AS TO THE ADMISSIBILITY OF

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

The European Commission of Human Rights sitting in private on 9 March 1988, the following members being present:

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

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

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

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

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

Having regard to:

- the Commission's decision of 4 December 1986 to bring the application to the notice of the respondent Government and invite them to submit written observations on its admissibilty and merits;

- the observations submitted by the respondent Government on 5 June 1987 and the observations in reply submitted by the applicant on 16 September 1987;

Having deliberated;

Decides as follows:

THE FACTS

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

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

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

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

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

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

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

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

The letter requested further access to the child, if possible

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

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

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

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

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

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

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

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

Practice which is in the following terms:

"Disagreement with parents

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

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

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

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

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

The local authority placed D. for adoption.

Relevant domestic law and practice

Care proceedings under the Chidren and Young Persons Act 1969

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

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

In the application before the Juvenile Court the local authority has to show the existence of one of the conditions in Section 1(2)(a)-(f) and show that the child is in need of care or control which he will not receive unless one of the orders specified in Section 1(3) is made. It is provided by Section 44 of the Children and Young Persons Act 1933, as amended by the Children and Young Persons Act 1969, that every court in care proceedings shall have

regard to the welfare of the child in question and shall in a proper case take steps for removing him from undesirable surroundings or for securing that proper provision is made for his education and training.

One of the orders under Section 1(3) of the 1969 Act is a care order. The effect of a care order is that the rights of the parents, except the rights to agree to adoption and to influence the child's religious beliefs, are taken from them and given to the local authority. The powers and duties of local authorities with respect to children and young persons committed to their care are contained in Section 10 and Part III of the Child Care Act 1980. The local authority have "the same powers and duties with respect to a person in their care by virtue of a care order ... as his parents or guardian would have apart from the order ..." (Section 10 of the 1980 Act). They also have power to keep the child in their care notwithstanding any claim by his parent or guardian while the order is in force. Where a child is committed to the care of a local authority that authority has the right to control access by other persons to that child. In consequence of the child being in the care of a local authority the local authority are required to give first consideration to safeguarding and promoting the welfare of that child throughout his childhood (Section 18 of the Child Care Act 1980). Thus the local authority must apply this test in relation to decisions concerning access to the child.

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

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

Judicial review

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

Wardship

Wardship jurisdiction is exercised by the Family Division of the High Court or, since 28 April 1986, to a limited extent by County Courts. It is a prerogative jurisdiction at common law and is largely independent of statutory provisions. When a child becomes a ward of court a court assumes responsibility for all aspects of his welfare. It may, for example, make orders as to where the child has to live, with whom, who may have access to him, and as to his religion, education and marriage if under 18. In determining what orders to make, the High Court is required by Section 1 of the Guardianship of

Minors Act 1971 to have regard to the child's welfare as the first and paramount consideration. A court may grant care and control of the child to a person or body, for example a local authority, but that person or body may only act in accordance with the court's directions. The court may also give care and control to one person or body and make a supervision order, at its own discretion or under Section 7(4) of the Family Law Reform Act 1969, in favour of another person or body. A child remains a ward of court until either he has attained his majority or the court orders that he shall cease to be a ward of court. No important step can be taken in the child's life without the court's consent (Re S (1967) 1 All ER 202 at 209).

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

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

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

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

Code of Practice on Access

The Code of Practice on Access is a statutory code issued under Section 12G of the Child Care Act 1980. Particular emphasis is placed on the need for local authorities to make provision for contact to be maintained, where this is consistent with the welfare of children, with the wider members of the family in addition to the child's parents (paras. 8 and 9 of the Code). The Code also requires local authorities to ensure that they have clear procedures to enable complaints about access to be pursued and for decisions to be reviewed where relatives are concerned as well as parents. The provisions introduced by the Health and Social Services and Social Security

Adjudications Act 1983 which provide a court procedure giving parents a right to apply for access where a child is subject to a care order do not apply to grandparent applications. Thus domestic legislation does not recognise that grandparents have a right to access or a right to apply for access to a child when that child is in the care of a local authority under a compulsory care order.

