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

FOURTH SECTION

CASE OF L. v. FINLAND

(Application no. 25651/94)

JUDGMENT

STRASBOURG

27 April 2000

FINAL

27/07/2000

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision.

In the case of L. v. Finland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr G. RESS, *President*,
Mr M. PELLONPÄÄ,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mrs S. BOTOUCHAROVA, *judges*,
and of Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 8 June 1999 and on 30 March 2000,

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

PROCEDURE

1. The case originated in an application (no. 25651/94) against the Republic of Finland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

The first applicant ("the applicant father") is the adopted son of the second applicant ("the applicant grandfather"). The applicants are Finnish nationals, born in 1965 and 1928 respectively. They are residents of the municipality of M., Finland. They were represented before the Commission by Ms A. Suomela of the Society for Family Rights in Finland (*Perheen Suojelun Keskusliitto PESUE r.y.)*. The applicants' application was introduced on 7 September 1994 and was registered on 14 November 1994 under file no. 25651/94.

2. The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 8, Article 6 § 3 (c) and (d) and Article 10 taken either alone or together with Article 13 of the Convention.

3. On 27 June 1996 the Commission decided to give notice of the application to the respondent Government and invited them to submit observations on the admissibility and merits of the application.

The Government, represented by Mr A. Kosonen, Co-Agent, Ministry for Foreign Affairs, submitted their observations on 7 January 1997, to which the applicants replied on 24 April 1997.

4. On 4 March 1997 the Commission granted the applicants legal aid.

5. Following the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 2 thereof, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

In accordance with Rule 52 § 1 of the Rules of Court, the President of the Court, Mr L. Wildhaber, assigned the case to the Fourth Section. The Chamber constituted within the Section included Mr M. Pellonpää, the judge elected in respect of Finland (Article 27 § 2 of the Convention and Rule 26 § 1 (a) of the Rules of Court), and Mr G. Ress, the Acting President of the Section and the President of the Chamber (Rules 12 and 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr I. Cabral Barreto, Mr V. Butkevych, Mrs N. Vajić, Mr J. Hedigan and Mrs S. Botoucharova (Rule 26 § 1 (b)).

6. The applicants submitted further information to the Court on 25 January 1999, to which the respondent Government replied on 9 March 1999. The Government submitted further information on 26 May 1999.

7. On 23 March 1999 the Chamber decided to hold a hearing in camera on the admissibility and merits of the application.

8. On 11 May 1999 the President of the Chamber decided, in accordance with Rule 33 §§ 3 and 4 of the Rules of Court, that all the documents in the case file are inaccessible to the public in while, including the identity of the applicants. He also decided that the legal aid granted to the applicants shall continue in force for the purposes of their representation before the Chamber.

9. The hearing in this case took place in camera in the Human Rights Building, Strasbourg, on 8 June 1999.

There appeared before the Court:

(a) *for the Government*
Mr H. Rotkirch, Ministry for Foreign Affairs, *Agent*,
Mr A. Kosonen, Ministry for Foreign Affairs, *Co-Agent*,
Ms C. Busck-Nielsen,
Ms P.-L. Heiliö,
Ms A. Liinamaa,
Mr J. Piha, *Advisers*;

(b) *for the applicants*
Mr J. Kortteinen,
Mr S. Heikinheimo, *Counsel*,
Ms A. Suomela, *Adviser*.

The Court heard addresses by them, and also their replies to questions put by the Court and by several of its members individually.

10. On 8 June 1999 the Chamber declared admissible[1] the applicants' complaints under Articles 8 and 13 of the Convention concerning the taking of children into public care and related access regulations and the complaint under Article 6 of the Convention concerning lack of an oral hearing before the County Administrative Court on 17 March 1997. The Chamber declared the remainder of the application inadmissible.

11. On 9 June, 29 July, 31 August, 6, 13 and 9 September and 20 December 1999, the applicants and the Government variously produced a number of documents, either at the President's request or of their own accord.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

12. The applicant father, who has two daughters (P., born in 1985, and S., born in 1991), married the mother of his children, E., on 21 September 1991. E. became mentally ill after the birth of their second child, S., and was hospitalised several times. Since at least 1985 there were contacts between the family and the social welfare authorities.

13. In the beginning of 1992 the parents were planning a divorce. On 20 January 1992 the Social Director of the City of K. placed the children in provisional public care, principally suspecting that P. had been sexually abused and supposing that S. was in serious danger of being subjected to similar abuse. P. was admitted for observation in a child psychiatric clinic and S. was placed in a foster family. The applicant father and E. were opposed to the public care order.

14. On 30 January 1992 the Social Welfare Board (*sosiaalilautakunta, socialnämnden)* of K. upheld the provisional public care orders. It also restricted the parents' right of access to P. to two weekly visits at the hospital and decided not to disclose S.'s whereabouts. The parents, represented by the Public Legal Adviser (*yleinen oikeusavustaja, allmänna rättsbiträdet*) of K., appealed to the County Administrative Court (*lääninoikeus, länsrätten*) of Vaasa.

15. On 9 March 1992 the social and health care authorities informed the applicant father and E. in a meeting at the hospital that the child psychiatric investigation did not result in any finding that P. had been subjected to sexual abuse. The doctor's statement concerning the result was dated 12 March 1992.

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1 The text of the Court's decision is obtainable from the Registry.

16. On 19 March 1992 the Social Welfare Board formally decided to place the children in public care. The Board considered that the parents were incapable of providing them with the stimulation necessary for their growth and development as well as with basic security. It noted that the mother was suffering from mental illness and that there were problems in the parents' relationship. P. had been used as an instrument in conflicts arising between the parents and the applicant father's adoptive parents. Her development did not correspond to that of the average for her age and it seemed that the child was at a stage of her development where it was crucial that she should be attached to stable and secure persons without risking her further development. The younger daughter, S., was found to be in a similar situation even though her development was still at an earlier stage. The parents appealed, again represented by the Public Legal Adviser.

17. P. was later placed in the same foster home as S.

18. On 28 June 1992 the parents were allowed to see their children for the first time after their placement in the foster home.

19. On 17 August 1992 the County Administrative Court rejected the parents' appeal against the public care order of 19 March 1992. It rejected their request for an oral hearing. The parents had stated that they had given up their plans to divorce and would be more motivated to co-operate with the Social Welfare Board. The court nevertheless found that the deficiencies in the children's care and the other home conditions risked jeopardising their development seriously.

20. On 17 August 1992 the County Administrative Court also rejected the parents' appeal against the Social Welfare Board's decision of 30 January 1992 to restrict their access to P. and not to disclose S.'s whereabouts.

21. The parents, still represented by the Public Legal Adviser, appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen)* against the County Administrative Court's confirmation of the care orders. No further appeal lay open to them in respect of the access restriction and the non-disclosure of the children's whereabouts. On 8 January 1993 the Supreme Administrative Court found no reason to amend the County Administrative Court's decision of 17 August 1992.

22. On 3 December 1992 the Social Welfare Board prolonged the access restriction until 31 May 1993. It agreed to three two-hour long supervised meetings between the children and the parents. The Board prohibited all access between the children and their grandparents until 30 April 1993, considering that these contacts had been disturbing the children's life in their foster family as well as P.'s schooling. The Public Legal Adviser advised the applicants not to challenge the access restriction and prohibition.

23. On 4 May 1993 the Social Welfare Board prolonged the prohibition on access between the children and the grandparents until 31 December 1993. The Board again considered that the grandparents' behaviour had disturbed the children's life in the foster home. It also noted their strong resistance against the children's placement in public care.

24. On 8 June 1993 the Social Welfare Board prolonged the restriction on access to the children by the parents until 31 May 1994. The children and their parents were to meet four times in supervised conditions in the foster home. The Board again referred to the need to guarantee the children a peaceful growth environment and the need to ensure the foster parents' work peace.

25. On 25 October 1993 the parents requested permission that the access restriction be alleviated and that they be allowed to keep the children over Christmas 1993. On 24 November 1993 the Social Welfare Board maintained the access restriction imposed on 8 June 1993 and prolonged it until 31 December 1994. From June to December 1994 the children and their parents were to meet three times under supervision.

