In the case of Johansen v. Norway (1),

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court B (2), as a Chamber composed of the following judges:

Mr R. Bernhardt, President,
Mr R. Ryssdal,
Mr R. Macdonald,
Mr I. Foighel,
Mr R. Pekkanen,
Mr A.N. Loizou,
Mr J.M. Morenilla,
Mr P. Kuris,
Mr U. Lohmus,

and also of Mr H. Petzold, Registrar, and Mr P.J. Mahoney, Deputy Registrar,

Having deliberated in private on 26 January and 27 June 1996,

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

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Notes by the Registrar

1. The case is numbered 24/1995/530/616. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning the States bound by Protocol No. 9 (P9).

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PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the Government of the Kingdom of Norway ("the Government") on 1 March and 3 April 1995 respectively, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 17383/90) against Norway lodged with the Commission under Article 25 (art. 25) by a Norwegian citizen, Ms Adele Johansen, on 10 October 1990.

The Commission's request and the Government's application referred to Articles 44 and 48 (art. 44, art. 48); the request also referred to the declaration whereby Norway recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request and 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 Articles 6, 8 and 13 of the Convention (art. 6, art. 8, art. 13).

2. In response to the enquiry made in accordance with Rule 35 para. 3 (d) of Rules of Court B, the applicant stated that she wished to take part in the proceedings and designated the lawyer who would represent her (Rule 31).

3. The Chamber to be constituted included ex officio Mr R. Ryssdal, the elected judge of Norwegian nationality (Article 43

of the Convention) (art. 43), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 para. 4 (b)). On 5 May 1995, in the presence of the Registrar, Mr Bernhardt drew by lot the names of the other seven members, namely Mr R. Macdonald, Mr I. Foighel, Mr R. Pekkanen, Mr A.N. Loizou, Mr J.M. Morenilla, Mr P. Kuris and Mr U. Lohmus (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

4. As President of the Chamber (Rule 21 para. 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 para. 1 and 40). Pursuant to the orders made in consequence on 6 June and 13 November 1995, the Registrar received the applicant's and the Government's memorials on 13 and 20 November 1995. On 20 December 1995 the Secretary to the Commission indicated that the Delegate did not wish to reply in writing.

5. On various dates between 10 January and 19 June 1996 the Registrar received a number of documents from the Government and the applicant, including particulars on the latter's Article 50 (art. 50) claims.

6. On 10 and 12 January 1996, the Registrar received from the Government a request that the memorials and appendices thereto not be made accessible to the public and that the hearing on 23 January be held in camera. The applicant and the Delegate of the Commission submitted their comments on 16 and 17 January. On 19 and 22 January the Government and the applicant accepted that the hearing be held in public subject, inter alia, to the non-disclosure of the identity of certain persons, including the applicant's daughter.

7. In accordance with the President's decisions, the hearing took place in the Human Rights Building, Strasbourg, on 23 January 1996, in public, in accordance with the terms indicated above. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr T. Stabell, Assistant Attorney-General
(Civil Matters), Agent,
Mr F. Elgesem, Attorney, Attorney-General's Office
(Civil Matters),
Ms T. Smith, Assistant Director-General, The Royal
Ministry of Child and Family Affairs,
Ms K. Ofstad, Adviser, The Royal Ministry of
Child and Family Affairs, Advisers;

(b) for the Commission

Mrs G.H. Thune, Delegate;

(c) for the applicant

Mrs S. Moland, advokat, Counsel,
Mrs K. Næss, advokat, Adviser,
Mr A. Salomonsen, Assistant.

The Court heard addresses by Mrs Thune, Mrs Moland, Mrs Næss and Mr Stabell.

8. On 26 June 1996 the President decided that the Government's and the applicant's memorials, subject to changes to the former, be made accessible to the public but that those appendices thereto which related to the domestic proceedings not be made so accessible (see paragraph 6 above).

On the same date, he also decided to authorise the filing of the applicant's letters of 16 and 22 January 1996, with their enclosures, but to refuse that of the letter and enclosures received on 19 January (Rule 39 para. 1, third sub-paragraph, of Rules of Court B).

AS TO THE FACTS

I. Particular circumstances of the case

A. Background

9. The applicant, who was born at Laksevåg near Bergen, left home when she was 16. In 1977, when she was 17 years old, she gave birth to her son C. and they became dependent on assistance from the social welfare authorities. From 1980 onwards the applicant cohabited with a man who mistreated her and C. He was convicted of drug offences in 1983 and spent two years in prison. On many occasions the social welfare authorities assisted the applicant in the upbringing of C., but considerable problems as well as friction arose between those authorities and the applicant. In August 1988 C. began to receive treatment at the Child Psychiatric Department of Haukeland Hospital in Bergen. In January 1989 he was admitted to a special school adapted to his needs.

10. On 14 November 1989 C., who was then 12 years old, was provisionally taken into care under section 11 of the Child Welfare Act (Barnevernsloven) no. 14 of 17 July 1953 ("the 1953 Act"; see paragraph 33 below), as the circumstances of the case disclosed a danger to his health and development. The police assisted the child welfare authorities in enforcing the decision. After spending the period from November 1989 to early January 1990 at the Child Psychiatric Department of Haukeland Hospital, C. was placed in a children's home.

According to a statement of 10 January 1990 by the Chief Physician, Ms Guri Rogge, and the Deputy Chief Physician, Mr Arne Hæggernes, the applicant's and C.'s situation had been "rather chaotic" throughout the period during which they had been in contact with the hospital. When faced with difficulties, the applicant had broken off her contact with the system which had been set up to assist her. Her way of life had had a detrimental effect on C. and the fact that he had changed schools had created much insecurity.

11. In mid-November 1989 the applicant, who was pregnant, left Bergen for Oslo. On 23 November she was given accommodation at the Oslo Crisis Centre, an institution for women who had been victims of domestic ill-treatment.

On the following day she went for an antenatal check-up at Markveien Medical Centre in Oslo. She stated to the doctor concerned that she had been taking valium, vival and paralgin during her pregnancy and that she had hardly eaten during the last fortnight. Because of her pregnancy and her state of health she was subsequently referred to Ullevål Hospital in Oslo. The doctors there considered her physical and mental state of health to be very poor, but refrained from contacting the child welfare authorities, fearing that she might injure herself if they did so.

B. Public-care measures in respect of the applicant's second child

12. On 7 December 1989 the applicant gave birth to her daughter S. In view of the applicant's difficult situation and the problems with regard to the upbringing of C., the child welfare authorities (barnevernet) at Røa in Oslo were contacted. At a meeting on

8 December 1989 between the applicant and her lawyer and the child welfare authorities the applicant's and S.'s situation was discussed.

On 13 December 1989 the Chairperson of the Client and Patient Committee of Røa, district 24 (klient- og pasientutvalget i bydel 24, Røa - "the Committee"), decided to take S. provisionally into care under section 11 of the Child Welfare Act (see paragraph 33 below) on the grounds that the applicant, because of her physical and mental state of health, was considered incapable of taking care of her daughter. The Chairperson considered that the child would be put at risk if the decision were not implemented immediately.

In reaching the above decision, the Chairperson had regard to the decision by the social welfare authorities in Bergen to take the applicant's son provisionally into care and their intention of doing so on a permanent basis, as well as their concern for the situation of the baby whom they considered taking into care immediately after birth. The Chairperson also took into account information provided by Markveien Medical Centre, by Ullevål Hospital and by those who had attended the meeting on 8 December 1989.

The applicant did not lodge any appeal against this provisional care decision.

13. On 19 December 1989, in accordance with the above decision, S. was placed in a short-term foster home linked to the Aline Child Care Centre. The applicant was allowed to visit her twice a week at the Centre. She did not challenge this access arrangement, which was not based on any formal decision.