Grandparents and grandchildren

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

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

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

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

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

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

COMPLAINTS

1. The applicants complain of a violation of their rights under Article 6 (Art. 6) of the Convention. They contend that their right to apply for custody of and/or access to their grandchild is a civil right, but that they do not have any right under English law to apply for custody

or access because their grandchild is subject to a care order made under the Children and Young Persons Act 1969. In the care proceedings the applicants have no locus standi and no right to apply for the discharge of the care order. Similarly, the applicants have no right to make an application in respect of their grandchild in wardship proceedings in view of the decisions of the House of Lords in A. v. Liverpool City Council (1981) 2 All ER 385 and W. and others v. Hertfordshire County Council (1985) 2 All ER 301. Hence the applicants contend that they had no independent and impartial tribunal established by law from which they could obtain a fair hearing within a reasonable time in respect of the determination of their civil rights as regards their grandchild.

2. The applicants also complain of a violation of their rights under Article 8 (Art. 8) of the Convention. They submit that they had substantial access to their grandchild from his birth in July 1984 until his final placement with foster parents in February 1986. They had close and intimate ties of love and affection with him, as also with his mother, father and sister. Family life includes the ties between grandparents and grandchildren and there is an applied obligation on the State to allow those ties to develop normally deriving from the decision of the European Court of Human Rights in the Marckx case (Eur. Court H.R., Marckx judgment of 13 June 1979, Series A No. 31). However, by their action in refusing:

1) to allow the applicants access to the child from the end of September to the end of November 1984 and

2) to allow the applicants adequate access to the child from mid-June to late November 1985 and

3) to allow the applicants access to the child from 4 February 1986 to date and

4) to allow the applicants to take over the care of the child and provide a home for him,

the social services department of the local authority have interfered with the applicants' right to respect for their family life.

Having regard to the following matters in particular:

1) That the decisions of the social services department of the local authority to refuse access in September 1984 and to restrict access in June 1985 were taken without the knowledge of the applicants and without their being asked to make any representations;

2) That the decision of the social services department of the local authority of 7 February 1986 to place the child for adoption in a new family was taken without the knowledge of the applicants and was not communicated to them and ignored the applicants' request in their letter of 9 August 1985 to be considered as possible carers for their grandson;

3) That the decisions of the social services department of the local authority on 19 February and 4 March 1986 to terminate the child's access to the applicants and to reject their offer of a home for him were taken without the applicants' knowledge or participation, despite their letter of 11 February 1986 asking to be allowed to make representations before decisions were taken;

4) That no attempt was ever made by the social services department of the local authority to conduct a thorough assessment of the applicants and their

relationship with the child or to obtain detailed information from them as to their proposals for the child;

5) That when the applicants were asked to meet with the social services department of the local authority on 25 March 1986, important decisions had already been made about the child's future and therefore their representations were ineffective;

the process of decision-making within the social services department of the local authority provided insufficient safeguards and showed a total lack of respect for family life.

The applicants contend that the above interference by the social services department of the local authority was not necessary within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention, as it was never alleged that the applicants injured, ill-treated or neglected the child, or that their relationship with him was other than normal, or that they did not show love and concern for their grandchild.

3. The applicants lastly contend that they had no effective remedy before a national tribunal as required by Article 13 (Art. 13) of the Convention because:

1) The making of a care order removed any parental rights that the applicants might have had;

2) The applicants as grandparents had no locus standi within the care proceedings or the subsequent proceedings to discharge the care order;

3) The applicants could not commence wardship proceedings in the High Court in view of the existing care proceedings.

The applicants therefore allege that Articles 6, 8 and 13 (Art. 6, Art. 8, Art. 13) of the Convention were violated in their case.

PROCEEDINGS BEFORE THE COMMISSION

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

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

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

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

SUBMISSIONS OF THE PARTIES

A. The respondent Government

1. The facts

Background

Following D.'s first hospitalisation, the local authority's

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

From the outset, the local authority sought to rehabilitate D. with his parents as being in his best interests. The efforts of the local authority therefore concentrated on the relationship between D. and his parents, and although this at times restricted the applicants' access to D., this was done for D.'s benefit. It had been noted at case conferences on 11 September and 13 November 1984 that the first applicant tended to overshadow D.'s mother, thus providing an obstacle to the proposed rehabilitation of D. with his parents.

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

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

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

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

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

bruising on D.'s buttocks was due to an "extremely hard slap". The local authority's letter of 26 June 1986 to the local ombudsman states on page 3:

> "The officers felt it was difficult for them to find out exactly and precisely how D. had been injured, which had occurred on a number of occasions. There seemed to be conflicting stories being told or, to use the (applicants') own phrase, a muddying of the picture. This is called collusion and it could have been created deliberately or it could have been created unknowingly, without being aware of the effect.
>
> The officers genuinely felt and still feel that such a smoke screen or muddying of the picture existed, hence, the reference in the telephone conversation (to collusion). That view is still felt and it is not appropriate to apologise for using the phrase."