26. The applicant father appealed to the County Administrative Court, requesting, *inter alia*, that an oral hearing and an inspection be held; that the Court should obtain P.'s own opinion in regard to the access arrangements; that the access restrictions be revoked; and that the Board be ordered to state clearly which concrete conditions in his home needed to be changed and to order the Board to support his efforts to change them. The Social Welfare Board submitted that the access restrictions had been necessary. It referred to, *inter alia*, an incident in August 1993, when the applicant father had forced P. to read statements written by the grandparents and which had mentioned the foster family in negative terms. The foster parents had told P. to call her parents but the telephone number of the foster family had had to be changed after they had received certain inappropriate calls.

27. On 14 December 1993 the Social Welfare Board prolonged the prohibition of access between the children's grandparents until 31 December 1994. The grandmother fell seriously ill and was exceptionally allowed to visit the children in their foster home for three hours on 23 December 1993 under supervision.

28. The grandparents appealed to the County Administrative Court, requesting, *inter alia*, that an oral hearing be held; that the court should obtain P.'s own opinion in regard to the access arrangements; and that the access restrictions be revoked.

29. In its submissions of 28 February 1994 the Social Welfare Board maintained that the access prohibition had been necessary on account of the grandparents' resistance both against the public care and the activities of the officials of the Board. The Board annexed copy letters and cards which the grandparents had sent to the children and which mentioned the foster family in negative terms. In the Board's opinion, the grandparents' resistance had

influenced the children and was capable of jeopardising their positive development. Other close relatives as well as friends of the children had pursued the children's interests and these contacts had been in accordance with the children's own opinion.

30. In the beginning of 1994 the parents moved apart and the applicant father moved back to his adoptive parents' home.

31. On 7 June 1994 the County Administrative Court rejected the applicant father's requests. The court found that there was no need for a hearing or an inspection. It also noted that P.'s opinion had already been obtained and that the applicant father's negative feelings towards the public care situation and the children's placement in a foster home had been transmitted to the children during his visits, thereby clearly jeopardising their development and rendering the access restrictions necessary. No appeal lay against the decision.

32. On 7 June 1994 the County Administrative Court also rejected the grandparents' requests in their entirety. It found that there was no need for a hearing or an inspection and that the grandparents' negative feelings towards the public care situation and the children's placement in a foster home had been transmitted to the children, thereby clearly jeopardising their development and rendering the access prohibition necessary. No appeal lay against the decision.

33. In response to a petition lodged by the parents, the Deputy Parliamentary Ombudsman (*eduskunnan apulaisoikeusasiamies, riksdagens biträdande justitieombudsman*), on 17 June 1994, found that the children's placement in public care had been justified. In general terms, she nevertheless underlined that the grounds relied upon in a public care order should be factual and not speculative. For instance, sexual abuse of the child could not be relied upon as a fact in the absence of any expert findings corroborating such a statement. Although the issuing of a public care order could well be justified already on the basis of such suspicions, the grounds relied upon should refer to the symptoms from which the child has been found to suffer. As for the access restrictions, the Deputy Ombudsman stressed, again in general terms, that the Social Welfare Board must actively support access arrangements between the children and both their parents and others who are close to them. Such access should not hamper the foster family's daily work. The access arrangements should normally be agreed upon when the public care plan was being drawn up. If an agreement could not be reached, an appealable decision was to be made and any restrictions were to be limited in time.

34. On 5 September 1994 the applicant father requested that the Social Welfare Board revoke the public care orders. Alternatively, both applicants requested that the access restriction and prohibition be alleviated. On 29 November 1994 the requests were rejected. The Social Welfare Board ordered that the parents could see the children in their foster family on five

occasions during 1995. It prolonged the prohibition of access between the children and the grandparents until 31 December 1995. In his appeal the applicant father requested, *inter alia*, an oral hearing.

35. In the case concerning the justification of the care order the County Administrative Court, on 25 April 1995, rejected the applicant father's appeal without holding an oral hearing. As for the access restriction, the court ordered that from 1 May to 31 December 1995 he could see the children once a month in their foster home. It rejected the remainder of that appeal without holding an oral hearing. Finally, the court rejected the grandparents' appeal.

36. On 8 December 1995 the Supreme Administrative Court rejected the applicant father's request for an oral hearing and upheld the County Administrative Court's decision in regard to the justification of the care order. It declined to examine his appeals in regard to the access restriction and prohibition.

37. On 19 December 1995 the Social Welfare Board rejected the grandparents' further request for a revocation of the access prohibition and prolonged that prohibition until 30 April 1996. The grandparents appealed, requesting, *inter alia*, an oral hearing. On 16 April 1996 the County Administrative Court rejected the appeal without holding an oral hearing.

38. On 21 February 1996 two social welfare officials drew up a care plan. It mentions the first applicant's wishes, indicates measures to be resorted to for the benefit of the children, i.e. that the children be supported to find activities corresponding to their age and talents and that, if need be, they be provided with individual therapy. It states that the care will continue until further notice since conditions for its termination are not, for the time being, at hand. The applicant father objected to the plan, considering that it did not comply with domestic law. It did not, for instance, specify the conditions in his home which should be improved before the care orders could be revoked. Instead, it stated that the public care order should be kept in force for the time being, as there were no grounds to revoke the order.

39. In the spring of 1996 the parents divorced.

40. On 7 May 1996 the Social Welfare Board restricted the grandfather's access to the children.

41. P. was psychologically examined by Dr L. between 12 August and 6 September 1996. The doctor's statement, dated 29 October 1996, stated, *inter alia*, that P. had clearly said that she was not willing to meet her biological parents as often as the visits took place at the time. According to the doctor's statement, P. felt especially nervous about the applicant father and the possibility that he might lose his temper. She did not feel nervous about her mother and she could meet her mother in accordance with the practice applied at that time. It was also stated that P. was not at all willing to meet the parents of the applicant father, because they wrote her letters which she was not able to understand and criticised the foster parents.

According to the statement, the examination confirmed the suspicions of sexual abuse.

42. In 1996 the applicant father met the children once a month.

43. On 3 December 1996 the Social Welfare Board prohibited the grandparents' access to the children until the end of 1998 and decided that the applicant father could see the children in their foster family four times a year in 1997 and 1998. The applicants appealed to the County Administrative Court which, on 17 March 1997, upheld the Social Welfare Board's decisions, without holding an oral hearing as requested by the applicants. The County Administrative Court's decision not to hold such a hearing was reasoned as follows:

(translation from Finnish)

"The County Administrative Court has earlier - 17 August 1992, 7 June 1994, 25 April 1995, 16 April 1996 and 26 September 1996 - considered the public care and restriction of the right of access in respect of the children. Later P. requested that the meetings be made less frequent. The meetings take place under supervision, and a closer examination of the suspected sexual abuse, which possibly took place before P. was taken into care, is not necessary in this connection. An oral hearing would most likely not bring to light any new evidence affecting the matter, which is why an oral hearing is manifestly unnecessary."

44. On 2 January 1997 the applicants' representative Ms Suomela made a complaint to the National Authority for Medicolegal Affairs (*terveydenhuollon oikeusturvakeskus, rättskyddscentralen för hälsovården)* concerning the examinations of P. by child psychiatrist H.L. and psychologist P.L. in the Central Hospital of S.

45. The access restriction was discussed with the children on 26 November 1998 during a home visit at the foster family's home in the presence of two psychologists and two social workers. According to the Government, P. clearly expressed her wish that the meetings of the children with the applicants be organised in the same way and at the same frequency as previously.

46. On 16 December 1998 the Social Welfare Board again ordered that the applicant father could see the children in their foster family four times a year until 31 December 2001. This decision was reasoned as follows:

(translation from Finnish)

"P. and S., who are placed in a foster family, must be ensured a peaceful living environment.

