liability to pay sums additional to those covered by the legal aid which they had received from the Council of Europe (see, inter alia, the Inze judgment of 28 October 1987, Series A no. 126, p. 22, § 56). The Court, however, shares

the Government's view that the amount claimed is excessive. It also agrees that the sum to be awarded should reflect the fact that some substantial complaints by the applicants remained unsuccessful (see, as the most recent authority, the Johnston and Others judgment of 18 December 1986, Series A no. 112, p. 33, § 86).

106. Taking into account the above factors and also the relevant legal aid payments made by the Council of Europe and making an assessment on an equitable basis, the Court considers that Mr. and Mrs. Olsson are together entitled to be reimbursed, for legal fees and expenses, the sum of 150,000 SEK.

FOR THESE REASONS, THE COURT

1. Rejects unanimously the Government's plea concerning the scope of the case;

2. Holds by ten votes to five that the decision to take the children into care and its maintenance in force did not give rise to a violation of Article 8 (art. 8) of the Convention;

3. Holds by twelve votes to three that there has been a violation of Article 8 (art. 8) on account of the manner in which the said decision was implemented;

4. Holds unanimously that there has been no violation of Article 6 (art. 6) of the Convention;

5. Holds unanimously that there has been no violation of Article 3 (art. 3) of the Convention, of Article 14 of the Convention, taken together with Article 8 (art. 14+8), of Article 2 of Protocol No. 1 (P1-2), or of Article 13 of the Convention, taken together with the said Article 2 (art. 13+P1-2);

6. Holds unanimously that Sweden is to pay to the applicants together, for non-pecuniary damage, 200,000 (two hundred thousand) Swedish crowns and, for legal fees and expenses, 150,000 (one hundred and fifty thousand) Swedish crowns;

7. Rejects unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 24 March 1988.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 § 2 (art. 51-2) of the Convention and Rule 52 § 2 of the Rules of Court, the following separate opinions are annexed to the present judgment:

(a) joint partly dissenting opinion of Mr. Ryssdal, Mr. Thór Vilhjálmsson and Mr. Gölcüklü;

(b) opinion of Mr. Pinheiro Farinha, Mr. Pettiti, Mr. Walsh, Mr. Russo and Mr. De Meyer.

R.R.
M.-A.E.

JOINT PARTLY DISSENTING OPINION OF JUDGES RYSSDAL, THÓR VILHJÁLMSSON, AND GÖLCÜKLÜ

As to the alleged violation of Article 8 (art. 8) of the Convention, we can subscribe only in part to the finding of the Court.

I. Introduction

The separation of children from their parents through a care decision taken by a State authority is certainly a serious interference with family life. In this respect it is important to protect parents and children against arbitrary intervention. The State concerned must be able to demonstrate that the views and interests of the parents have been duly taken into account and that the whole decision-making process is such as to ensure that the measures adopted are necessary to safeguard the children's interests.

An important feature of the relevant Swedish legislation is the possibility of judicial proceedings before the administrative courts and the competence of those courts to examine fully whether children should be taken into care and how a care decision should be implemented.

It is established that different social authorities had been involved with the Olsson family to a considerable extent prior to the events giving rise to the present case. There had been continuing and intensive contacts, including contacts with Mr. and Mrs. Olsson. Home-therapy had been tried without success. According to the examination of the facts and evidence conducted by the Social District Council and the competent domestic courts, the parents were not able to deal satisfactorily with the children, and in August-September 1980 the latter's needs created some kind of an emergency situation with the result that the Council considered it necessary to take them into care.

II. The care decision

We agree with the Court that the decision to take the children into care and its maintenance in force until 1987 did not give rise to a violation of Article 8 (art. 8) of the Convention, for the reasons given in paragraphs 71-74 and 75-77, respectively, of the judgment. In this context we would emphasise two facts: firstly, the Council's decision of 16 September 1980 was confirmed by adequately reasoned judgments of the County Administrative Court (30 December 1980) and of the Administrative Court of Appeal (8 July 1981); secondly, the Council's subsequent refusal to terminate care was confirmed by adequately reasoned judgments of the County Administrative Court (17 November 1982) and of the Administrative Court of Appeal (28 December 1982).

III. The implementation of the care decision

Paragraph 78 of the Court's judgment states that the applicants complained of (i) the placement of the children separately and at a long distance from each other and their parents; (ii) the restrictions on and the conditions of visits; and (iii) the conditions in the homes where the children were placed.

First of all we would like to stress - as the Court has also done - that there is nothing to suggest that the Swedish authorities did not act in good faith in implementing the care decision.

As to the last of the complaints listed above, we agree with the Court that it is not established that the quality of the care given to the children in the homes where they were placed was not satisfactory. This complaint must accordingly be rejected.

As to the complaint about the placement, which mainly concerns the placement of Helena and Thomas far away from Gothenburg, we would first say that when a care decision - as in the present case - is to be regarded as a temporary measure, it is generally desirable to place the children in foster homes that are not far away from their parents' home. However, in view of Mr. and Mrs. Olsson's conduct in the autumn of 1980 - their removal and hiding of Stefan -, it was quite reasonable for the Council to consider that Helena and Thomas could not be placed in foster homes in the Gothenburg region. It seems unfortunate that they were placed at so great a distance from Gothenburg, but it may have been difficult to find foster parents able and willing to satisfy the special needs of these two children. In our opinion, the Council's view that it was not appropriate to place both of them in the same foster home has to be accepted. Moreover, we are satisfied that the Council did really try to place them in the same village, but that this became impossible because one of the chosen families in the end declined to receive the child. In any event, the national authorities must enjoy a considerable discretion in this respect, since the decision on such a matter has to be based on an overall appraisal of a number of facts, including the availability of suitable foster homes and the needs of the children taken into care.

As to the restrictions on visits, it should be mentioned that the County Administrative Court confirmed them on two occasions and that, after its decision of 3 October 1985, Mr. and Mrs. Olsson withdrew their appeal on this point in subsequent proceedings before the Administrative Court of Appeal (see paragraph 24 of the European Court's judgment). Moreover, they did not make full use of their entitlement to visit in accordance with the decisions taken and, on the subject of contacts with the children, their whole attitude seems to have been rather negative as regards co-operation with the foster parents and the social authorities (see paragraphs 25 and 26 of the judgment).

In the particular circumstances of the case and taking into account the domestic authorities' margin of appreciation, we have come to the conclusion

that the measures taken in implementation of the care decision could reasonably be considered necessary and proportionate to the legitimate aim pursued, and that they accordingly did not give rise to a violation of Article 8 (art. 8) of the Convention.

SEPARATE OPINION OF JUDGES PINHEIRO FARINHA, PETTITI, WALSH, RUSSO AND DE MEYER

We take the view that the decisions at issue themselves, as well as their implementation, unjustifiably interfered with the right of the applicants to respect for their family life.

We feel that it cannot be accepted that children can be taken away from their parents without a prior judicial decision, save in cases of emergency.

Moreover, we believe that it has not been shown that in the present case such a measure was really "necessary in a democratic society".