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

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

2. Domestic law and practice

Care proceedings under the Children and Young Persons Act 1969

While grandparents are not entitled to be parties in care proceedings, in practice, however, the Juvenile Court has inherent jurisdiction to allow other persons (such as grandparents in appropriate cases) to participate in the proceedings. This could include allowing persons who are not parties to cross-examine local authority witnesses (R. v. Gravesham Juvenile Court, ex parte B (1983) 4 FLR 312; R. v. Milton Keynes Justices, ex parte R (1979) 1 WLR 1062). It is also open to a juvenile court to make a supervision order instead of a care order at the original hearing of an application for a care order (Section 1(3) of the Children and Young Persons Act 1969) or on an application for the discharge of a care order (Section 21(2) of the Children and Young Persons Act 1969). Section 12(1) of the Children and Young Persons Act 1969 provides that: "A supervision order may require the supervised person to reside with an individual named in the order who agrees to the requirement...."

Wardship and judicial review

In a recent decision of the House of Lords (in Re W (A minor) (1985) 2 WLR 892) the role of the wardship court as a potential reviewing body for local authority decisions was rejected and the principles enunciated in the Liverpool case were reaffirmed. Accordingly it would appear that while the wardship court is not available, in cases where a child is in care, to review local authority decisions it may intervene in certain limited circumstances. These include cases in which a local authority takes action which is so unreasonable as to require the intervention of the court. Linked to this circumstance is the availability of a remedy through judicial review of a local authority's action by way of application to the High Court under Order 53 of the Rules of the Supreme Court in relation to an administrative decision or exercise of discretion by a local authority (see for example R. v. Hertfordshire County Council, ex parte B. and R. v. Bedfordshire County Council, ex parte C, The Times 19 August 1986). Judicial review is available

where, for example, a local authority have taken irrelevant matters into account in reaching a decision, have not taken relevant matters into account or have acted unreasonably (Associated Provincial Picture Houses Ltd v. Wednesbury Corporation (1948) 1 KB 233). It is submitted that an application for judicial review and wardship could in appropriate cases be issued simultaneously. Where leave is granted to proceed with an application for judicial review an application could also be made to the Court to exercise its wardship jurisdiction.

Adoption legislation

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

Children and Young Persons (Amendment) Act 1986

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

3. Admissibility and merits

Article 8 (Art. 8) of the Convention

The respondent Government do not accept that until 7 February 1986 the applicants' access to D. was refused. They also submit that from 6 September 1984, the date of the place of safety order, until 7 February 1986, there were only limited periods when the applicants' access to D. was restricted. While with his parents, and while in hospital between 6-21 September 1984, there was no restriction on access. At other times, although there was some restriction on access to D. while D. was living with foster parents in order to encourage rehabilitation of D. with his parents, the first applicant was able to share access to D. with D.'s mother when D.'s father was not visiting

him.

The respondent Government submit that it is clear from the case-law of the Commission and the Court that, in the case of a relationship more distant than that between parent and child or between spouses, the notion of "family life" requires more than a bare relationship. The importance of actual cohabitation and dependency is illustrated in the Court's judgments in Marckx (Eur. Court H.R., Marckx judgment of 13 June 1979, Series A No. 31) and Johnston (Eur. Court H.R., Johnston judgment of 18 December 1986, Series A No. 112). The respondent Government submit that in particular the Commission has adopted this approach in the case of grandparent/grandchild relationship (see e.g. Application No. 8924/80, Dec. 10.3.81, D.R. 24 p. 183).

On the facts of the present case the respondent Government submit that the ties between the applicants and D. were not sufficiently close to amount to "family life" within the meaning of Article 8 (Art. 8) of the Convention. The applicants did not form a part of the same household as D., and did not have primary responsibility for his upbringing. The fact that they may have visited D. regularly and that they may have been concerned about him does not, in the circumstances of the case, show that the applicants played a "considerable part in family life" in relation to D. Accordingly, the applicants and D. did not, in the respondent Government's submission, enjoy a family life within the meaning of Article 8 (Art. 8).