14. The question of public care was brought before the Committee on 29 December 1989. The Committee obtained an expert opinion dated 13 February 1990 from Mr Knut Rønbeck, psychologist, which contained the following conclusion on the applicant's ability to take care of S.:

> "... On the surface, she appears to be a well-organised, friendly and charming young woman. On meeting her, it may therefore initially be difficult to understand that the child welfare authorities and mental health authorities have had such serious problems in achieving cooperation with her for the benefit of her son. If one approaches her more closely, however, a clear picture emerges of a woman with major unsolved mental problems which strongly affect her social functioning and her ability to care [for a child]. The problems are expressed in the form of anxiety and depression. Since her early youth, she has functioned fairly marginally from a social point of view. For many years, she lived with a man who she herself believes abused both her and her son, but without being able to break out of this relationship.
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> ...
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> ... Having regard to [the applicant's] history in respect of taking care of her child and due to her lack of knowledge of/denial of her own faults vis-à-vis her own and [C.'s] problems I regret that, as the expert in this case, I am not hopeful about her future ability to take care of her children, although she undoubtedly loves them and is attached to them. In addition to these points [I] must add that [the applicant] now realises that what the future holds in store is the prospect of being a mother on her own in Oslo where she lacks support from a social environment.
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> ...
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> The child in this case [S.] is in a period of her life where the attachment to preferably stable persons ought to develop.

It is of decisive importance for her personal development that she now gets the opportunity to attach herself to persons whom she may regard during her adolescence as stable and secure parents."

15. The applicant requested the appointment of a second expert. Since the child welfare authorities refused her request, the applicant herself engaged a psychologist, Mrs Lise Valla, who submitted her opinion on 17 April 1990. This concluded:

"... I cannot find that there are sufficient reasons for depriving [the applicant] of the care of her children [C.] and [S.].

In my view [the applicant] shows responsibility when it comes to considering the children's adolescence - and she is also a person who may learn from the mistakes she has made.

It is clear, however, that [the applicant] will need some practical assistance in the future. It is desirable that both she and [C.] receive therapy in order to manage the emotional gaps from the bad years - and I would consider it reasonable that the public authorities should provide this. Furthermore, [the applicant] ought to receive support so that she can improve her level of education."

The above opinion was based on available documents and meetings with the applicant and her son.

16. In the meantime the child welfare authorities at Røa continued their examination of the case. Their report to the Committee of 30 March 1990, based on, among other material, talks with the applicant, Mr Rønbeck's opinion and the case files of the child welfare authorities in Bergen and Oslo, stated that if S. were to be reunited with her mother, the child's mental health would be subjected to harm or serious danger and she would live under such conditions as described in section 16 (a) of the Child Welfare Act (see paragraph 32 below). The report recommended that S. be taken into compulsory care pursuant to section 19 of the Act, such measures being necessary in view of the applicant's inability to provide satisfactory care for her daughter and of the fact that the preventive care measures taken under section 18 of the Act in respect of her son C. had not been effective (see paragraphs 33-34 below). The report further recommended that S. be placed in a foster home with a view to adoption. Scientific experience in recent years had shown that remaining a long-term foster child instead of being adopted was disadvantageous for the child: the foster parents could at any time cancel the agreement or the parents might institute proceedings in order to be reunited with the child. Adoption had the advantage of clarifying the situation and of creating security and stability for the child and the adoptive parents. Moreover, the report stated that, in order to secure the child's development and its relationship with the persons who would permanently assume the care, it would be appropriate for the authorities to deprive the applicant of all her parental responsibilities (foreldreansvaret) pursuant to section 20 of the Act (see paragraph 35 below).

As regards the question of access, the report added:

"While the girl has been at the Child Care Centre [the applicant] has had access to her twice a week for one hour. Following transfer of the girl to an approved foster home with a view to adoption it is recommended that access be refused and the address kept secret.

[The applicant] has previously tried to disappear with her son in order to avoid the social welfare authorities and she did not inform the social welfare office/authorities when her son

ran away from the children's home at Bergen in February 1990 in order to stay with her. Therefore, it is considered not unlikely that she would intervene in a disturbing manner in the foster home, and perhaps also try to take the girl with her.

It is considered important for this child to have quiet and stability in the new environment where she is placed. The social welfare authorities will accordingly recommend that [the applicant] be refused contact with the child and that the child's new address be kept secret.

Today the girl has no relationship with her mother and, therefore, it will not be necessary to phase out the access arrangement before the girl is transferred to the foster home."

17. On 2 May 1990 the Committee, chaired by a Mrs Justice Inger Kristine Moksnes of the Oslo City Court (byrett), examined the case. The applicant, assisted by a lawyer, called three witnesses and the child welfare authorities called one witness. Mr Rønbeck, the appointed expert, was heard, but not Mrs Valla, the expert engaged by the applicant herself. As the costs in respect of Mrs Valla's appearance were not covered by the State, she was not able to attend the hearing.

A request by the applicant's counsel to be assisted by Mr Reidar Larssen, a psychiatrist, as a representative was rejected by the Committee on the ground that the applicant was already represented. He was, however, allowed to appear as a witness and to attend the hearing thereafter with no right to address the Committee.

The opinions of Mr Rønbeck and Mrs Valla and the child welfare authorities' report of 30 March 1990 were available to the Committee.

On the basis of the information and evidence submitted to it the Committee decided on 3 May 1990, by four votes to two, to take S. into care; to deprive the applicant of her parental responsibilities (which as a result were transferred to the child welfare authorities); to place S. in a foster home with a view to adoption; to refuse the mother access as from the moment of the child's placement in the foster home and to keep the latter's address secret. In its decision the Committee stated:

"With reference to the reports which have been submitted and the submissions made during this meeting, the Committee's majority, Mrs Ryberg, Mr Clausen, Mr Aasland and Mrs Moksnes, finds that [the applicant] has very little chance of acting satisfactorily in taking care of her daughter. The majority stresses that [the applicant] has had sole responsibility for the maintenance and care of her son, born in 1977. This task she has not managed and the social welfare authorities have taken this child into care. The [applicant] has received special assistance since 1977 and has lived off social security benefits since her son was 10 years old. She has only worked for short periods. She has not lived with the fathers of her two children but had for several years a cohabitant who ill-treated her and her son, both physically and mentally. He was part of the drugs scene in Bergen, as she was at one time. He is now in prison, serving a sentence for drug dealing. She has herself used drugs and alcohol and has had intoxication problems. It is unclear how big a problem this has been, but the Committee assumes that she has no intoxication problems at present. It is not quite clear, however, whether the problem has been solved also for the future.

> [The applicant] now maintains that she has broken with her former friend and her previous life. She has moved to Oslo and now appears to have a different lifestyle than the one in Bergen. She has made a few social contacts but these are dependent on circumstances and cannot be of decisive importance. She has vague plans for the future, although she expresses a wish to train as a nursing auxiliary.
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> However, the majority is of the opinion that the decisive factor in this case must be that, according to the appointed expert, [the applicant] has serious unsolved mental problems which impair her social skills and her ability to take care [of children]. Although her son has had considerable mental problems she has not been able to cooperate with the authorities and has not understood the necessity of giving his needs priority over her own. She has not been able to understand that the boy needed help and has not been willing to accept assistance either. The majority fears that this attitude may lead to her daughter's needs not being met either if she remains with [the applicant]. The majority finds that the daughter will live in such conditions that the requirements of section 16 (a) of the Child Welfare Act are fulfilled.
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> In connection with taking her son into care a number of measures have been tried, and the majority therefore finds that measures under section 18 would be ineffective. The requirements for care under section 19 are accordingly fulfilled. The majority also finds that the requirements pursuant to section 20 of the Child Welfare Act are fulfilled. [The applicant] is not particularly motivated to accept treatment and there is little prospect of change in this respect. The majority accordingly finds that it would be in the interest of the child to be placed in a foster home with a view to adoption. The next few years will be crucial for the child and it is preferable that she should feel certain that she will not be moved. It is of decisive importance for the girl that she can now be attached to stable persons whom she may regard as stable and secure parents in her adolescence.
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> This is of decisive importance for the development of her personality. Therefore she ought not to be exposed to a foster-home agreement which may be revoked. She also ought to form close relationships with a small number of people and
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> therefore ought to remain at a secret address pursuant to section 19 of the Child Welfare Act, so that [the applicant] no longer has access to her daughter when she is placed with foster parents."

18. The minority of the Committee found that the applicant's situation in life had improved since her removal from Bergen to Oslo and that she should thus be given the opportunity to take charge of the care of her daughter while staying at a special institution for that purpose.

19. After her daughter's birth the applicant moved to a flat in Oslo. During the spring of 1990, her son C. twice ran away from the children's home in Bergen to join her in Oslo and, on the second occasion, she indicated that she would not comply with the care decision. As C. did not want to return to Bergen and as the applicant considered that the social welfare authorities there did not do enough to help him, she decided to let C. stay in Oslo. She managed to get him admitted to a school there and she contacted a psychiatrist for support.