The medical examination carried out in the child psychiatric clinic in the summer of 1996 revealed that [the applicant father] had abused P. sexually before she was taken into care. [He] has himself denied the accusations and thus tried to discredit the information given by his child. P. has said that she is nervous about the meetings and that she is happy with the present practice concerning the meetings, taking place four

times a year under supervision in the home of the foster family. She has also said that she is not willing to visit her father at his present home. More frequent meetings, making the child nervous, endanger her development."

47. Also on 16 December 1998 the Social Welfare Board prohibited the grandparents' access to the children until the end of year 2001. The decision is reasoned as follows:

(translation from Finnish)

"P. and S., who are placed in a foster family, must be ensured a peaceful living environment, and the foster family must be able to look after them without disturbance.

More frequent meetings would not be in the best interest of the children, because grandparents still strongly object to the placement of the children in a foster family, and have expressed this in their letters to the children. The grandmother has also scared the children during an occasional meeting on 7 November 1998 by saying that the children had been kidnapped. The behaviour of the grandparents make the children confused and thus endangers their development.

P. said, in the child psychiatric clinic of the Central Hospital of S. in the summer of 1996 that [the second applicant] had abused her sexually before she was taken into care, and had also otherwise made her scared. P. has said that she does not want to see [the grandmother] and [the second applicant] at all."

48. The applicants have not appealed against the Social Welfare Board's decisions of 16 December 1998.

49. On 25 February 1999 the National Authority for Medicolegal Affairs, having obtained experts' statements in this matter, rejected the applicants' representative's complaint of 2 January 1997. The conclusions of the Authority concerning the examinations in 1992 and, respectively, in 1996, are as follows:

(translation from Finnish)

"As regards the medical examination of [P.] which took place in the Central Hospital of S. in 1992, the National Authority for Medicolegal Affairs finds, in the light of the evidence available, that the examination in the hospital was justified. The child psychiatric examination since January 1992 was justified and the examination was mainly well organised.

The child psychiatric examination of [P.] both in the ward and in the clinic was to a large extent carried out with the usual methods of assessing extensively and profoundly the overall psychological development of the child.

On the whole the psychological examination of [P.] carried out by P.L. was extensive and carried out professionally. The methods used were appropriate. The investigation carried out does not show that the examination would not have been based on the null hypothesis.

However, the special question of possible sexual abuse of the child was not sufficiently taken into account in the examination of [P.] between 27 January and

5 March 1992, which is shown by the fact that there are relatively few patient documents concerning the examination in the ward and by the psychologist.

In the light of the evidence, the recommendation and the conclusions contained in the opinion given by Senior Physician H.L. on 12 March 1992 to the Social Welfare Board of K., can be considered appropriate. ...

...In the light of the evidence, the National Authority for Medicolegal Affairs firstly notes that observations had been made on the meetings between [P.] and her parents already in 1992 when she was examined in the ward. In the opinion of Senior Physician H.L. the finding of sexual abuse is not based on the symptoms of [P.] but on the information given by her. However, in this respect the reasons given in the opinion of H.L. could have been expressed somewhat more clearly.

It was not possible to video-tape or record in some other way the interview of [P.] concerning sexual abuse, because such information was not expected beforehand. ...

... The child psychiatric examination of [P.] was initiated in 1996 because of reasons other than suspicion of sexual abuse, as has been mentioned above. Therefore the examination was a usual psychological examination. Because it was impossible to predict in what direction the examination would turn, it was not possible at an early stage to take into account her rights or the consequences of information given by her, as regards the examination of sexual abuse. The observations given by the Psychologist P.L. to the National Authority for Medicolegal Affairs reveal that she had later informed [P.] in detail of what kind of measures would be taken as a result of the information given by her.

In the light of evidence the National Authority for Medicolegal Affairs in the first place notes that the clinical examination of [P.] carried out by a doctor on 5 September 1997 was justified and adequately documented.

The psychological examination of [P.] carried out by Psychologist P.L. was extensive and on the whole professional. The methods of examination used were appropriate.

According to the evidence the examinations were carried out by Senior Physician H.L. and Psychologist P.L. objectively, and there are no indications of pressure by child welfare authorities in respect of the results of examination.

[P.] has been examined for a long time in the ward of the Central Hospital of S., and the examination included a very profound child psychiatric examination on the basis of which it can be concluded that the recommendations and conclusions made by Senior Physician H.L. were also appropriate.

On these grounds the National Authority for Medicolegal Affairs finds that the complaint by Anu Suomela, Master of Social Sciences, does not give reason for further measures."

50. The decision of the National Authority for Medicolegal Affairs cannot be appealed against.

51. S. was heard on 17 March, 21 April and 4 May 1999 by a psychologist in the presence of a social welfare official. According to a

statement, made on 24 May 1999 by the psychologist and social welfare official, S. was a happy little girl who openly talked about her life. She was found to be at normal development level of her age. She seemed to be attached to her foster parents and did not remember the time when she lived with her biological family. She found her mother's visits to be pleasant but felt nervous about her father's visits.

52. The care plan was reviewed on 25 May 1999 by the social welfare authorities. No changes were made to the access regulations.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The principles of the Child Custody and Right of Access Act and the Child Welfare Act

53. Section 1 of the Child Custody and Right of Access Act (*laki lapsen huollosta ja tapaamisoikeudesta, lag ang. vårdnad om barn och umgängesrätt 361/1983)* defines what is meant by child custody and what is required from the custodian. According to its first paragraph, the objectives of custody are to ensure the well-being and the balanced development of a child according to its individual needs and wishes, and to ensure for a child close and affectionate relationships in particular with its parents.

54. The Child Custody and Right of Access Act requires both the parents and authorities to ascertain the wishes and views of the child when making and executing a decision concerning a child, if this is possible in view of the age and stage of development of the child (Sections 4.2, 8, 9.4, 11, 34.1 point 3; and Sections 34.2, 39.1, 39.2 and 46.2). Court decisions concerning the custody and access of a child cannot be executed against the will of a child who has attained the age of 12.

55. Also according to the Child Welfare Act (*lastensuojelulaki, barnskyddslag 683/1983* as amended by Act 139/1990), a child who has attained the age of 12 is given an independent right to be heard in most important child welfare decisions related to his or her person and to appeal therefrom.

56. In situations where the child does not live with its parents or where they are separated because of need of protection or other corresponding reason, the child has the right to keep up personal relations and contacts with its parents. However, this right can be limited on specific grounds and by certain procedures prescribed by law, for example, because of a danger and threat caused by contacts or on the basis of the best interests of the child (Section 2 of the Child Custody and Right of Access Act; Sections 19.2, 24 and 25 of the Child Welfare Act; Articles 9 and 10.2 of the Convention on the Rights of the Child).

57. According to Section 1 of the Child Welfare Act, a child is entitled to a secure and stimulating growing environment and to a harmonious and well-balanced development, and has a special right to protection. The objective of the Child Welfare Act is that a child will in all circumstances get such care and upbringing as is required by the Child Custody and Right of Access Act.

B. Assistance in open care

58. In case the parents or custodians of the child are not able to provide the child with sufficiently secure conditions for its growth and development, the Social Welfare Board and its office holders shall take the necessary measures in accordance with the Child Welfare Act. These measures include the assistance in open care referred to in Sections 12 to 14 and the duty to take a child into care and provide substitute care referred to in Section 16.

59. According to Section 13.1 of the Child Welfare Act (as amended by Act 139/1990), when the need for child welfare is caused primarily by inadequate income, deficient living conditions or lack of housing, or when these factors constitute a serious obstacle to the rehabilitation of a child and family, or a young person in the process of becoming independent who had been a social welfare client before attaining the age of 18, local authorities must provide adequate financial support without delay, and correct deficiencies in housing conditions or provide housing according to need.

60. Assistance in open care referred to in Section 13.2 of the Child Welfare Act includes general assistance in accordance with the Social Welfare Act (*sosiaalihuoltolaki, socialvårdslag 710/1982)*. In addition to general assistance, special forms of assistance are mentioned: lay helper or supporting family; adequate therapy; holiday and recreational activities; and assisting a child in his or her education and training, in job and home finding, and in his or her leisure activities and other personal needs, by providing financial and other support. The assistance shall be provided in co-operation with the child or young person and its parents or other persons caring for them.