Alternatively, if the applicants did, in the circumstances of the present case, have ties with D. sufficiently close to indicate that there was a right to respect for their family life with D. the Government submit that on the facts of the case no interference with that right occurred. In relation to the period before 7 February 1986, the applicants' access to D. was at many times unrestricted. Furthermore the Government submit that, particularly in the case of relationships other than those between a parent and child, the concept of "family life" cannot involve the right of unlimited access to the child; and that in the circumstances of the case, any "family life" that the applicants enjoyed with D. did not necessarily involve the right to have unlimited access to D. while he was placed with foster parents or to have access to him when he was the subject of a compulsory care order.

Even if it is found that there had been an interference contrary to Article 8 para. 1 (Art. 8-1), the respondent Government submit that it was justified under Article 8 para. 2 (Art. 8-2) of the Convention. The relevant law and practice satisfy the Convention requirements that any restriction be "in accordance with the law" and the various decisions taken in relation to D. pursued the legitimate aims of "the protection of health or morals" and "the protection of rights and freedoms of others". As regards the necessity of any alleged interference, the respondent Government argue that in this area the margin of appreciation afforded to the national authorities is a wide one. The respondent Government rely in this respect on the partly dissenting opinion given in Olsson v. Sweden (Application No. 10465/83, Comm. Rep. 2.12.86). There were strong reasons why the local authority should have taken the steps which they did in the interest of D.

The respondent Government emphasise in this respect that there was ample evidence of physical abuse of D. The local authority were also concerned to achieve rehabilitation of D. with his parents after the place of safety order was obtained in September 1984 and, to the extent that this aim involved an attempt to bolster up the relationship between the parents and D., it was also necessary to some extent to restrict the applicants' access to D. The respondent Government also emphasise that, in the present case, any interference with the grandparents' right to respect for family life would be considerably less serious than an interference with the parents' right. The relationship between the parent and child is clearly much closer than

that between grandparent and grandchild. The respondent Government also point out that the local authority were concerned to respect D.'s right to a family life, first by attempting to rehabilitate D. with his parents, and then (after 29 October 1986) by attempting to obtain a permanent substitute family placement for him by way of adoption. A permanent substitute family was considered necessary at that stage because rehabilitation attempts had failed and because D.'s parents and the applicants were implicated directly or indirectly in the abuse of D. The respondent Government refer to the local authority's record of 27 March 1986 where the first applicant is recorded as stating that she was aware that D's mother had abused D. even though she had not acted earlier to bring this to the local authority's attention. The respondent Government refer to the local authority's report of 16 October 1986 in which it was concluded that there was a risk of further injury and that D. needed a permanent substitute family and a complete severence from his natural family. This was supported by the guardian ad litem's reports of 20-22 October 1986 which were placed before the Court that refused the discharge of the care order. In all the circumstances, the respondent Government submit that the decisions of the local authority and the national courts were well within the margin of appreciation left to Member States by the Convention.

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

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

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

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

In the present case, any "right" to access which the applicants had stemmed from the possibility of the local authority exercising their discretion in the applicants' favour. In such cases,

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

It is submitted that the applicants could not show, on the facts, that they had a proper basis for challenging the actions of the local authority, as the local authority did not act improperly. However, if this is alleged, it is submitted that in this regard the applicants have failed to exhaust domestic remedies for the purposes of Article 26 (Art. 26) of the Convention.

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

Article 13 (Art. 13) of the Convention

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

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

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

Alternatively, the applicants had an effective remedy before a national authority through the procedure adopted by the local authority in respect of access and subsequently by taking wardship and/or judicial review proceedings in respect of the decisions made by the local authority pursuant to that procedure in relation to the applicants. There is no evidence to indicate that any decision of the

local authority in this case was improperly taken, but, if it had been, the remedies available through judicial review and wardship would have allowed such a decision to be challenged and afforded an effective remedy in accordance with the requirements of the Convention. In these circumstances the Court could have declared that the decisions that had been taken did not have a proper legal basis, or required the local authority to make its decision again taking account of proper considerations. In conjunction with its wardship jurisdiction the Court could have awarded care and control to the applicants or directed that access be granted.

The Government would also observe that the applicants have already put their case to the Adoption Panel. Their request that they be considered as suitable for an adoption placement for D. was in fact rejected, but they will be entitled to apply to be made parties to any court proceedings which consider adoption of D. by the prospective adopters with whom the child is presently placed. The applicants will therefore be able to make representations to that court on such matters as they see fit. For example it would be open to the applicants to argue against the making of an adoption order. Again this procedure indicates that the applicants do have an effective remedy before a national authority as required by Article 13 (Art. 13).