20. On 24 April 1990 it was decided to take C. permanently into care but on 19 June that care decision was lifted, notwithstanding the fact that his care situation was still considered to be detrimental to his physical and psychological development, a matter which continued to be of great concern to the authorities. The conflict between the authorities, on the one hand, and the applicant and her son, on the other, had made it impossible to implement the care decision without it being even more detrimental to the boy. The decision of 19 June was subsequently confirmed by the Hordaland County Governor (Fylkesmannen) on 13 March 1991. C. has lived with the applicant since May 1990.

C. Applicant's appeals against the care measures in respect of S.

21. On 25 May 1990 the applicant's lawyer received the minutes of the Committee's meeting of 2 May 1990 leading to its decision of 3 May 1990. As regards the taking into public care and the deprivation of her parental responsibilities, the applicant lodged an appeal on 28 May 1990 against the decision of 3 May with the County Governor for Oslo and Akershus. As far as the restrictions on access were concerned, she requested the County Governor to give the appeal suspensive effect (oppsettende virkning). She submitted that continuing access was decisive for maintaining contact between her and the child pending the appeal. The applicant also sent a copy of her appeal to the Committee, which on 28 June 1990 decided to uphold the decision of 3 May 1990 and to refer the case to the County Governor.

22. On 31 July 1990 the County Governor, referring to section 42 of the Public Administration Act (Forvaltningsloven) of 10 February 1967 decided not to give the appeal suspensive effect on the grounds that it would be in the girl's best interests if the decision of 3 May 1990 to terminate access were implemented as from the moment the child was placed in the foster home.

S. was placed with foster parents on 30 May 1990. The applicant has not had access to or seen her daughter since.

23. The applicant pursued her appeal against the care decision and the deprivation of parental responsibilities. As she was informed that her appeal to the County Governor of 28 May 1990 would remain pending for four to five months, she instituted proceedings in the Oslo City Court. She asked the court to set aside the Committee's decision of 3 May 1990, maintaining inter alia that it was crucial that her case be examined speedily, given that she had been refused access to her daughter. On 24 October 1990 the City Court dismissed (avviste) the application as such actions could only be instituted subsequent to a decision in the matter by the County Governor. On 17 January 1991 the High Court (Lagmannsretten) rejected an appeal by the applicant on the ground that the County Governor had in the meantime decided the case (see paragraph 24 below) and there was therefore no reason to deal with the appeal. A further appeal to the Supreme Court (Høyesterett) was rejected on 7 March 1991.

24. On 9 November 1990, after a meeting with the applicant and her lawyer, the County Governor for Oslo and Akershus upheld the Committee's decision concerning care and parental responsibilities.

25. On 13 November 1990 the applicant instituted proceedings against the Ministry of Child and Family Affairs (Barne- og familiedepartementet) in the Oslo City Court under Chapter 33 of the Code of Civil Procedure (tvistemålsloven, Law no. 6 of 13 August 1915 -see paragraph 38 below), asking for the care decision to be lifted and to be reunited with her daughter. In the alternative she requested that her parental responsibilities be restored.

On 20 December 1990 the defendant Ministry submitted observations in reply.

26. After consulting the parties, the City Court appointed two experts on 1 February 1991 to evaluate the applicant's ability to take care of her daughter and the consequences of revoking the care decision and/or restoring the applicant's parental responsibilities. The experts were requested to submit their opinions by 15 March 1991, which they did.

On 8 February 1991 the parties were informed that the case had been set down for 2 April 1991.

27. The City Court, sitting with one specially appointed judge, Mr Idar E. Pettersen, heard the case between 2 and 5 April 1991. Having heard the applicant, represented by counsel, a representative of the defendant Ministry, eleven witnesses and the two appointed experts, the City Court, in a judgment of 16 April 1991, upheld the taking into care and the deprivation of parental responsibilities. It gave the following reasons:

> "According to the Child Welfare Act the starting-point is that a child should grow up with his or her natural parents. The interests of the child may, however, warrant exceptions being made to this general rule as it cannot be interpreted so as to allow the child to be subjected to considerable harm.
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> In reviewing a compulsory measure imposed under the Child Welfare Act the courts must as a starting-point rely on the circumstances obtaining at the time of passing judgment. The possible negative effects on the child of being returned from the foster parents to the natural parents must be taken into consideration. Regard must also be had to the fact that the Child Welfare Committee [barnevernsnemnda] and the County Governor may lawfully maintain a decision to take the child into care even if the circumstances on which the decision was based have later changed to such an extent that the conditions for intervention pursuant to the Child Welfare Act are no longer fulfilled.
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> After hearing the evidence the Court finds that such material conditions [ytre betingelser] obtain as would allow the applicant today to give her daughter, born on 7 December 1989, an acceptable upbringing. In this respect there has been an improvement in the situation since the child welfare authorities took over the care of the daughter. [The applicant] now appears to be permanently settled in Oslo together with the father of her oldest child who also lives with her. It appears quite clear that the applicant has great concern for the child who has been taken from her. There can hardly be any doubt that it is her intention to arrange things as far as possible in order to assume the care of the child, if she were to be returned to the mother, to the best of her abilities. These being the facts in the present case, the Court must examine whether returning the child from the foster parents to her natural mother would entail a real danger of harm to the child.
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> We have before us a case where the mother had the care taken away from her shortly after birth. The mother has since had very little contact with the child and is now a stranger to her.
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> The experts appointed by the City Court are both in agreement that the child would be in a critical situation if returned. On this point, Mrs Seltzer, psychologist, states in her expert opinion:
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> 'She is today in the middle of a phase of development of

her personal autonomy which, in order for her to develop without complications, depends on secure conditions and stable emotional continuity. In the short term there can be no doubt that the child would react with sorrow and emotion if she were now to be removed from her foster home. In the long run it is likely that if she were removed at this stage of her development she would carry with her into her future life an experience of insecurity vis-à-vis other people, including those who represent close and dear relations.'

The experts stress that a return in these circumstances would entail a particular risk. This is so because [the child] has twice already in her short life experienced a removal from her natural mother, first shortly after birth and then at the age of seven months when she was moved from the [Child Care Centre] to her present foster parents. She would therefore be particularly sensitive to further changes.

The child now lives under secure and stimulating conditions with her foster family and, as the situation appears to the Court, it is considered that the foster parents can give her a safer upbringing than she would receive from her natural mother. Furthermore, in the Court's view there is a real danger that the mother will not be able to deal adequately ... with the return of her child in a crisis. The mother's history and previous contact with the public-support system indicate that when, in such a pressing and threatening situation, she needs help from that system, she will defend herself with fear and aggression. It was in particular Mr Reigstad, psychologist, who emphasised this. During his oral explanations to the Court he has maintained the views which he expressed in his written opinion but has also in his oral explanations submitted further details concerning the mother's personality. He is of the opinion that the mother makes a projective identification. This means that she has divided her world into two parts, one with friends and another with enemies. Towards those whom she recognises as friends she shows a secure and nice side of herself, whilst to those whom she considers to be against her she reacts with deep suspicion, fear and aggression. In Mr Reigstad's opinion, in such a situation the mother will consider the public-support system to be against her and will meet it with a correspondingly negative attitude. This will place an additional burden on the child and harm her permanently in the form of a split character.

The expert witnesses called by the mother have all had a very good impression of her. This goes for Mr Terje Torgersen, doctor, Mrs Lise Valla, psychologist, and Mr Reidar Larsen, psychiatrist. A common element for these persons is, however, that none of them have had a patient-doctor relationship with [the applicant]. Those who have been appointed by the child welfare authorities and the Court, Mr Knut Rønbeck, psychologist, Mrs Wenche Seltzer, psychologist and Mr Ståle Reigstad, psychologist, have all found the mother to be more complex. The Court considers that the appointed experts, on the basis of their terms of reference and their contacts with [the applicant] and others, have had the best opportunity to evaluate her as a person. The Court has therefore considerable hesitations about departing from [their assessment]. The Court has examined the [assessment] in the light of the other submissions in the case and, not least, the basic principles of the Act on the lifting of a care decision.

In the Court's view the experts have done a very thorough job. The conclusions are clear and appear well-founded. Their

statements confirm and elaborate the overall impression which the Court has formed of the case. The Court, therefore, considering the case as a whole, will base its decision on the experts' assessment. In the Court's opinion, there is nothing in the case to suggest that it should depart from their assessment.