C. Taking a child into care and substitute care

61. According to Section 16 of the Child Welfare Act, the Social Welfare Board shall take a child into care and provide substitute care for him or her if (a) the child's health or development is seriously endangered by lack of care or other conditions at home, or if the child seriously endangers his or her health and development by abuse of intoxicants, by committing an illegal act other than a minor offence, or by any other comparable behaviour, (b) the measures of assistance in open care are not

appropriate or have proved to be inadequate; and (c) substitute care is considered to be in the best interests of the child.

62. According to Section 9.2 of the Child Welfare Act, substitute care shall be provided without delay where it is needed and is in the best interests of the child.

63. If a child is in imminent danger or otherwise in need of an immediate care order and substitute care, the Social Welfare Board may take him or her into care without submitting the decision to the County Administrative Court for approval (Child Welfare Act, Section 18).

64. An emergency care order shall expire within 14 days of the decision unless it is taken up as a normal care order referred to in Section 17 during the said period. Such a care order must be handled within 30 days, or on special grounds within 60 days of the emergency order. A decision on emergency care can be appealed in the normal way.

D. The duration and termination of care

65. Care order in accordance with Section 16 of the Child Welfare Act terminates when the child attains the age of 18 or concludes marriage. Public care shall be terminated earlier where the preconditions for the termination of care exist.

66. According to Section 20 of the Child Welfare Act, the Social Welfare Board shall discharge a child from care, when the need for care or substitute placement referred to in Section 16 no longer applies, unless such discharge is clearly contrary to the best interests of the child.

E. Custodians and their rights

67. Taking into care differs from adoption in so far as the parents are able to keep limited custodial rights and guardianship responsibilities. Taking a child into care also maintains contact between the child and the parents as well as relationships under family law such as statutory succession, including the right to a family name and to inheritance.

F. The competence of the Social Welfare Board

68. On the custody of a child in care Section 19.1 of the Child Welfare Act stipulates as follows:

> "When the Social Welfare Board takes a child into care, it shall be empowered to decide on the child's care, upbringing, supervision, other welfare, and residence. The Board shall, however, make every effort to co-operate with the parents or other custodians of the child."

G. The right of access

69. Through a decision to take a child into care, the Social Welfare Board automatically takes over the competence to decide on the contacts between the child and its parents and other persons close to the child (Section 19.2 of the Child Welfare Act).

70. According to Section 24 of the Child Welfare Act, a child who is in substitute care shall be ensured the continuous and secure human relations that are important for his or her development. The child is entitled to meet his or her parents and other persons close to him or her and to keep in touch with them. The Social Welfare Board shall support and facilitate the child's access to his or her parents and to other persons close to him or her.

71. According to Section 25 of the Child Welfare Act, the Social Welfare Board or the director of a residential home may restrict the right of access of a child in substitute care to its parents or other persons close to him or her, as stipulated in Decree, if (a) such access clearly endangers the development or safety of the child; or if (b) such a restriction is necessary for the safety or security of the parents, or the children or staff in the residential home. On the above-mentioned grounds, the Social Welfare Board may decide that a child's whereabouts shall not be disclosed to its parents or custodians while the child is in care.

72. According to Section 25 of the Child Welfare Act and Section 9 of the Child Welfare Decree (*lastensuojeluasetus, barnskyddsförordning 1010/1983)*, a decision concerning the restriction of the right of access shall be valid for a specified time, and it shall mention the persons whose rights are restricted. In addition, the decision shall mention what kind of contacts are restricted by the decision and to what extent the restriction is in force.

73. A decision to restrict the right of access restricts the child's right to meet its parents and other parents close to the child. Such close persons to the child are the child's custodian or other legal representative, members of family and those persons who have in reality kept in touch with the child before and when the child has been in care.

H. Care plan

74. A care plan shall be made for each case of family-orientated and individual child welfare, unless the matter under consideration requires only temporary counselling or guidance. This plan must be adjusted when necessary.

75. In case of a child taken into care (Section 16 of the Child Welfare Act) or a child placed in residential care as assistance in open care (Section 14 of the Child Welfare Act) the care plan shall mention (a) the purpose and objectives of the placement; (b) what kind of special support will be organised for the child, for the persons in charge of the child's care and

upbringing and for the child's parents; (c) how the child's right of access to its parents and other persons close to the child is going to be organised; and (d) how after-care is going to be organised.

76. According to Section 4 of the Child Welfare Decree, the care plan shall be elaborated in co-operation with those involved.

I. Child welfare authorities

77. According to Section 4 of the Social Welfare Act, a Social Welfare Board, with several members elected by the municipality, shall be responsible for providing social welfare in its area, and shall be charged with the responsibilities assigned to social welfare boards in other Acts.

78. According to Section 12 of the Social Welfare Act, the decision-making authority of a municipal Social Welfare Board can be delegated to officials subordinate to the board, with the exception of decisions involving compulsory welfare measures for an individual.

J. Appeal in accordance with the Child Welfare Act

79. According to Section 17.2 of the Child Welfare Act, a decision made by the Social Welfare Board on taking a child into care or placing him in substitute care, must be submitted within thirty days to the County Administrative Court for approval, if a child who has attained the age of 12 or his or her custodians oppose the measure or if the hearing required by Section 17.1 of the Act could not be arranged.

80. According to Section 36, decisions concerning taking into care or placement in substitute care can be appealed to the County Administrative Court within thirty days of notification of the decision. During that time, such an appeal may also be lodged with the local Social Welfare Board which shall forward it to the County Administrative Court together with its own statement within fourteen days. The submission and the appeal shall in this case be dealt with and decided at the same time.

81. According to Section 37.1 of the Child Welfare Act, appeals against a decision on care orders, on placement in substitute care, or on termination of care, made by the County Administrative Court in pursuance of this Act, may be lodged with the Supreme Administrative Court.

82. According to Section 37.2 of the Child Welfare Act, other decisions than those stated in subsection 1, relating to family-oriented and individual child welfare rendered by the County Administrative Court in pursuance of the Child Welfare Act, cannot be appealed.

83. According to Section 35.2 of the Child Welfare Act, a child who has attained the age of 12, his or her parents, his or her custodians, and the person responsible for his or her care and upbringing or who was responsible immediately prior to the case in question, may appeal in cases

concerning the taking of a child into care, placement in substitute care or termination of the care.

K. Other provisions on appeal

84. A decision made by an official subordinate to a municipal Social Welfare Board shall not be subject to ordinary process of appeal, but a person challenging such a decision shall have under the Administrative Procedure Act (*hallintomenettelylaki, lag om förvaltningsförfarande 598/1982)* the right to have the decision reviewed by a municipal Social Welfare Board within fourteen days of having been informed of the decision. The Social Welfare Board shall deal with the matter without delay. A decision made by the Social Welfare Board can be appealed to the County Administrative Court.

85. According to Section 46 of the Social Welfare Act, a decision made by the Social Welfare Board is subject to appeal to a County Administrative Court within thirty days of the service of the decision. Certain decisions by the County Administrative Court can be appealed to the Supreme Administrative Court.

86. When a decision of an authority can be appealed, the authority in question shall attach to its decision the information and instructions concerning the right of appeal.

87. According to Section 47 of the Social Welfare Act, a decision made by a municipal Social Welfare Board is enforceable regardless of appeal if (a) the decision requires immediate implementation; or (b) for reasons due to the arrangement of social welfare, the enforcement of the decision cannot be delayed; and (c) when the Social Welfare Board has ordered the decision to be enforced at once.

88. When an appeal has been lodged, the appellate authority can order that the decision not be enforced or that the said enforcement be suspended.

89. According to Section 38.1 of the Administrative Judicial Procedure Act (*hallintolainkäyttölaki, förvaltningsprocesslag 586/1996*), which entered into force on 1 December 1996*)*, a County Administrative Court shall conduct an oral hearing if a private party so requests. The same applies to the Supreme Administrative Court where it is considering an appeal against the decision of an administrative authority. The oral hearing requested by a party need not be conducted if the claim is dismissed without considering its merits or immediately rejected or if an oral hearing is manifestly unnecessary in view of the nature of the matter or for another reason.