B. The applicants

1. The facts

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

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

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

The applicants submit that the Code of Practice on Access encourages local authorities to make provision for access to members of the child's extended family. Paragraph 28 of the Code states that local authorities should have clear procedures to deal with complaints about access from relatives of children in care. Paragraph 33 states that parents should be informed in writing if termination of access is being considered and should be told how to make their views known and how any decisions will be conveyed to them. It is submitted that the spirit of the Code is that concerned relatives should be in no worse a position than parents. In this case the local authority decided to

terminate D.'s access to his grandparents on 7 February 1986. The applicants were not informed in advance that such termination of access was being considered. The decision on 7 February 1986 was confirmed at the meetings held on 19 February and 4 March 1986. Though the local authority were well aware that the applicants wished to make representation about access to and care of their grandchild, the applicants were not told about the meetings or invited to make their views known. The applicants note that the report of the meeting of 6 May 1986 does not state the reasons for refusing access.

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

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

2. Domestic law and practice

Care proceedings under the Children and Young Persons Act

There is no provision in the Act or in the Magistrates Court (Children and Young Persons) Rules 1970 for grandparents to be given notice of, be parties to or play a part in care proceedings, or any proceedings to discharge a care order.

The applicants do not agree with the Government's submission that in practice the Juvenile Court could exercise its inherent jurisdiction to allow grandparents to participate in the proceedings and cross-examine witnesses. The cases of R. v. Gravesham Juvenile Court ex parte B. and R. v. Milton Keynes Justices ex parte R. were concerned with the rights of parents to be represented and to cross-examine witnesses. Parents are entitled to participate in care proceedings by virtue of the 1970 Rules. The aforementioned cases dealt with the application and interpretation of those Rules in accordance with the interests of justice. There is no precedent in domestic law to support the proposition that persons who are not parties and have no right to participate in proceedings may none the less put their case to the Court.

Wardship

Under domestic law, once a child is in care, the question of whether and to what extent a grandparent is to have access to him is a matter entirely within the discretion of the local authority. The cases of A. v. Liverpool City Council (1981) 2 All ER 385 and Re W (a minor) (1985) 2 WLR 892 firmly establish that a grandparent may not use the wardship jurisdiction to challenge the exercise of the local authority's discretion.

Judicial review

Anyone who wishes to make an application for judicial review to challenge the decision of a local authority must first seek leave of the Court. In practice it is very difficult for a parent or relative of the child in care to obtain the necessary evidence to

support an applicaton for leave. Members of the child's family have no right to attend local authority reviews or case conferences where decisions are made and as in this particular case they are usually excluded. Parents and relatives cannot compel the local authority to produce the minutes of relevant meetings or any reports upon which decisions are based. In proceedings for judicial review the Court may order pre-trial disclosure of such documents, but only after leave to commence the proceedings has been obtained. Even then such documents are unlikely to be disclosed and the general rule of evidence is that they are privileged and not open to inspection.

In any event an application for judicial review is an unsatisfactory remedy for parents and relatives who wish to challenge decisions made by a local authority as established in the Court's judgment in W. v. the United Kingdom.

The Government submit that an applicaton for judicial review and wardship could in appropriate cases be issued simultaneously so that if the applicaton for judicial review was successful the Court in wardship could review the merits of the local authority's decision. The applicants reject this submission. In R. v. Newham London Borough Council ex parte McL (The Times 25 July 1987) a grandmother applied unsuccessfully for judicial review of a decision relating to her granddaughter. In the course of his judgment Mr. Justice Latey stated that the process of judicial review did not meet the needs of parents and relatives and the principles to be applied were too restrictive and inappropriate for the review of child care cases. He expressed the view that judges hearing applications for leave should, in suitable cases, recommend that wardship proceedings be commenced by the local authority. However, he also stated that no such recommendation would be binding upon a local authority, and that primary legislation would be needed for the Court to be empowered to direct that wardship proceedings be instituted.

Adoption

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

3. Admissibility and merits

Article 8 (Art. 8) of the Convention

The applicants submit that the close ties between themselves and their grandson did amount to "family life". Whilst it may be true that in some cases cohabitation by two or more persons is evidence of the existence of family life as for example in Johnston v. Ireland (loc. cit.) where the two persons concerned were not married or in any other way legally related it cannot conversely be argued that the absence of cohabitation is evidence that no family life existed. The applicants refer in particular to the case of Marckx v. Belgium (loc. cit.). In that case the Government argued that no family life existed between the child concerned and her grandmother as the grandmother had died when the child was less than a year old and there was no evidence

that she had had any relations with the child. This argument was rejected by the Court who pointed out that there was no evidence that the child did not have relations with her grandmother.