In the light of the above the Court finds that, because of the likely reactions of the child to changes to her environment, it would be a particularly demanding task for the mother to assume the care of her. In view of what is known about the mother's present situation and her history it is unlikely that she will be able to cooperate with the social assistance provided by society without friction. Accordingly, having regard to the concrete circumstances of the case as a whole, the Court reaches the conclusion that the County Governor's, and thus also the social welfare authorities', decision to take the child into care should be upheld.

The next question is whether the decision should be limited to the taking into care or should also cover parental responsibilities pursuant to section 20 of the Child Welfare Act. In this respect the Court points out that it is clear that section 20 has been applied with a view to adoption. The foster parents wish to adopt [the child] and in view of the information available to it the Court assumes that, unless the present decision is limited to taking into care, adoption will be the end result.

The Court considers that for it to apply ... section 20, it must be satisfied that this is necessary in order to secure proper care for the child. What is required will depend on the purpose of depriving the parents of their parental responsibilities and the situation in general. If the aim is to free the child for adoption, very weighty reasons are required. Section 20 may be applied with a view to adoption only in very special circumstances. It must be a condition that the parents will be unable to give the child appropriate care and that this would be a permanent situation. When parental responsibilities are taken away with a view to adoption the question arises whether the child and the natural parents should be permanently deprived of contact with each other, with the consequences for reunification which that entails.

In the Court's opinion a condition for the transfer of parental responsibilities with a view to adoption is that it is obvious that the child cannot in the foreseeable future be reunited with the parents. In the present case, both appointed experts have recommended to the Court that the child's placement in the foster home be made permanent. One of [them], [Mr] Reigstad, states in this respect:

> `Assessment of the question of parental responsibilities and adoption
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> When considering this question in the present case we find, in addition to the general consideration that in such cases adoption is always an advantage for the child, concrete and real reasons militating in favour of adoption.
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> The applicant's problems are in my view long-standing and well established in her overall character. They can be documented back to 1977 and have been almost constantly present during her entire adult life. It follows that she is unlikely to solve them in the foreseeable future and

that the situation therefore has a certain permanent character.

In addition, were the applicant to be given access to the foster home she would in all likelihood destroy the home's security and make it unsuitable as a foster home for the child. This must be seen in the light of the crusade the applicant has led over the last years against the child care authorities and of the fact that she has clearly stated that her aim is to get her daughter back. In addition, the fact that she earlier hid her son from the child care authorities in Bergen and was supported in this by her lawyers in Oslo on the whole gives very little reason for optimism in respect of her future cooperation with the foster home.

I have therefore reached the conclusion that it would be in the interest of the daughter to remain in the foster home and that permission be granted to adopt her so that [the foster parents] also acquire the parental responsibilities.

Having regard to my terms of reference, my conclusion is accordingly:

Conclusion

A. If the daughter were to be reunited with her natural mother there is a considerable danger that she would not recover from her separation crisis, which would cause her permanent harm. There are also objective grounds for doubting that the mother would be capable of ensuring that the daughter receives such necessary medical and psychological assistance as she needs. For these reasons I cannot recommend to the Court that the child and her natural mother be reunited.

B. I assume that the aim of letting a natural mother keep her parental responsibilities in respect of a child placed in a foster home is to allow her access to the home and to participate in, or take, important decisions regarding the child. In the circumstances, access to the foster home or even lifting of the secrecy of the home's address would destroy the security of the foster parents and make the home unsuitable as a foster home. In both the short and the long run this would be detrimental to the child.

C. In my view the best solution from the child's point of view would be to deprive the mother of her parental responsibilities and to allow the foster family to adopt the child. This would secure the child a stable and appropriate upbringing and would bind the child to its new family without reservation.'

In this regard, the other expert, [Mrs] Seltzer, states:

`If the child remains in the foster home and the foster parents continue to act as the [child's] foster parents, I consider that it would be impractical and possibly complicating if a person other than the foster parents were to assume parental responsibilities. I consider also that it would be in the best interests of the child for her to belong, fully, formally and uninterruptedly to one place. In addition one cannot disregard the fact that an arrangement dividing the care and the parental responsibilities may create insecurity and represent a potential source of conflict between the

adults, with the child in between. In certain circumstances it can also be difficult to manage the daily care in a satisfactory manner if the parental responsibilities are assumed by another party. If the Court nevertheless decides to split the daily care and parental responsibilities, this requires good cooperation between the parties, something which at present cannot be taken for granted having regard to the fact that the foster parents and the natural mother have not met each other. I recommend that the daily care and the parental responsibilities be entrusted to those who have the daily care of the child.'

Both experts, in their oral submissions to the Court, have stated that their views have been strengthened by the submissions made during the examination of the case.

As regards the question whether the mother would be able to give the child proper care on a permanent basis, [Mr] Reigstad states that the mother lacks today and will lack in the foreseeable future the necessary ability to do so. [Mr] Rønbeck was of the same opinion when he submitted his report in connection with the case. [Mrs] Seltzer for her part is of the opinion that today the mother is probably capable, in favourable and clear circumstances, of taking care of the child but the mother's situation is uncertain. She suggests therefore that it would be in the child's interests to stay where she is.

As the Court understands the expert evidence, it is obvious that the mother could not properly take care of the child on a permanent basis. Also as regards the question of parental responsibilities, the Court attaches decisive weight to the experts' assessment. The Court further agrees with the experts that allowing the [applicant] access to the foster home would entail a real danger of conflict between the foster parents and the natural mother. The Court refers in this connection to what has been said about the mother's ways of reacting. It follows that there are strong and real factors militating in favour of adoption. The special interests which might weigh against adoption in the present case cannot in the opinion of the Court be decisive. The Court here points out that the natural mother is a stranger to the child, who, as far as the Court has been informed, has not had any particular contact with the mother. After a general, concrete evaluation the Court has accordingly reached the conclusion that the decision concerning the transfer of parental responsibilities shall also be maintained."

28. On 28 May 1991 the applicant lodged an appeal with the Supreme Court. The defendant Ministry filed a reply on 19 June 1991. On 23 August 1991 the applicant was requested to submit further observations by 6 September 1991, which she did on 5 September 1991. On 19 September 1991 the Appeals Committee of the Supreme Court (Høyesteretts Kjæremålsutvalg) refused leave to appeal.

D. Subsequent developments

29. In the spring of 1991 the applicant moved to Nørreballe, Denmark. She now lives there with C.'s father. C. now lives near Copenhagen where he works. The applicant gave birth to a second daughter on 14 December 1991. According to the Danish authorities this child has developed well. A second son was born in 1993. The applicant's daughter S. is still living with her foster parents. No decision concerning her adoption has yet been taken.

A report of 30 January 1994 by Mrs An-Magritt Aanonsen, psychologist, which is favourable both to the applicant and to the foster parents, concluded:

> "1. Both mother and child today seem to be doing well. The mother is cohabiting in a steady relationship with the father of three of her four children. She seems to give satisfactory care to her children and copes well with her everyday situation and has managed to handle problems which have arisen without any special help.
>
> The child has formed a strong primary attachment to her foster parents who provide her with good conditions for growing up and who appear genuinely fond of her and very committed.
>
> 2. In the previous section, I discussed the consequences of establishing a right of contact. Given the child's situation today it is not desirable to establish a right of access at present unless there is some change in the conditions of care placement. It is desirable for the child to have the greatest possible continuity and stability, something that is best achieved by permanent placement with her present carers.
>
> 3. I have also discussed above the consequences of establishing a right of access with respect to the child's care position and the importance this will have for her development. I have indicated a type of arrangement that it would be possible to introduce without any consequences for the care situation.
>
> In conclusion, I would stress that one thing we know today is that it is important for a child's development for him or her to have stability, continuity and carers who take responsibility for and are fond of it and help it affirm itself as a person. It is in the child's interest that the carers should be confident that it is they who take decisions about important events in the child's life. This must be taken into account if a right of access or visit is established."

## II. Relevant domestic law

### A. The 1953 Child Welfare Act

#### 1. Compulsory care measures

30. The public-care measures at issue in the present case were based on provisions set out in the Child Welfare Act of 17 July 1953 ("the 1953 Act"), which was replaced by new legislation on 1 January 1993 (see paragraphs 41-45 below).