L. Interested parties and their rights

90. According to the Child Custody and Right of Access Act, a person under 18 years of age is legally incompetent (minor). A child who has attained the age of 12 is entitled to be heard in child welfare cases as stipulated in Section 15 of the Administrative Procedure Act; he or she is also entitled to demand the social services and other support mentioned in Section 13.

91. Section 17.1 of the Child Welfare Act determines the parties to be heard in matters concerning taking a child into care, placing a child in substitute care and termination of care. According to this Section, the following persons have the right to be heard in accordance with Section 15 of the Administrative Procedure Act: (a) the custodian of the child, (b) a biological parent who is not the custodian of the child, (c) a person currently in charge of the child's care and upbringing or who was in charge immediately prior to the case in question, and (d) a child who has attained the age of 12. They will also have to be notified of a decision concerning taking a child into care and termination of care following the procedure for special notification. The authorities also have, when necessary, an obligation to inform them of possibilities of appeal.

92. Section 15, subsection 1, of the Administrative Procedure Act lays down a general obligation to hear the parties. Before any decision is made the party shall be afforded an opportunity to reply to the claims put forward by others as well as to any evidence that may affect the decision.

M. Supervision of the activities of child welfare authorities

93. The County Administrative Board, in the capacity of a State authority on regional level, has the general competence to supervise the activities of municipalities. Also, following a procedural appeal, the County Administrative Board (*lääninhallitus, länsstyrelsen)* can investigate whether a local authority has acted in accordance with law.

94. In addition, the Ministry of Social Affairs and Health supervises and directs, in its capacity as the highest authority in social welfare and health matters, the activities of municipalities and, when necessary, also the activities of the County Administrative Board in child welfare. Appeals concerning individual cases addressed to the Ministry of Social Affairs and Health are sent to the County Administrative Board which decides on the matter as the first instance.

95. The Parliamentary Ombudsman and the Chancellor of Justice (*oikeuskansleri, justitiekansler)* have the competence to supervise the legality of the measures taken by any authorities.

N. Supervision of the activities of health care authorities

96. According to the Act on National Authority for Medicolegal Affairs (*laki terveydenhuollon oikeusturvakeskuksesta, lagen om rättskyddscentralen för hälsovården 1074/1992)*, the National Authority for Medicolegal Affairs is subordinate to the Ministry of Social Affairs and Health. Its task is to see to the appropriateness of citizens' health care services by, *inter alia*, monitoring the activities of health care professionals, according to the Act on Health Care Professionals (*laki terveydenhuollon ammattihenkilöistä, lagen om yrkesutbildade personer inom hälso- och sjukvården 559/1994).* The Authority receives information about inadequacies observed in professional practice for example from patients' notifications and complaints, the authorities, the Social Insurance Institution, pharmacies, employers, and courts of law. The Authority has at its disposal approximately 250 permanent specialists who represent expertise in the various fields of medicine.

97. The Authority gives administrative guidance to the health care professionals in the form of calling a health care professional's attention to some feature in his or her actions, or presenting him or her with a caution. The Authority can also issue a professional a written warning, restrict a person's right to practise the profession, or entirely revoke such a right.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLES 8 AND 13 OF THE CONVENTION

98. The applicants complained that the taking of the children into public care was too drastic a measure and that especially after that measure, the authorities had not aimed at effectively reuniting the family. They referred, in particular, to the County Administrative Court's decision of 7 June 1994 upholding the severe access restriction and prohibition issued on 24 November and 14 December 1993, respectively. The applicants furthermore stressed that no care plan was drawn up which could comply with domestic law. The applicants claimed that the taking into care the applicant father's children P. and S., the refusal to terminate the care and the deprivation of the applicants' right of access as well as access prohibitions constituted a violation of their right to respect for their family life protected by Article 8 of the Convention. That Article, insofar as is relevant, reads as follows:

"1. Everyone has the right to respect for his ... family life ... .

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 ... for the protection of health or morals, or for the protection of the rights and freedoms of others."

99. The Court has examined this complaint together with the complaints concerning Article 13 of the Convention which reads as follows:

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

A. Whether there was an interference with the applicants' right to respect for their family life under Article 8 of the Convention

100. The Government accepted, in their written observations, that there had been an interference with the applicants' right to respect for their family lives as guaranteed by Article 8 § 1 of the Convention. The Government, however, considered that this interference did not constitute a violation of this Article as they are "in accordance with the law", pursue legitimate aims under Article 8 § 2 of the Convention and are regarded as "necessary in a democratic society".

101. The Court recalls that the mutual enjoyment by parent and child, as well as by grandparent and child, of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (see, among others, the Johansen v. Norway judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-III, § 52). The impugned measures, as was not disputed, evidently amounted to interference with the applicants' right to respect for their family life as guaranteed by paragraph 1 of Article 8 of the Convention. Such interference constitutes a violation of this Article unless it is "in accordance with the law", pursues an aim or aims that are legitimate under paragraph 2 of Article 8 and can be regarded as "necessary in a democratic society".

B. Were the intereferences justified?

1. "In accordance with the law"

102. It was undisputed before the Court, with two exceptions, that the impugned measures had a basis in national law and, to that extent, the Court is satisfied that such was the case.

103. The exceptions were allegations by the applicants that no care plan was drawn up which would comply with domestic law, and that the care orders could not be based on suspicions of sexual abuse which were never corroborated by expert findings. The applicants maintained that the care plan made on 21 February 1996 did not fulfil the requirements set forth for such a plan in Section 4 of the Child Welfare Decree, as it did not involve the parents, as required by the law. Moreover, the plan did not contain any consideration on how and under what conditions the family reunification could take place. On the contrary, it was stated in the plan that the taking into care would be continued at least for two years. Before this care plan was made, the social welfare authorities had considered that the text of the formula, used for the decision to take the children into care, was sufficient as a care plan.

104. The Government maintained that these assertions seem rather to relate to the decision-making process and the merits of the impugned decisions than to a denial of their basis in national law. At any case, the Government considered it indisputable that the measures in question had a basis in Finnish law, especially in various provisions of the Child Welfare Act and Child Welfare Decree. As regards protection against general arbitrariness alleged by the applicants, the Government wished to refer also to the procedural protection, including judicial supervision, which accompanies those general powers of social authorities which are necessary considering the great variety of circumstances in issues relating to the protection of children (see e.g. the Margareta and Roger Andersson v. Sweden judgment of 22 April 1992, Series A no. 226, §§ 83-85).

105. The Court recalls that the expression "in accordance with the law", within the meaning of Article 8 § 2, requires firstly that the impugned measures should have a basis in domestic law. It also refers to the quality of the law in question, requiring accessibility and foreseeability so as to give the individual adequate protection against arbitrary interference (see the above-mentioned Margareta and Roger Andersson judgment, § 75).

Whilst it is true that no interference or decision can be considered to be "in accordance with the law", unless it complied with the relevant domestic legislation, the logic of the system for safeguarding rights established by the Convention sets limits upon the scope of the power of review exercisable by the Court in this respect. It is in the first place for the national authorities, notably the courts, to interpret and apply the domestic law (see the Barthold v. Germany judgment of 25 March 1985, Series A no. 90, § 48).

106. According to Section 4 of the Child Welfare Decree, the care plan shall be drawn up in co-operation with those involved and shall mention, *inter alia*, the purpose and objectives of the measures in question, as well as the means and estimated time needed for their achievement (see §§ 74-76 above). The Court notes that, according to the document setting out the care plan of 21 February 1996, the first applicant had been present when the plan

was drawn up but he declined to sign the document. The plan mentions the first applicant's wishes , indicates several measures to be resorted to for the benefit of the children and states that the care will continue until further notice since the conditions for its termination are, for the time being, not fulfilled.