In this case there is convincing evidence that more than "a bare relationship" existed between the applicants and their grandson. They loved him, showed interest and concern for his and his parents' welfare, and until his reception into care maintained close and regular access to him. The applicants' conduct after D.'s reception into care indicates the strength of their attachment to him. There is clear evidence that "family life" existed between the applicants and their grandson.

The applicants submit that their access to D. was refused in September 1984 and again in February 1986 and was restricted at other times as detailed in their application. The applicants submit that this was an interference with their right to respect for their family life. The applicants repeat the submission made in their application that the local authority's refusal to allow them to take over the custody of D. also amounted to an interference with their right to respect for their family life.

The Government submit that "the concept of family life cannot involve the right of unlimited access to the child". The applicants would submit that they never sought unlimited access to D. once he was received into care but rather sought access which was reasonable and regular. The Government further submit that "any family life that the applicants enjoyed with D. did not necessarily involve the right ... to have access to him when he was the subject of a compulsory care order". The applicants submit that, when a child is taken into care, his family is not automatically deprived of access to him. The effect of a care order is that access becomes a matter within the discretionary power of the local authority. In exercising this discretionary power the local authority should be guided by the Code of Practice which expressly acknowledges that the interest of most children will be served by the sustaining of links with their natural family. The applicants would refer to the decision in W. v. the United Kingdom (Eur. Court H.R., judgment of 8 July 1987, Series A No. 121) in which the Court stated at paragraph 77:

> "... The extinction of all parental right in regard to access would scarcely be compatible with fundamental notions of family life and family ties which Article 8 (Art. 8) of the Convention is designed to protect (see the Marckx judgment ...)."

The applicants submit that their right to respect for family life included a right to maintain contact with their grandson whilst he remained in care.

The applicants accept that the local authority's decisions in respect of their access to D. were in accordance with the law and were designed to achieve a legitimate purpose. However, the applicants submit that the interference with their right to respect for their family life was not "necessary in a democratic society" because

(i) they were not involved in the local authority's decision-making process to a sufficient degree to provide them with the requisite protection of their interest and

(ii) they were deprived of an effective remedy for challenging the decisions of the local authority.

The applicants also submit that it is insufficient merely to say that where there is some evidence to indicate that decisions taken in respect of the child in care were taken in his best interests, then any interference with his family's right to respect for their family life must be necessary in a democratic society. Whatever may be the

merits of a particular case the procedures applicable to the determination of issues relating to family life must show respect for that family life. The applicants refer to the case of W. v. the United Kingdom (loc. cit.) and would adopt the observations of the Court in this respect. The applicants submit that the reasoning of the Court though applied to parents of children in care applies with equal force to grandparents. It can be argued that decisions affecting grandparents need to be taken with even greater care as, unlike parents who may apply for access to children in care or for the discharge of the care order, they have no remedy for challenging any decisions made.

The applicants do not accept the Government's submission that "in the present case any interference with the grandparents' right to respect for family life would be considerably less serious than an interference with the parents' right". They would emphasise that in addition to their request for access they were also offering a permanent home to D. as an alternative to an adoptive placement. The applicants submit that they were not sufficiently involved in the local authority's decision-making process, that that process was not conducted in a fair manner that afforded due respect for their interests as protected by Article 8 (Art. 8) and that accordingly the interference with their right to respect for their family life was not necessary. The applicants would refer to their application where the details of their lack of involvement in the decision-making process are set out.

The applicants further submit that the absence of an effective remedy for challenging the decisions of the local authority constitutes a breach of Article 8 (Art. 8). The local authority's decision to terminate the applicant's access to D. and to reject the applicants offer of a home for him could not be challenged by the applicants in a court or before any impartial public body. The applicants as grandparents were not entitled to be parties to the proceedings in the Juvenile Court and were not entitled to make application to any other court in relation to decisions taken by the local authority once the care order was made. The applicants were not entitled to know the reasons for the decisions taken about them by the local authority and were not entitled to examine or ask that a court examine any reports upon which such decisions were based as such documents were privileged. The necessity for any interference in the applicants' right to respect for their family life was a matter left entirely within the discretion of the local authority and was incapable of review by any impartial tribunal. The applicants submit that such a procedure is in breach of Article 8 (Art. 8)