31. The principle underlying the 1953 Act, which was applicable in this case, was that, generally speaking, it was in the best interests of a child for it to be cared for by its natural parents. If the child had been taken into care, the best solution would in principle be for the natural parents to remain in contact with it and retain parental responsibilities.

32. Under section 16 (a) of the 1953 Act, protective measures could be taken if a child lived in such conditions that its physical and mental health was likely to be impaired or was seriously endangered. It was established case-law (see the Supreme Court's judgment of 6 November 1986, Norsk Retstidende ("NRt") 1986, p. 1189, and judgment of 21 January 1987, NRt 1987, p. 52) that such a measure could be taken not only where such harm had materialised but also where there was a clear risk of harm. Consequently, under this provision, a child could

be taken into care immediately after birth.

33. Section 18 of the Act provided for several preventive measures (forebyggende tiltak), such as placing the child's home under supervision, furnishing financial assistance, ensuring placement in a kindergarten or a school, or providing care and treatment.

If such preventive measures were considered to be ineffective or had proved to be of no avail and leaving the child in its current situation pending care proceedings would entail a risk of harm to the child, section 11 of the Act empowered the Health and Social Board (helse- og sosialstyret), hereinafter "the Board", or if necessary its chairperson, to take a child into care on a provisional basis. Where such an interim measure had been taken, the case had to be brought before the Board, often represented by its Client and Patient Committee. Provided that the requirements of section 16 were fulfilled, the Board or the Committee could decide to take the child into public care (overta omsorgen) pursuant to section 19 of the Act. In practice the child was usually transferred to a suitable child care centre or a foster family.

34. The 1953 Act did not contain any provision expressly empowering the authorities to restrict the parents' access to their child where the child had been taken into public care. However, according to an authoritative interpretation of section 19 by the Ministry of Justice, Department of Legislation (Justisdepartementets lovavdeling), the Board or the Committee could also determine the extent of the parents' right of access and whether or not the address of the foster family should be kept secret (see the Department's statements of 28 October 1964 and 14 March 1966).

35. Where the Board or the Committee had decided to take a child into care in accordance with the above rules they could also decide, pursuant to section 20 of the Act, to deprive the natural parents of their parental responsibilities. Section 20 did not set out the circumstances in which such a measure could be taken but, according to the Supreme Court's case-law, it should be supported by weighty reasons. A decision to deprive the natural parents of their parental responsibilities could not be taken unless the long-term consequences of alternative arrangements were considered (see the Supreme Court's judgments of 20 December 1990, NRt 1990, p. 1274, and of 23 May 1991, NRt 1991, p. 557). Measures under section 20 were often taken with a view to adoption by the foster parents. Adoption represented a final break in the legal relations between the child and its natural parents.

The notion of parental responsibilities, which is defined in Chapter 5 of the Child Act (Barnelova) no. 7 of 7 April 1981, comprises two elements: firstly a duty of care (omsut og omtanke), and secondly a duty and a right to decide, within certain limits, for the child in its personal matters (personlege tilhøve) (sections 30 to 33). The latter include decisions on the child's place of residence, general education, religious and civic education, medical and dental treatment, consent to marriage, adoption and employment (Lucy Smith and Peter Lødrup in Barn og Foreldre, 4th edition, Oslo 1993, pp. 67 and 71). In the present judgment the right of the parent to decide on the child's personal matters is referred to as "parental rights".

36. Compulsory care measures under the 1953 Act were to be lifted when the child was 21 years of age or when there were no longer any reasons to maintain the measures (section 48).

### 2. Administrative and judicial remedies against compulsory care measures

37. A decision by the Board or the Committee to take a child into care, to deprive the parents of their parental responsibilities or to restrict access under the 1953 Act could be appealed against to the

County Governor by any person affected by the measure (sections 52 and 54 of the Act). Orders on access could in addition be appealed against to the Ministry of Child and Family Affairs (section 53 (2) of the 1953 Act).

38. Decisions by the County Governor under the 1953 Act regarding care decisions and the deprivation of parental responsibilities, but not access, could form the subject of an appeal to the City or District Court under a special procedure provided for in Chapter 33 of the Code of Civil Procedure. The court had jurisdiction to review all aspects of the case (Article 482).

An appeal against a judgment by the City or District Court lay directly to the Supreme Court (Article 485). This was to give priority to the kind of cases to which Chapter 33 of the Code applied, as is illustrated by Article 478 of the Code which provided that the proceedings must be dealt with speedily.

39. On the other hand, appeals to the courts against decisions by the County Governor restricting access were governed by the ordinary procedure laid down in Chapter 30 of the Code of Civil Procedure and the general principles of judicial review of administrative decisions. Such review covered not only questions of fact and of law but also to some extent the exercise of administrative discretion (for a more detailed description, see the E. v. Norway judgment of 29 August 1990, Series A no. 181-A, pp. 18-19, paras. 40-42).

40. If an appeal by the natural parents to have the care terminated had been rejected, they were not entitled to apply for fresh review proceedings until one year after the prior decisions had become final (section 54 of the 1953 Act). However, no such right to review applied if the child had been adopted in the meantime, as adoption meant a definite break between the child and its natural parents.

B. The Child Welfare Services Act 1992

41. On 1 January 1993 the 1953 Act was replaced by the Child Welfare Services Act no. 100 of 17 July 1992 ("the 1992 Act"). Among other reforms the 1992 Act introduced a new adjudicating body in the child welfare administration, namely the County Social Welfare Board ("the County Board"), which was established in accordance with the Social Services Act (sosialtjenesteloven) no. 81 of 13 December 1991. The major reason for this change was to reinforce the legal protection of the parents and the child.

Like the 1953 Act, the 1992 Act stresses that "crucial importance shall be attached to framing measures which are in the child's best interest" (section 4-1).

42. Although the 1992 Act contains more detailed provisions, the conditions for compulsory care measures and deprivation of parental responsibilities are essentially the same as those that applied under the 1953 Act. The Supreme Court's case-law predating the 1992 Act remains applicable.

43. Under the 1992 Act the question of adoption of a child who has been taken into care is a separate issue. If the parents object to adoption, such a measure cannot be taken unless the County Board gives its consent. Under the more detailed provisions of the 1992 Act (section 4-20 (2) and (3)), the County Board may only give its consent if the parents will be permanently unable to provide the child with reasonable care, or if removing the child may lead to serious problems for him or her because of his or her attachment to the persons and the environment where he or she is living. In addition, an adoption must be in the child's best interest and the prospective adoptive parents must have been the child's foster parents and have shown themselves fit to bring up the child as their own. According to the preparatory works

this implies that consent to adoption should not be given unless the child has lived in the foster home for some time.

44. Unlike the 1953 Act, the 1992 Act contains in section 4-19 (1) a provision to the effect that both the child and the parent have a right of access unless the County Board decides otherwise in the child's interests. The preparatory works of the new Act emphasise the importance of contact between the child and its parents.

45. The decisions of the County Board may be contested before the courts under the special provisions of Chapter 33 of the Code of Civil Procedure (section 9-10 of the Social Services Act). The system of judicial review of public-care decisions is amended on two major points.

Firstly, whereas judicial review of care decisions and deprivation of parental responsibilities under the 1953 Act presupposed a prior decision by the County Governor, an appeal against such decisions taken by the County Board under the 1992 Act lies directly to the City Court.

Secondly, whilst the special Chapter 33 review did not apply to access restrictions under the 1953 Act, it now does when such restrictions have been imposed under the 1992 Act (section 7-1).

PROCEEDINGS BEFORE THE COMMISSION

46. In her application to the Commission of 10 October 1990 (no. 17383/90), Ms Johansen complained that there had been a violation of her right to respect for family life as guaranteed by Article 8 of the Convention (art. 8) on account of the order to take her daughter into public care, the deprivation of her parental rights, the termination of her access to her daughter, the excessive length of the proceedings and their lack of fairness. She also invoked Article 6 of the Convention (art. 6) (right to a fair hearing within a reasonable time). In addition, she complained that, contrary to Article 13 (art. 13), she had not been afforded an effective remedy in respect of her complaint under Article 8 of the Convention (art. 8).

47. On 13 October 1993 the Commission declared the application admissible. In its report of 17 January 1995 (Article 31) (art. 31), the Commission expressed the opinion that there had been no violation of Article 8 of the Convention (art. 8) with regard to the taking of her daughter into care and the maintenance in force of the care decision concerned (unanimously); that there had been a violation of Article 8 (art. 8) as regards the decision depriving the applicant of her parental rights and access (by eleven votes to two); that no separate issue arose either under Article 6 (art. 6) (by twelve votes to one) or Article 13 (art. 13) (unanimously). The full text of the Commission's opinion and of the two partly dissenting opinions contained in the report is reproduced as an annex to this judgment (1).