107. The Court finds nothing to suggest that the care plan did not comply with domestic law and thus was not "in accordance with the law" within the meaning of Article 8 § 2 of the Convention. The Court, accordingly, finds this requirement to be satisfied.

2. Legitimate aim

108. In the Court's view the relevant Finnish law was clearly aimed at protecting "health or morals" and "the rights and freedoms" of children. There is nothing to suggest that it was applied for any other purpose in the present case.

3. "Necessary in a democratic society"

109. The applicants alleged that the measures at issue could not be regarded as "necessary in a democratic society". They argued that the taking the children into public care was too drastic a measure to begin with. The allegation on sexual abuse of P. was first made on 4 December 1991 by her mother in connection with the announced intention of the father to seek a divorce and to demand the care and custody of both children. Medical and psychological investigation of P. resulted, on 12 March 1992, in a finding that there was no indication of sexual abuse. The measures recommended in the same statement did not include the taking into care of P.

110. The applicants further argued that the taking into care on the basis of the alleged sexual abuse by the grandfather was not a genuine reason, especially since the parents had agreed to move to a living environment separate from that of the grandparents. The authorities were aware of this agreement when they decided to take the children into care on 19 March 1992. They were also aware of the findings of the medical and psychological investigations on P.

111. The applicants emphasised that the question with regard to the justification of the delimitation of parental rights must be assessed in the light of the circumstances prevailing at the time of the decision-making and not with the benefit of hindsight. It was not appropriate to refer to the investigations done in 1996 as the substantive matter of the case was the events and facts which had taken place before filing the application.

112. The applicants further stressed that the duration of the taking into care of the children was estimated to be long-lasting and that the Government had several times repeated that the physical reunification of the family was not likely to happen at all. In the applicants' opinion taking into

care should be a temporary measure to be discontinued as soon as circumstances permit. The withdrawal of the applicant father's parental rights and access had a permanent character and could only be considered "necessary" within the meaning of Article 8 § 2 if supported by particularly strong reasons. However, no such reasons existed.

113. The Government regarded the interferences with the applicants' right to respect for their family life as "necessary in a democratic society". Taking a child into care often represents a measure of long duration - insofar as his or her childhood is concerned - and thus can be considered a completely normal measure. The Government questioned whether the ultimate aim of reuniting the natural parent and the child really could be the purpose of Article 8 of the Convention under the notion of the right to respect for family life that normally should be aimed at and sought by the implementing measures. Attention should rather be paid to the particular circumstances of each case, and especially the reasons for taking the child into care and maintaining the care decision in force. In this respect it should be remembered that childhood is a short but very important period in a person's life, considering his or her future development. Mistakes made by the parents towards their children are thus serious and cannot always be repaired. Therefore it may be necessary for the stability of the child that the family situation, modified already once, will not be changed back again. In this respect it should be remembered that a child is entitled to respect for his or her family life, in accordance with Article 8 of the Convention, also in his or her foster family and children's home.

114. The Government did not foresee the physical reunification of the children and the applicants, and accordingly, no measures aimed at such a reunification had been carried out. A child often becomes strongly attached to his foster parents and it is therefore harmful for the child to detach him or her from the foster family and the relationships built within that family. The younger the child is, the faster the psychological relationship between the child and the foster parents develops. It may be necessary for the stability of the child that the family situation not be changed back again. Ultimately, the termination of the public care as well as the taking into public care have to be decided in the best interests of the child.

115. The Government stressed that the taking of both children into care, as is evident from the County Administrative Court's decision of 17 August 1992, was based on deficiencies in their care, and that the conditions in their home seriously risked to jeopardise their development.

116. The Government also observed that the mother and the applicant father have joint custody of the children after their divorce. The mother has accepted the children's stay in the foster home and is not willing to allow that the children be handed over to their father or his parents. She and her mother, the other grandmother of the children, have a positive co-operative relationship with the authorities and the foster family. They are satisfied

with the care the children receive in the foster family; and in their opinion the family placement is in the best interests of the children. Their wish is that the stabilised conditions of the children should no longer be changed. Also, the children have a close relationship with the mother and her mother, and have several times visited their home. Further, it is not clear what the "reunification of the family" would mean in this case as the reunification of the family is not possible in its usual form in the present case, because the biological parents have lived separately since 1993 and have been officially divorced in 1996. The applicant father has lived with his adoptive parents since the beginning of 1994, and the applicants' request for reuniting the family has referred to returning the children to the common home of the applicant father and his parents.

117. The Government further argued that the most important obstacle is, however, the fear, tension and anguish of P. caused by the contacts with her father and his parents. P., who was 6 years old when she was taken into care and is now 14 years old, has expressed this several times. It was recalled that, with a view to finding out P.'s own wishes and thoughts concerning the meeting arranged with her father, she was submitted to a child psychiatric investigation at the Central Hospital of S. In his conclusions Dr L. noted that P. spontaneously described her sexual abuse by the applicant father as well as by the applicant grandfather.

The Government underlined that the children were placed in the foster family. They have lived there since the beginning of 1992 and have become attached to and feel at home in the foster family. Indeed, S. was only eight months old when she was taken into care and does not remember having lived anywhere else.

The Government finally noted that in the present situation the right to respect for family life from the children's point of view means above all the right to live in the foster family which is their *de facto* family, and to live together. In this kind of a case the mutual family ties between a child who has been taken into care and her biological parents shall, as far as possible, be ensured in some other way than by reuniting the family into a physical entity, for example by visits and letters to the extent required and allowed by the interest of the child.

118. In determining whether the impugned measures were "necessary in a democratic society", the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify them were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention (see, *inter alia*, the Olsson v. Sweden (no. 1) judgment of 24 March 1988, Series A no. 130, § 68).

In so doing, the Court will have regard to the fact that perceptions as to the appropriateness of intervention by public authorities in the care of children vary from one Contracting State to another, depending on such factors as traditions relating to the role of the family and to State

intervention in family affairs and the availability of resources for public measures in this particular area. However, consideration of what is in the best interest of the child is in every case of crucial importance. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned (see the Olsson v. Sweden (no. 2) judgment of 27 November 1992, Series A no. 250, § 90), often at the very stage when care measures are being envisaged or immediately after their implementation. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for the regulation of the public care of children and the rights of parents whose children have been taken into care, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation (see, for instance, the Hokkanen v. Finland judgment of 23 September 1994, Series A no. 299-A, § 55; the above-mentioned Johansen judgment, § 64; and the decision of 8 February 2000 as to the admissibility of application no. 34745/97 in the case of Scott v. the United Kingdom, Third Section, unpublished).

The margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake. Thus, the Court recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care. However, a stricter scrutiny is called for both of any further limitations, such as restrictions placed by those authorities on parental rights and access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed (the above-mentioned Johansen judgment, § 64).

It is against this background that the Court will examine whether the measures constituting the interferences with the applicants' exercise of their right to family life could be regarded as "necessary".

(a) The taking into care

119. The Court observes that the children were taken into care in a situation in which an allegation of sexual abuse had arisen. However, the Social Welfare Board's decision to take the children into care on 19 March 1992 was based on other grounds, such as the parents' incapacity of providing the children with the stimulation necessary for their growth and development and the mother's mental illness. For several years before the decision to take the children into care, there had been contacts between the family and the social welfare authorities, who had afforded various open-care measures in view of the family's economical and social difficulties. P.'s development at the time did not correspond to the average for her age, and it seemed that the child was at a stage on her development where it was

crucial that she should be attached to stable and secure persons without putting her further development at risk. The younger daughter, S., was found to be in a similar situation, even though her development was at an earlier stage. It is also recalled that the mother was suffering from a mental illness at the relevant time.

120. In these circumstances the Court sees no reason to doubt that the authorities could consider that the care in the foster home had better prospects of success than the continuation of the open-care measures. The Court also considers that there is nothing to suggest that the decision-making process leading to the taking into public care failed to involve the applicants to a degree sufficient to provide them with the requisite protection of their interests (see the W. v. the United Kingdom judgment of 8 July 1987, Series A no. 121, §§ 63 and 67). In this respect the Court notes that the Board's decision was preceded by many meetings between the social welfare authorities and the parents, and that the latter, including the first applicant who was assisted by the Public Legal Adviser, was heard by the Board before the decision. The parents, still represented by the Public Legal Adviser also could and did appeal on two court levels.