Article 6 (Art. 6) of the Convention

The applicants' civil rights

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

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

The applicants would further submit that any right of access

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

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

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

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

Article 13 (Art. 13) of the Convention

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

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

THE LAW

1. Article 8 (Art. 8) of the Convention

The applicants complain that the refusal of the local authority to allow access or adequate access to their grandchild in September-November 1984, June-November 1985 and from 7 February 1986

onwards and their refusal to allow them to give him a home interferes with their right to respect for their family life. They further submit that the decisions of the local authority in respect of access, custody and adoption were taken without their knowledge and without affording them an opportunity to make representations and therefore that the local authority showed a lack of respect for their family life.

Article 8 (Art. 8) of the Convention provides:

"1. Everyone has the right to respect for his private and 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 in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Government have submitted that the concept of "family life" as guaranteed by Article 8 (Art. 8) of the Convention requires more than a bare relationship and that, in the present case, the ties between the applicants and D. were not sufficiently close to fall within the scope of that provision. The Government rely particularly on the fact that D. was not living with the applicants.

The Commission recalls in this respect that the Court in the Marckx case stated that "family life" within the meaning of Article 8 (Art. 8) includes at least the ties between near relatives, for instance those between grandparents anmd grandchildren, since such relatives may play a considerable part in family life (Eur. Court H.R., Marckx judgment of 13 June 1979, Series A No. 31 para. 45). Cohabitation however is not a prerequisite for the maintenance of family ties which are to fall within the scope of the concept of "family life". Cohabitation is one factor amongst many others, though often an important one, to be taken into account when considering the existence or otherwise of family ties.

The Commission recalls in this case that the applicants visited D. regularly after his birth and that, during his first admittance to hospital, both applicants visited him on a daily basis. Throughout the events that followed, it is evident that the applicants, so far as they were able, maintained contact with D. through frequent visits and that they made known to the local authority their concern for D. and their wish to offer him a home. In these circumstances and having in mind the very young age of D. and the history of his placement in care, the Commission finds that the applicants established significant family ties with their grandchild falling within the scope of "family life" as provided in Article 8 para. 1 (Art. 8-1) of the Convention. The Commission must therefore consider whether there has been any interference with the applicants' right to respect this aspect of their family life and, if so, whether it can be justified under Article 8 para. 2 (Art. 8-2) of the Convention.

The Commission notes first of all that in normal circumstances the relationship between grandparents and grandchildren is different in nature and degree from the relationship between parent and child, which has been recognised by both the Commission and Court as being of fundamental importance (e.g. Eur. Court H.R., W. v. the United Kingdom judgment of 8 July 1987, Series A No. 121). When a parent is denied access to a child taken into public care this would constitute in most cases an interference with the parent's right to respect for family life as protected by Article 8 para. 1 (Art. 8-1) of the Convention, but this would not necessarily be the case where grandparents are concerned. Access of a grandparent to grandchildren is normally at the discretion

of the child's parents and, where a care order has been made in respect of the child, this control of access passes to the local authority. In the latter situation, there may be an interference by the local authority if it diminishes contacts by refusing to grandparents what is in all the circumstances the reasonable access necessary to preserve a normal grandparent-grandchild relationship. Regulation of access which did not go to that length would not of itself show a lack of respect for family life.

In the present case, the applicants complain of a refusal of access or of adequate access in respect of three periods: from end of September to end of November 1984, from June to November 1985 and from 7 February 1986 onwards. They complain that these decisions were taken without their knowledge and without being given an opportunity to make representations. The Commission recalls that the first period corresponded to D.'s first placement with foster parents following a serious injury which had led to his hospitalisation. Access to D. was resumed after less than two months when the local authority began a programme of rehabilitating D. with his parents. As regards the second period, it appears that the applicants were restricted to one visit per week by the first applicant in company with D.'s mother. The Government state that this restriction of access was imposed by the local authority on the grounds that concentration needed to be placed on the delicate and more important task of rehabilitating D. with his parents.

Even assuming therefore that the six months rule provided for in Article 26 (Art. 26) has been complied with, the Commission finds in respect of these two periods, bearing in mind that at other times the applicants apparently had unlimited access to D., that the restriction of access by the local authority in the above circumstances did not amount to an interference with their rights under Article 8 para. 1 (Art. 8-1) of the Convention and showed no lack of respect for those rights.