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Note by the Registrar

1. For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-III), but a copy of the Commission's report is obtainable from the registry.

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FINAL SUBMISSIONS MADE TO THE COURT

48. At the hearing on 23 January 1996 the Government, as they had done in their memorial, invited the Court to hold that there had been no violation of Article 6 or 8 of the Convention (art. 6, art. 8).

49. On the same occasion the applicant reiterated her request to

the Court stated in her memorial to find that there had been a breach of Articles 6 and 8 (art. 6, art. 8).

AS TO THE LAW

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

50. The applicant alleged that the taking into care of her daughter S., the refusal to terminate the care and the deprivation of her parental rights and access gave rise to violations of Article 8 of the Convention (art. 8), which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

51. The Government disputed the above contention. The Commission considered that there had been no violation with regard to the taking into public care and the refusal to terminate the care, but that there had been a violation with regard to the deprivation of the applicant's parental rights and access.

A. Was there an interference with the applicant's right to respect for family life?

52. The Court recalls that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life and that domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 (art. 8) (see, amongst others, the McMichael v. the United Kingdom judgment of 24 February 1995, Series A no. 307-B, p. 55, para. 86). The impugned measures, as was not disputed, evidently amounted to interferences with the applicant's right to respect for her family life as guaranteed by paragraph 1 of Article 8 of the Convention (art. 8-1). Such interference constitutes a violation of this Article (art. 8) unless it is "in accordance with the law", pursues an aim or aims that are legitimate under paragraph 2 of Article 8 (art. 8-2) and can be regarded as "necessary in a democratic society".

B. Were the interferences justified?

1. "In accordance with the law"

53. It was undisputed before the Commission and, with one exception, before the Court that the impugned measures had a basis in national law and, to that extent, the Court is satisfied that such was the case.

54. The exception was an allegation by the applicant - in her written pleadings dealing with the necessity of the interference - to the effect that the provisional taking into care of her daughter had failed to fulfil the condition as to risk of harm in section 11 of the Child Welfare Act 1953 (see paragraphs 12 and 33 above).

55. The Government maintained that the measure was in accordance with Norwegian law.

56. The Court sees no reason to doubt that the provisional taking into care of the daughter had a basis in Norwegian law; it observes that the applicant, although she could have done so, did not appeal

against that measure but only challenged the subsequent decision to take into care on a permanent basis, which measure was upheld by the City Court as being lawful.

57. Before the Commission the applicant had argued that as the relevant law (see paragraphs 32-35 above) was framed in vague terms its effects were unforeseeable and it thus failed to satisfy one of the quality requirements implied by the expression "in accordance with the law" (see, for instance, the Margareta and Roger Andersson v. Sweden judgment of 25 February 1992, Series A no. 226-A, p. 25, para. 75).

58. The Commission and the Government disagreed. They considered that the law in question was rather broad in its terms but that it was impossible to formulate legal rules with absolute precision in this field. Also, since the imposition of measures under that law was to a large extent subject to judicial review, there were important safeguards against arbitrariness.

59. Before the Court the applicant did not pursue her submission that the relevant domestic law was not foreseeable for the purposes of paragraph 2 of Article 8 (art. 8-2).

2. Legitimate aim

60. Those who appeared before the Court agreed that the relevant domestic law was clearly intended to protect the interests of children and that there was nothing to suggest that it was applied for any other purpose.

61. The Court is satisfied that the contested measures were aimed at protecting the "health" and "rights and freedoms" of the applicant's daughter and thus pursued legitimate aims within the meaning of paragraph 2 of Article 8 (art. 8-2).

3. "Necessary in a democratic society"

62. The applicant disputed that the interference with her right to respect for family life had been "necessary". In this connection she challenged a number of aspects of the domestic decisions, namely (1) the decision-making process before the Committee (see paragraphs 14-17 above); (2) the merits of the taking into care of her daughter S. and the maintenance in force of the care decision; (3) the merits of the deprivation of her parental rights and access; and (4) the length of the entire proceedings.

63. The Government contested the applicant's allegations. The Commission disagreed on the first and second points but shared the applicant's view as regards the third point, taking into account the argument concerning the length of the proceedings.

64. 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 (art. 8-2) (see, inter alia, the Olsson v. Sweden (no. 1) judgment of 24 March 1988, Series A no. 130, p. 32, para. 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 any event 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, pp. 35-36, para. 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, p. 20, para. 55).

The margin of appreciation so 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 (see the Sunday Times v. the United Kingdom (no. 1) judgment of 26 April 1979, Series A no. 30, pp. 35-37, para. 59). 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.

It is against this background that the Court will examine whether the measures constituting the interferences with the applicant's exercise of her right to family life were "necessary".

(a) The decision-making process

65. The applicant complained that the hearing before the Committee had been inadequate. Not only had the authorities been over-represented, but their expert, Mr Rønbeck, had had a more favourable position at the hearing than the psychologists whom the applicant had wanted to be present: Mrs Valla had not been summoned and Mr Larssen had not been allowed to address the Committee (see paragraph 17 above). In addition, the fact that the hearing had continued until late at night had adversely affected the applicant's possibility of presenting her views in a fully satisfactory manner.

66. The Court notes that the Committee took its decision of 3 May 1990 after hearing the views of the applicant and her counsel. Mr Rønbeck had moreover been appointed with the applicant's agreement and it was only after he had presented his opinion that she requested the appointment of another psychologist, Mrs Valla. Although the latter was not heard directly by the Committee, her report was submitted to it (see paragraph 17 above).

In the circumstances, there is nothing to suggest that the decision-making process leading to the adoption of the impugned measures by the Committee was unfair or failed to involve the applicant to a degree sufficient to provide her with the requisite protection of her interests (cf. the W. v. the United Kingdom judgment of 8 July 1987, Series A no. 121, pp. 28-29, paras. 64-65; and the above-mentioned McMichael judgment, pp. 55 and 57, paras. 87 and 92). In addition, it is to be noted that, before deciding the applicant's appeals, the County Governor and the City Court heard the applicant and her counsel (see paragraphs 24 and 27 above). The Court therefore agrees with the Government and the Commission that the procedure did not give rise to a breach of Article 8 (art. 8).

(b) The merits of the impugned measures

(i) The taking into care and the refusal to terminate the care

67. As to the taking into care, the applicant maintained that the Committee's majority had wrongly relied on Mr Rønbeck's assessment (see paragraphs 14 and 17 above). In concluding that she was incapable of assuming the care of her daughter, he had over-emphasised the importance of her difficult past in Bergen. The minority had correctly based its opinion on the assessment by the psychologist Mrs Valla, who, in the light of the improvements in the applicant's situation after she moved to Oslo, had considered her suitable as a carer, as was confirmed by the subsequent opinions of two other psychologists, Mrs Seltzer and Mrs Aanonsen (see paragraphs 18, 27 and 29 above). Indeed, even the City Court had found her suitable when adjudicating the case (see paragraph 27 above).

According to the applicant, any uncertainty as to her ability to care for her daughter could have been reduced by resorting to preventive care measures. For instance, the authorities could have acceded to the applicant's request for a place in a mother-and-child unit, which would have enabled her to prove she was capable of assuming care while under the supervision of the child welfare authorities. Any lack of cooperation between her and the child welfare authorities in Bergen had stemmed from her extremely difficult situation while living there and did not mean that she would not cooperate with the authorities in Oslo; on the contrary she had declared her willingness to do so.

68. Also the County Governor, in rejecting the applicant's appeal against the care decision, had in her view attached excessive weight to her past in Bergen and too little to the improvements in her ability to provide care after her move to Oslo.

69. She further maintained that the City Court's ruling had the undesirable consequence that a new-born baby placed in a foster home could never be reunited with his or her natural parent even though the latter, as here, was deemed capable of assuming care. Since care measures were in principle to be temporary in character, the authorities should instead have sought gradually to return the child to the applicant.

70. The Government and the Commission were of the view that both the taking into care and the maintenance in force of the care decision were "necessary" within the meaning of paragraph 2 of Article 8 of the Convention (art. 8-2).