121. In the light of the foregoing, the Court is satisfied that the taking of the applicant father's children P. and S. into care were based on reasons which were not only relevant but also sufficient for the purposes of paragraph 2 of Article 8 of the Convention and that the decision-making procedure satisfied the requirements of that provision. It considers that in taking the above care measures the national authorities acted within the margin of appreciation afforded to them in such matters. The Court accepts also that the appeals which were open to the applicants before the County Administrative Court and the Supreme Administrative Court satisfy the conditions of Article 13 of the Convention. Accordingly, the taking into public care did not constitute a violation of Articles 8 and 13.

(b) The refusal to terminate the care

122. The Court recalls that taking a child into care should normally be regarded as a temporary measure to be discontinued as soon as circumstances permit, and that any measures of implementation of temporary care should be consistent with the ultimate aim of reuniting the natural parent and the child (see, in particular, the above-mentioned Olsson (no. 1) judgment, § 81). In this regard a fair balance has to be struck between the interests of the child in remaining in public care and those of the parent in being reunited with the child (see, for instance, the above-mentioned Olsson (no. 2) judgment, § 90). In carrying out this balancing exercise, the Court will attach particular importance to the best interests of the child, which, depending on their nature and seriousness, may override those of the parent. In particular, the parent cannot be entitled under

Article 8 of the Convention to have such measures taken as would harm the child's health and development.

The Court recalls that on 5 September 1994 the applicant father requested that the Social Welfare Board revoke the public care orders. On 29 November 1994 the Board, after having heard the father, rejected the request. On 25 April 1995 the County Administrative Court rejected the applicant father's appeal without holding an oral hearing. On 8 December 1995 the Supreme Administrative Court rejected the applicant father's request for an oral hearing and upheld the County Administrative Court's decision in regard to the justification of the care order.

123. The question of whether the continuation of the implementation of the care measures was justified must be assessed in the light of the circumstances and their development since 1992. In this regard it is observed that the applicant father and the mother of the children had separated before the request was made and did not constitute a family any more. The rights and interests of the mother have also to be taken into account. In these circumstances the national authorities could, in the exercise of their discretion, consider the maintenance of the care order to be in the best interest of the children.

The Court therefore concludes that the rejection of the applicant father's request of September 1994 satisfied the requirements of Article 8 paragraph 2. Nor does the failure of the authorities to terminate the care at a later date in the Court's view violate that Article. In this respect the Court, in addition, refers to its reasoning concerning the access restrictions and prohibitions below.

Accordingly, the continuation of the public care did not constitute a violation of Articles 8 and 13 of the Convention.

(c) The access restrictions and prohibitions

124. The applicants recalled that S. was placed in the foster family immediately after taking the emergency care measures. The parents were not informed of the whereabouts of S. and they were refused any access to her. The parents were allowed to meet P. in the child psychiatric unit twice a week. After the examinations P. was placed in the same foster family as S. and the parents were not informed even at this point of the whereabouts of the children, nor were they allowed to see them. The authorities allowed access to the children for the first time after they were taken into care on 26 August 1992 for two hours under supervision. Even after that, the access of the parents to the children has been severely restricted. The applicant grandfather has been prohibited from meeting the children all the time.

125. The Government argued that a physical connection is not the only way to ensure family ties. In Finland the child welfare measures referred to in the Child Welfare Act, such as taking a child into care and substitute care, are assistance addressed to the child, the purpose of which is not to alter the

biological ties of the child to his family. The mother and the father remain as custodians and guardians of the child who has been taken into care. The fact that a child has been taken into care and placed in a foster family does not prevent the child from later meeting his or her parents as an equal adult and thereby creating normal family ties.

The Government noted that P. has wished that the contacts to the applicant father be reduced. She is not willing to see the parents of the applicant father at all. P. has also expressed her dislike over the letters sent by the grandparents. The Government emphasised that P. is now 14 years old. Taking account of her age, her wishes should be respected as far as possible. Accordingly, since the beginning of 1997 the meetings between the children and their father have, mainly because of P.'s wishes, taken place under supervision at the reduced level of four times a year in the foster family. Before that the applicant father had an increased access to the children once a month on the basis of the decision of 25 April 1995 by the County Administrative Board, but this strained P. too much. The latest decision of 16 December 1998 of restricting the right of access of the father to the children will remain in force until 31 December 2001.

The children had not met the applicant grandfather and his wife. The decision restricting this right of access will also remain in force until 31 December 2001.

The meetings between the children and their mother had regularly taken place in the foster home, in accordance with the care plan and mainly in accordance with the mother's wishes. At times the foster parents had taken the children to see their mother in the home of the grandmother, when the children had also been able to see their grandmother and uncle.

126. The Government emphasised that in the child psychiatric examinations the attitude and the reactions of P. to the contacts with the applicant father and the applicant grandfather had consistently been similar with those described in the documents of the social welfare authorities concerning restrictions of the right of access.

S., who was 8 years old, had recently been heard concerning her wishes about the contacts with her parents and other relatives. She had considered that the number of visits of her father should not be increased, but that the quality of these visits could be improved. She did not want to see the parents of her father at all.

127. In determining whether the impugned measures could be regarded as "necessary in a democratic society", the Court recalls the above-mentioned considerations (see § 118 above). The Court notes that in the period between 8 June 1993 and 31 December 1994 the applicant father seems to have met the children altogether seven times. While originally only five meetings were envisaged for the whole year of 1995, the County Administrative Court, upon the applicant father's appeal, increased the meetings by ordering, on 25 April 1995, that from 1 May to

31 December 1995 the applicant father could see the children once a month in their foster home. He met them once a month also in 1996. This increase of the meetings, however, seems to have met with the resistance of P. who expressed the wish of not having to meet her father so often. This in turn led the authorities to organise a child psychiatric examination in which P. told that she had been subjected to sexual abuse. After this, the Social Welfare Board restricted the applicant father's access to the children so that he could see them in their foster family four times in both 1997 and 1998. The decision was upheld by the County Administrative Court.

The Court notes that while the applicant father's access has been considerably restricted, he has been able to meet the children regularly. Moreover, his right to see the children was increased by the County Administrative Court in 1995, only to be decreased again in the light of the child psychiatric examination suggesting sexual abuse of P. While such abuse has never been confirmed by a judicial finding, the Court concludes that the children's interest made it justifiable for the Finnish authorities to reduce the right of access of the applicant father.

In these circumstances the decisions concerning the applicant father's access can be regarded as fulfilling the principle of proportionality and therefore as necessary in a democratic society.

The applicant grandfather has been suspected of the sexual abuse of P. since the children were taken into care. Both children, P. and S., have later indicated that they do not wish to meet him at all. The applicant grandfather indeed has been denied any access to the children. While this restriction is very drastic even in case of a child/ grandparent relationship, the Court accepts that in the circumstances of the present case the national authorities could reasonably consider that restriction to be necessary in a democratic society.

128. In view of the reasons set out in paragraphs 126 and 127 above, the Court thus considers that the national authorities acted within the margin of appreciation afforded to them in such matters. The Court is also satisfied that the appeals which were open to the applicants before the County Administrative Court met the conditions of Article 13 of the Convention. Accordingly, these measures did not constitute a violation of Articles 8 and 13 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

129. The applicants further complain that the County Administrative Court refused to hold an oral hearing in the proceedings ending on 17 March 1997, even though it was requested by the applicants. The Court has examined this complaint under Article 6 § 1 of the Convention which reads, in so far as relevant, as follows:

"In the determination of his civil rights and obligations ... , everyone is entitled to a ... public hearing ... "

130. The applicants submitted that the proper examination of the claims submitted by the social welfare authorities to the County Administrative Court would have made it necessary to hold an oral hearing. It seemed to be a principle of the County Administrative Court not to hold an oral hearing in any event, regardless of the circumstances of the case. The request to hold an oral hearing was rejected on 17 March 1997, even despite the fact that the Administrative Procedure Act had come into force on 1 December 1996. According to that Act, the County Administrative Court is obliged to organise an oral hearing if an interested party so demands.