As regards the third period when the local authority decided on 7 February 1986 (as confirmed on 19 February and 4 March 1986) to terminate access completely and seek long-term placement and adoption for D. outside his family, from which time the applicants have not been allowed to see D. again and in view of the Commission's finding of significant family ties between the applicants and D., the Commission finds that these decisions, which in effect ended all future contact between the applicants and D., constituted an interference with their right to respect for family life contrary to Article 8 para. 1 (Art. 8-1) of the Convention.

An interference with the right to respect for family life entails a violation of Article 8 (Art. 8) unless it is "in accordance with law", has an aim that is legitimate under Article 8 para. 2 (Art. 8-2) and is "necessary in a democratic society" for the aforesaid aim. The case-law of the Commission and the Court establishes that the notion of necessity implies that the interference corresponds to a pressing social need and that it is proportionate to the legitimate aim pursued. In determining whether an interference is "necessary", the Commission and the Court take into account that a margin of appreciation is left to the Contracting States (see e.g. Eur. Court H.R., Handyside judgment of 7 December 1976, Series A No. 24; Eur. Court H.R., Johnston and Others, judgment of 18 December 1986, Series A No. 112).

In the present case however it is not contested by the applicants that the local authority's decisions were in accordance with law and were designed to achieve a legitimate purpose, namely the protection of D.'s health and his rights. They dispute however that the interference was "necessary in a democratic society", on the grounds that they were not sufficiently involved in the local authority's decision-making and they had no effective remedy for challenging the decision of the local authority.

As regards the question whether the interference was necessary in a democratic society, the Commission recalls that the child D. had been victim of a series of injuries since his birth and that the local authority had come to the conclusion that they were non-accidental and that it was necessary for D.'s physical safety and emotional security to place him with a permanent substitute home beyond his natural family. The Commission notes that the local authority had made unsuccessful attempts to rehabilitate D. with his family and that the applicants were able to make representations to the local authority concerning D.'s future on several occasions. In these circumstances, bearing in mind the margin of appreciation to be accorded to the Contracting State, the Commission finds that the decision of the local authority to terminate access to D. did correspond to a pressing social need and was not disproportionate. The Commission accordingly finds that in the present case the interference was necessary in a democratic society within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

The applicants have also complained in respect of the termination of access following 7 April 1986 that they were not adequately consulted.

The Commission has therefore considered whether these complaints of insufficient involvement in the decision-making process disclose in themselves a failure to respect their family life. An analogous issue was considered before the Court in W. v. the United Kingdom (Eur. Court H.R., judgment of 8 July 1987, Series A No. 121) in respect of parents, where it was stated:

> "In the Court's view, what therefore has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents 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. If they have not, there will have been a failure to respect their family life and the interference resulting from the decision will not be capable of being regarded as 'necessary' within the meaning of Article 8." (Art. 8)

In the present case however the Commission recalls that the applicants are the grandparents, and not the parents of the child in care, and the Commission finds that the difference in nature of this relationship will normally not require a local authority to consult or involve them in the decision-making process to such a degree as in the case of natural parents.

The Commission recalls that the local authority decided to terminate the applicants' access to D. on 7 February 1986 and that this decision was confirmed at meetings on 19 February 1986 and 4 March 1986 in which it was also found that the applicants were not suitable to care for D. full-time. The applicants were however invited to make representations concerning access at three subsequent meetings - on 25 March 1986, 2 April and 6 May 1986 - and were then able to present their case for access to and/or custody of D.

On examination of the facts of the present case, the Commission therefore finds that the views of the grandparents were taken into account and they were able to make representations to the local authority on several occasions in order to obtain a review of the situation. The Commission finds that the degree of involvement in the present case was sufficient to provide them with the requisite protection of their interests as required by Article 8 (Art. 8) of the Convention and accordingly there has been no failure to respect their family life within the meaning of that provision.

It follows that these complaints must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. Articles 6 and 13 (Art. 6, Art. 13) of the Convention

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

The applicants also complain that they have no remedy in respect of their complaints, since they had no locus standi within the care proceedings and wardship proceedings would have been ineffective. They invoke Article 13 (Art. 13) of the Convention in this respect.

The Commission finds that the complaints under Articles 6 and 13 (Art. 6, Art. 13) raise serious issues of fact and law and decides to adjourn this part of the application.

For these reasons, the Commission

DECLARES INADMISSIBLE the applicants' complaints under Artice 8 of the Convention,

DECIDES TO ADJOURN the remainder of the application.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)