71. The Court observes that the Committee Chairperson's decision of 13 December 1989 to take the applicant's daughter S. provisionally into care was taken on the grounds that the applicant, in view of her physical and mental state at the time, was deemed unable to provide satisfactory care for her daughter, who would thus be at risk if she were to remain with the applicant. The Chairperson had regard not only to statements by medical officers in Oslo but also to those of the child welfare authorities in Bergen, which, after several years' concern for the applicant's son C., had provisionally taken him into care and had contemplated such a measure also with regard to the daughter S. immediately after her birth (see paragraph 12 above).

Furthermore, in deciding to take S. into care on a permanent basis, the Committee attached decisive weight to Mr Rønbeck's assessment that the applicant suffered from serious unsolved mental problems impairing her social skills and her ability to take care of children. It considered that, if S. were to remain with the applicant, it was likely that the child would live under such conditions as would damage her physical and mental health. Having failed to understand her son C.'s need for care, the applicant had opposed attempts by the authorities to assist her in this matter. The fact that preventive care measures in respect of her son had been ineffective suggested that this kind of measure would also be unsuccessful with regard to her daughter. There was little reason to believe that the applicant would

be motivated to accept treatment. The child was at a stage of her development where it was crucial that she should become attached to stable and secure persons without fearing that she would be moved. In these circumstances, the Committee considered, it was in her best interests to be taken into care (see paragraphs 14 and 17 above).

Moreover, the County Governor's decision of 9 November 1990 upholding the Committee's decision to take S. into care was based essentially on the same reasons (see paragraph 24 above).

72. In its decision of 16 April 1991 the City Court found that the material conditions (ytre betingelser) had improved to a point where the applicant was able to provide S. with a satisfactory upbringing but held nevertheless that the measure should remain in force. It considered that, since S. had been taken into care shortly after birth, had had very little contact with her mother and had already been moved twice, returning her to the mother would entail a particular risk to her development. As the child was in the middle of a phase of development of personal autonomy, it was crucial that she live under secure and emotionally stable conditions, such as obtained in the foster home. Moreover, at this critical stage of her upbringing, there was a real danger that the applicant would be unable to deal adequately with the child's reactions to the change of environment (see paragraph 27 above).

73. In the light of the foregoing, the Court is satisfied that the taking of the applicant's daughter S. into care and the maintenance in force of the care decision concerned were based on reasons which were not only relevant but also sufficient for the purposes of paragraph 2 of Article 8 (art. 8-2). The measures were supported by painstaking and detailed assessments by the experts appointed by the Committee and the City Court. The finding of fact being primarily a matter for the national authorities, the Court will not substitute its views for theirs as to the relative weight to be given to the expert evidence adduced by each party (see paragraph 64 above). It considers that in taking the above care measures the national authorities acted within the margin of appreciation afforded to them in such matters. Accordingly, these measures did not constitute a violation of Article 8 (art. 8).

(ii) The deprivation of parental rights and access

74. In the applicant's and the Commission's opinion, taking into care should in principle be a temporary measure to be discontinued as soon as circumstances permit. The deprivation of the applicant's parental rights and access had a permanent character and could only be considered "necessary" within the meaning of Article 8 para. 2 (art. 8-2) if supported by particularly strong reasons. However, the applicant's state of health had not been such that she would have been permanently unable to care for her daughter. The argument that the applicant might disturb the calm and stable foster-home environment could not be decisive as access arrangements could have been implemented outside the foster home. Having regard to the improvements in the applicant's situation and the irreversible effects which the deprivation of the applicant's parental rights and access had on her enjoyment of family life with her daughter, the measures could not be said to be justified.

75. In addition, the applicant disputed that the deprivation of her parental rights and access were in her daughter's interest. On the contrary, the mother's contact with her child during the period preceding her placement with the foster parents had been positive and such contact could have contributed to a stable development of the child's identity had it been allowed to continue. The applicant further stressed that the measures had not been based on proper and repeated reviews of the specific circumstances of her case but on a general and prevailing view that adoption offered better prospects for

the child's welfare than long-term fostering. Having been taken primarily to facilitate adoption, the measures had seriously and permanently prejudiced the applicant's interests by depriving her of any prospects of being reunited with her daughter.

76. The Government argued that in cases such as the present one the necessity test to be applied under Article 8 of the Convention (art. 8), rather than attempting to strike a "fair balance" between the interests of the natural parent and those of the child, should attach paramount importance to the best interests of the child, a principle which was firmly rooted not only in the laws of the Council of Europe member States but also in the Organisation's own policies (see Council of Europe: Committee of Ministers Resolution (77) 33 on placement of children, adopted on 3 November 1977; 16th Conference of European Ministers of Justice, Lisbon, 21-22 June 1988, Conclusions and resolutions of the conference, pp. 5-6). In this connection the Government referred also to the preamble to the 1996 European Convention on the Exercise of Children's Rights and to Articles 3, 9 paras. 1 and 3, and 21 of the 1989 United Nations Convention on the Rights of the Child. In any event, so the Government submitted, Article 8 of the Convention (art. 8) should not be interpreted so as to protect family life to the detriment of the child's health and development.

77. In the instant case, they maintained, the reasons mentioned above for the taking into care and for maintaining the care decision concerned in force all suggested that it was necessary to place the child permanently in a foster home. There was strong scientific evidence indicating that the placement was more likely to be successful if the child was adopted by the foster parents.

Reuniting the applicant with her daughter would have required extensive preparation presupposing good cooperation between all the parties involved. However, the applicant had shown an extremely hostile attitude towards the child welfare authorities in Bergen and had actively obstructed their implementation of the care decision in respect of her son by attempting to take him with her to Oslo. The competent authorities had therefore considered that there was a danger that she might disturb the daughter's development in the foster home and try to abduct her if given access. In these circumstances, having regard to their margin of appreciation, the relevant authorities were entitled to think that it was necessary for the protection of the child's best interests to deprive the applicant of her parental rights and access.

78. The Court considers 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, p. 36, para. 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, pp. 35-36, para. 90; and the above-mentioned Hokkanen judgment, p. 20, para. 55). 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, as suggested by the Government, the parent cannot be entitled under Article 8 of the Convention (art. 8) to have such measures taken as would harm the child's health and development.

In the present case the applicant had been deprived of her parental rights and access in the context of a permanent placement of her daughter in a foster home with a view to adoption by the foster parents (see paragraphs 17 and 22 above). These measures were

particularly far-reaching in that they totally deprived the applicant of her family life with the child and were inconsistent with the aim of reuniting them. Such measures should only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests (see, mutatis mutandis, the Margareta and Roger Andersson judgment cited above, p. 31, para. 95).

79. The question whether the deprivation of the applicant's parental rights and access was justified must be assessed in the light of the circumstances obtaining at the time when the decisions were taken and not with the benefit of hindsight. That question must moreover be considered in the light of the reasons mentioned in paragraphs 71 to 73 above for taking the daughter into care and for maintaining the care decision in force.

80. It is also relevant that it was in the child's interest to ensure that the process of establishing bonds with her foster parents was not disrupted. As already mentioned, the girl, who had been taken into care shortly after birth and had already spent half a year with temporary carers before being placed in a long-term foster home, was at a stage of her development when it was crucial that she live under secure and emotionally stable conditions. The Court sees no reason to doubt that the care in the foster home had better prospects of success if the placement was made with a view to adoption (see paragraphs 17 and 27 above). Furthermore, regard must be had to the fact that the child welfare authorities found that the applicant was not "particularly motivated to accept treatment" (see paragraph 17 above) and even feared that she might take her daughter away; for instance, she had on one occasion tried to disappear with her son and on another occasion she had failed to inform the authorities that he had run away from the children's home to join her (see paragraph 16 above).

81. In the Court's opinion, the above considerations were all relevant to the issue of necessity under paragraph 2 of Article 8 (art. 8-2). It remains to be examined whether they were also sufficient to justify the Committee's decision of 3 May 1990 to cut off the contact between the mother and the child (see paragraphs 17 and 22 above).

82. In the first place, it must be observed that during the period between the birth of the applicant's daughter on 7 December 1989 and the Committee's decision of 3 May 1990, the applicant had had access to her child twice a week in a manner which does not appear to be open to criticism (see paragraph 16 above).

83. Secondly, as indicated in the Committee's decision of 3 May 1990, the applicant's lifestyle had by then already somewhat changed for the better (see paragraph 17 above).