131. The Government noted that according to the Court's case-law in proceedings before a court of first and only instance, the right to "public hearing" under Article 6 § 1 of the Convention entails an entitlement to an oral hearing unless there are exceptional circumstances that justify dispensing with such a hearing. The Government refer to the judgments of the Court in the cases of Fredin v. Sweden (no. 2) (judgment of 23 February 1994, Series A no. 283-A, § 21-22), Fischer v. Austria (judgment of 26 April 1995, Series A no. 312, § 44) and Allan Jacobsson v. Sweden (no. 2) (judgment of 19 February 1998, *Reports* 1998-I, § 46). The Government did not dispute that the County Administrative Court has to provide an oral hearing if an interested party so requests. However, the Government argued that the court has discretionary power in the matter not to arrange an oral hearing, *inter alia*, if it considers such a hearing manifestly unnecessary considering the nature of the case or for some other reason.

The Government recalled that the County Administrative Court rejected the applicants' request by concluding that an oral hearing would most likely not bring to light any new evidence affecting the matter, and thus considered its arrangement manifestly unnecessary. In its detailed reasoning the court referred to the fact that it had dealt with the issues of public care and the restriction of the right of access in respect of the same children already six times, and that P. had requested that the meetings be made less frequent. The court also noted that the meetings took place under supervision, and that a closer examination of the suspected sexual abuse, which possibly occurred before P. was taken into care, was not necessary in this connection. According to the Government, it should be noted that the County Administrative Court had at its disposal all the relevant information concerning the matter. The applicants' submissions to the County Administrative Court were not capable of raising issues of fact and law pertaining to the access restrictions of such a nature as to require an oral hearing for their disposition.

132. The Court recalls that the instrument of ratification of the Convention deposited by the Finnish Government on 10 May 1990

contained a reservation according to which Finland could not guarantee a right to an oral hearing before the courts mentioned in the reservation. The reservation was, however, withdrawn, insofar as administrative courts were concerned as from 1 December 1996, i.e. before the proceedings leading to the decision of the County Administrative Court of 17 March 1997 had been instituted.

The Court notes that the 17 March 1997 decision of the County Administrative Court was one among several court rulings concerning the facts of this case. While, for reasons relating to the Finnish reservation, the Court is only competent to deal with the lack of an oral hearing as regards the decision of 17 March 1997, it must take into account the previous court proceedings as a background to the issue before it (see, *mutatis mutandis*, the aforementioned Hokkanen judgment).

In this respect the Court notes that at no stage of the previous proceedings had there been an oral hearing. In view of this, the nature of the issues and of what was at stake for the applicants, the Court is not satisfied that there were exceptional circumstances which, in the light of the case-law referred to by the Government, would have justified dispensing with a hearing.

133. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention on account of the lack of an oral hearing before the County Administrative Court in the proceedings ending on 17 March 1997.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

134. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damages

135. The applicants alleged that they had sustained non-pecuniary damage corresponding to the sums paid by the Government for the costs of the family placement, i.e. FIM 3,500 per month and per child. The applicants requested that the Government have to take steps to reunite the family and to compensate for the family life lost during these actions. If the family was to be reunited in February 2001, the value of the lost family life would be FIM 420,000. If the Government did not reunite the family, the compensation for 18 years would be FIM 756,000. The loss already sustained was FIM 378,000.

136. The Government observed that the family placement costs which had been paid by the Government for the subsistence of the children cannot be taken as a ground for evaluating possible non-pecuniary damage to the applicants. The Government considered that if the Court were to find a violation of Article 8 of the Convention, its judgment should include sufficient just satisfaction in respect of the non-pecuniary damage. However, the sums presented by the applicants were regarded as excessive. The Government left the decision-making to the Court's discretion on an equitable basis.

The Government noted that the applicants had not sought any compensation for the alleged failure of the Government to comply with the requirements of Articles 6 and 13 of the Convention. Accordingly, no compensation could be awarded and, according to the constant case-law of the Court, the finding of a violation would in any case have constituted sufficient just satisfaction in this respect.

137. The Court notes that in the present case an award of just satisfaction could only be based on the fact that the applicants did not have the benefit of the right to an oral hearing as guaranteed in Article 6 § 1 of the Convention. The applicants had not sought any compensation under Article 6 § 1 of the Convention, as pointed out by the Government. In any case, whilst the Court cannot speculate as to the outcome of the trial had the position been otherwise, it considers that a finding of a violation of Article 6 § 1 constitutes in itself sufficient just satisfaction for the applicants' alleged non-pecuniary damage.

B. Costs and expenses

138. The applicants sought FIM 60,030 in respect of their own costs and expenses relating to their representation. The applicants also sought FIM 253,235 in respect of the costs which were born on their behalf by the Society for Family Rights in Finland (PESUE).

139. The Government noted that an award may only be made in so far as the costs and expenses were actually and necessarily incurred in respect of national proceedings or other domestic steps undertaken to avoid, prevent or obtain redress for a violation. Furthermore, only costs relating to the complaints declared admissible by the Court can be awarded, and only in respect of a violation found by the Court. The Government noted in this respect that the majority of the applicants' complaints were declared inadmissible by the Court in its decision of 8 June 1999.

As to the applicants' own claim for costs and expenses, the applicants did not submit any documents or receipts indicating whether these expenses were really incurred and paid, and if so, whether these expenses related to the domestic or Strasbourg proceedings. The Government noted that it was for the Court to assess the amount of expenses incurred, having regard to the

supporting documents produced. At any rate, the Government found the total sum somewhat excessive, and left it to the Court to decide on this point.

The Government noted that, according to the Court's case-law, an applicant's counsel cannot rely on Article 41 to claim just satisfaction on his or her own account. Whether the claim for costs and expenses requested by the Society for Family Rights in Finland fell within this category, was left by the Government to the Court's discretion. The Government, however, stated that neither this part of the claim relating reimbursement of costs and expenses included sufficiently detailed documents or receipts to verify whether these costs and expenses were really incurred and paid. Accordingly, the same principles presented by the Government in connection with the applicants' own claims above also applied to this claim. The Government also questioned the necessity to have two lawyers and Ms Suomela representing the applicants before the Court. At any rate, the Government found the total sum excessive. The Government left the final assessment to the Court's discretion.

Finally, the Government noted that the sums paid by the Council of Europe should be deducted from the possible reimbursement of costs and expenses.

140. The Court notes that the Society for Family Rights in Finland was not a party to the present proceedings and that their costs and expenses are therefore not to be awarded. The applicants had not alleged that they would be responsible for reimbursing the costs and expenses incurred by the Society. As these costs were not actually incurred by the applicants, this part of the claim must be rejected.

Taking into account that the applicants' complaints have only been partially approved, the Court, making its assessment on an equitable basis, awards the applicants a total of FIM 35,000, in respect of the proceedings before the Commission and the Court and for domestics costs together with any relevant value-added tax, from which must be deducted the FRF 24,560.60 already received for legal fees from the Council of Europe by way of legal aid.

C. Default interest

141. According to the information available to the Court, the statutory rate of interest applicable in Finland at the date of the adoption of the present judgment is 10 % per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Articles 8 and 13 of the Convention;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in relation to the lack of an oral hearing in the proceedings ending on 17 March 1997;

3. *Holds*
   (a) that the present judgment in itself constitutes just satisfaction for any non-pecuniary damage;
   (b) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, for legal fees and expenses, 35,000 (thirty-five thousand) Finnish marks less 24,560.60 (twenty-four thousand five hundred and sixty) French francs, 60 (sixty) centimes to be converted into Finnish marks at the rate applicable on the date of delivery of the present judgment;
   (c) that simple interest at an annual rate of 10 % shall be payable from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 27 April 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER Registrar	Georg RESS President