It was rather the difficulties experienced in the implementation of the care decision concerning her son which provided the reason for the authorities' view that the applicant was unlikely to cooperate and that there was a risk of her disturbing the daughter's care if given access to the foster home (see paragraphs 16 and 17 above).

However, it cannot be said that those difficulties and that risk were of such a nature and degree as to dispense the authorities altogether from their normal obligation under Article 8 of the Convention (art. 8) to take measures with a view to reuniting them if the mother were to become able to provide the daughter with a satisfactory upbringing.

84. Against this background, the Court does not consider that the decision of 3 May 1990, in so far as it deprived the applicant of her access and parental rights in respect of her daughter, was sufficiently

justified for the purposes of Article 8 para. 2 (art. 8-2), it not having been shown that the measure corresponded to any overriding requirement in the child's best interests (see paragraph 78 above).

Therefore the Court reaches the conclusion that the national authorities overstepped their margin of appreciation, thereby violating the applicant's rights under Article 8 of the Convention (art. 8).

In this connection it should be noted that less than a year after 3 May 1990 the City Court found that the applicant's material conditions had improved to the point where she would have been able to provide her daughter with a satisfactory upbringing. An important consideration for the City Court in refusing to terminate care was the lack of contact between the applicant and her daughter pending the proceedings, which state of affairs resulted directly from the decision of 3 May 1990 to deprive the applicant of her access (see paragraph 27 above).

85. In view of the reasons set out in paragraphs 82 to 84 above, the Court does not consider that the applicant's allegation that the length of the care proceedings was excessive (see paragraph 62 above) gives rise to any issue under Article 8 (art. 8).

II. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 OF THE CONVENTION (art. 6-1)

86. The applicant also complained about the length of the proceedings under Article 6 para. 1 of the Convention (art. 6-1), which, in so far as relevant, reads:

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

87. The Government disagreed with the applicant, whereas the Commission, having taken the length of the proceedings into account under Article 8 (art. 8) (see paragraph 63 above), concluded that no separate issue arose under Article 6 (art. 6).

88. The Court observes that the proceedings leading to the deprivation of parental rights and access commenced before the Committee on 13 December 1989 and ended when the Supreme Court refused leave to appeal on 19 September 1991 (see paragraphs 12 and 28 above). They thus lasted altogether one year and nine months.

The Court shares the applicant's and the Commission's opinion that, in view of what was at stake for the applicant and the irreversible and definitive character of the measures concerned, the competent national authorities were required by Article 6 para. 1 (art. 6-1) to act with exceptional diligence in ensuring the progress of the proceedings. However, it does not find that they failed to discharge their obligations in this respect.

In the Court's opinion the issues to be determined by the relevant administrative and judicial authorities were of a certain complexity. The proceedings comprised a thorough examination of the merits of the impugned care measures by the Committee's Chairperson, the Committee itself, the County Governor and the City Court and then a summary examination by the Supreme Court which refused leave to appeal (see paragraphs 12, 17, 24, 27 and 28 above). Thus three administrative and two judicial levels were involved and there is nothing to suggest, as was also conceded by the Commission, that any of these separately failed to act with the diligence required in the particular circumstances. Nor does it appear, having regard to the complexity of the case, that the duration of the proceedings as a whole exceeded a reasonable time.

89. Accordingly, the Court finds no breach of Article 6 of the Convention (art. 6) on account of the length of the proceedings.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION (art. 13)

90. Before the Commission the applicant alleged that there had been a breach of Article 13 of the Convention (art. 13), which reads:

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

91. This complaint, which in the Commission's opinion gave rise to no issue separate from that under Article 8 (art. 8), was not pursued by the applicant before the Court, which does not consider it necessary to examine it of its own motion.

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

92. Ms Adele Johansen sought just satisfaction under Article 50 of the Convention (art. 50), which reads:

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

93. The applicant sought no compensation for damage but claimed the reimbursement of costs and expenses incurred in the proceedings before the Court. By letter of 17 June 1996, she stated that she waived her Article 50 (art. 50) claim, the costs and expenses in question having been reimbursed by way of legal aid from the Norwegian authorities.

FOR THESE REASONS, THE COURT

1. Holds unanimously that the taking into care of the applicant's daughter and the maintenance in force of the relevant care decision did not give rise to a breach of Article 8 of the Convention (art. 8);

2. Holds by eight votes to one that the decision of 3 May 1990, in so far as it deprived the applicant of her access and parental rights in respect of her daughter, constituted a violation of Article 8 (art. 8);

3. Holds unanimously that there has been no violation of Article 6 para. 1 of the Convention (art. 6-1);

4. Holds unanimously that it is not necessary to examine whether there was a breach of Article 13 of the Convention (art. 13);

5. Holds unanimously that it is not necessary to make an award for costs and expenses.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 7 August 1996.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 of the Convention (art. 51-2) and Rule 55 para. 2 of Rules of Court B, the partly dissenting opinion of Mr Morenilla is annexed to this judgment.

Initialled: R.B.

Initialled: H.P.

PARTLY DISSENTING OPINION OF JUDGE MORENILLA

1. I agree with the majority that the taking into care of the applicant's daughter and the maintenance in force of the care decision were "necessary in a democratic society" within the meaning of paragraph 2 of Article 8 of the Convention (art. 8-2). However, unlike the majority, I find that the Norwegian administrative and judicial authorities were entitled to think that it was "necessary" also to deprive the applicant of her parental rights and access in respect of the daughter.

2. When judging the necessity of these measures, the Court should, as rightly pointed out by the majority (see paragraph 64 of the judgment), examine whether the reasons adduced by the domestic authorities were "relevant and sufficient" in the light of the case as a whole. Moreover, regard should be had to the margin of appreciation to be accorded to them in this area, which, in addition to those reasons mentioned in paragraph 64 of the judgment, may be justified by the changing structure of family life in many member States of the Council of Europe (see Gomien, Harris and Zwaak, Law and Practice of the European Convention on Human Rights and the European Social Charter, Strasbourg 1996, pp. 242, 243).

I share the majority's view that the authorities' discretion in assessing the necessity of taking a child into care should be a wide one but, unlike the majority, I see no valid justification for the Court to exercise a stricter scrutiny of restrictions on parental rights and access. In my view, in respect of the latter kind of measure too, the Court should avoid playing the role of a court of appeal and should limit itself to reviewing whether the applicant's interests were duly protected in the decision-making process and whether the justifications adduced by the national authorities could reasonably be made on the basis of the facts established by them.

3. In the instant case, the decision-making process leading to the decisions depriving the applicant of her parental rights and access was, as also observed by the majority, beyond reproach.

However, unlike the majority, I consider that the difficulties which the child welfare authorities experienced with the applicant and the risk of her disturbing the foster-home environment were such as to exempt them from their normal duty under Article 8 (art. 8) to take measures with a view to reuniting her and the daughter. In serious circumstances such as those which obtained in the instant case, where the life, health and development of the child were at risk, society must be able to intervene by taking such measures as are required in order to protect the best interests of the child, even though it may have the ultimate effect of disrupting in an irreversible manner the natural bonds between the mother and the daughter. Such interests were paramount not only under the relevant domestic law (see paragraphs 30-40 of the judgment) but also under Article 8 of the Convention (art. 8) (see, for instance, the Keegan v. Ireland judgment of 26 May 1994, Series A no. 290, pp. 20-21, para. 55; and the Olsson v. Sweden (no. 2) judgment of 27 November 1992, Series A no. 250, pp. 35-36, para. 90), which should be interpreted in the light of Resolution (77) 33 on placement of children adopted by the Committee of Ministers of the Council of Europe on 3 November 1977.

Although I am aware of the serious consequences of the measures for the applicant's family life, I consider that in the circumstances the authorities were, having regard to their margin of appreciation, entitled to think that it was necessary to deprive the applicant of her parental rights and access in the context of a permanent placement of the child in a foster home with a view to adoption. In my opinion, in reaching the contrary conclusion, the majority has based itself on reasoning (see paragraphs 82-84 of the judgment) which amounts to a reassessment of the evidence established by the Committee (see paragraph 17) and the County Governor (see paragraph 22).

4. For these reasons, I cannot follow the majority in finding that the national authorities, by depriving the applicant of her parental rights and access, "overstepped their margin of appreciation, thereby violating the applicant's rights under Article 8 of the Convention (art. 8)".