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

CASE OF K. AND T. v. FINLAND

(Application no. 25702/94)

JUDGMENT

STRASBOURG

12 July 2001

In the case of K. and T. v. Finland,

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mrs E. PALM,
Mr C.L. ROZAKIS,
Mr G. RESS,
Mr J.-P. COSTA,
Mr GAUKUR JÖRUNDSSON,
Mr G. BONELLO,
Mr W. FUHRMANN,
Mr K. JUNGWIERT,
Sir Nicolas BRATZA,
Mr B. ZUPANČIČ,
Mr M. PELLONPÄÄ,
Mrs M. TSATSA-NIKOLOVSKA,
Mr T. PANŢÎRU,
Mr R. MARUSTE,
Mr K. TRAJA
Mr A. KOVLER,

and also of Mr P.J. MAHONEY, *Registrar*,

Having deliberated in private on 14 March and 13 June 2001,

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

PROCEDURE

1. The case originated in an application (no. 25702/94) against the Republic of Finland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Finnish nationals, K. and T. ("the applicants"), on 26 October 1994.

2. The applicants, who had been granted legal aid, were represented by Mr J. Kortteinen and Mr S. Heikinheimo, lawyers practising in Helsinki (Finland), and Ms A. Suomela, an adviser. The Finnish Government ("the Government") were represented by their Agents.

3. The applicants alleged originally that the facts of the case disclosed a breach by the respondent State of its obligations under Articles 5, 6 § 3 (c), 8, 10 and 12 of the Convention taken either alone or in conjunction with Article 13.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). The President of the Section decided, on 11 May 1999, in accordance with Rule 33 §§ 3 and 4 and Rule 47 § 3, that none of the documents in the case file should be accessible to the public and that the identity of the applicants should not be disclosed. On 8 June 1999, following a hearing in camera on its admissibility and merits (Rule 54 § 4), it was declared partly admissible (Articles 8 and 13 of the Convention) by a Chamber of that Section ("the Chamber"), composed of Mr G. Ress, *President*, Mr M. Pellonpää, Mr I. Cabral Barreto, Mr V. Butkevych, Mrs N. Vajić, Mr J. Hedigan, Mrs S. Botoucharova, *judges*, and Mr V. Berger, *Section Registrar* [*Note by the Registry*. The Court's decision is obtainable from the Registry].

6. On 27 April 2000 the Chamber delivered its judgment in which it held, unanimously, that there had been a violation of Article 8 of the Convention. A violation was found in respect of the decisions to take the children into public care and in respect of the refusal to take proper steps in order to reunite the family. The Chamber did not find it necessary to examine the access restrictions as a separate issue, except in so far as the situation obtaining at the time was concerned. In that respect the Chamber did not find a violation of Article 8. The Chamber found that there had been no violation of Article 13 of the Convention. It also held that the respondent State was to pay the applicants (i) for non-pecuniary damage, FIM 40,000 (forty thousand Finnish marks) each, that is a total of FIM 80,000 (eighty thousand Finnish marks), and (ii) for legal fees and expenses, FIM 5,190 (five thousand one hundred and ninety Finnish marks) less FRF 2,230 (two thousand two hundred and thirty French francs) to be converted into Finnish marks at the rate applicable on 27 April 2000. Judge Pellonpää's concurring opinion was annexed to the judgment.

7. On 24 July 2000 the Government requested, pursuant to Article 43 of the Convention and Rule 73, that the case be referred to the Grand Chamber. A panel of the Grand Chamber accepted their request on 4 October 2000.

8. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24. The President of the Grand Chamber decided, on 24 January 2001, that the Section President's order of 11 May 1999 (see paragraph 5 above) should remain in force during the proceedings before the Grand Chamber.

9. The applicants submitted their comments on the Government's request for referral on 30 January 2001.

10. A hearing before the Grand Chamber took place in public in the Human Rights Building, Strasbourg, on 14 March 2001 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*

Mr	H. ROTKIRCH, Ministry for Foreign Affairs,	
Mr	A. KOSONEN, Ministry for Foreign Affairs,	*Agents*,
Ms	P.-L. HEILIÖ,	
Ms	A. AHO-EAGLING,	
Mr	J. PIHA,	*Advisers*;

(b) *for the applicants*

Mr	J. KORTTEINEN,	*Counsel*,
Ms	A. SUOMELA,	*Adviser*.

The Court heard addresses by Mr Kortteinen, Mr Rotkirch, Mr Kosonen and Mr Piha, and also their replies to questions from its individual members.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Fluctuations in the state of the first applicant's mental health up to 1993

11. At the beginning of the events relevant to the application, K. had a daughter, P., and a son, M., born in 1986 and 1988 respectively. P.'s father is X and M.'s father is V. From March to May 1989 K. was voluntarily hospitalised for about three months, having been diagnosed as suffering from schizophrenia. From August to November 1989 and from December 1989 to March 1990, she was again hospitalised for periods of about three months on account of this illness. In 1991 she was hospitalised for less than a week, diagnosed as suffering from an atypical and undefinable psychosis. It appears that social welfare and health authorities have been in contact with the family since 1989.

12. The applicants initially cohabited from the summer of 1991 to July 1993. In 1991 both P. and M. were living with them. From 1991 to 1993 K. and X were involved in a custody and access dispute concerning P. In May 1992 a residence order was made transferring custody of P. to X.

13. K. was again hospitalised from 22 April to 7 May 1992, from 13 May to 10 June 1992, and from 11 to 17 January 1993, on account of psychoses. She was in compulsory care between 15 May and 10 June 1992.

According to a medical report dated 15 May 1992, K. was paranoid and psychotic.

14. On 19 March 1993, according to the social welfare authorities' records, a discussion took place between a social worker and K.'s mother. K.'s mother said that her daughter's health condition was really bad and that K. had destroyed a childhood picture of hers, a wedding photo of the mother, broken a glass and "pierced the eyes" of all appearing in the photos. K.'s mother had said that she was tired of the situation, as she did not get any support from the mental health authorities. She added that she was worried and afraid that "again something must happen before K. is admitted to care".

On 24 March 1993 K. was placed under observation with a view to determining whether she should be placed in compulsory psychiatric care, having initially been diagnosed as suffering from psychosis. The conditions for compulsory care were not considered to be met but she remained in voluntary care until 5 May 1993.

15. Allegedly, X did not allow K., P. and M. to meet. On 11 May 1993, when K. was again pregnant, her access to P. was further limited by an order of the District Court of R. Basing itself on a doctor's opinion, the court held that the child's mental development would be endangered if the meetings between P. and K. continued without supervision as had been ordered in 1992.

B. Voluntary placement of M. in a children's home

16. According to the records of the social welfare authorities, M. showed signs of behavioural problems. On 30 March 1992 a psychologist reported how M. had played with two dolls saying – in very vulgar terms – that they were performing sexual acts. On 17 February 1993 K. was said to have broken a mirror in the presence of M. who had kept repeating: "mummy broke the mirror ..."

Notes of the social authorities of 24 and 30 March 1993 among others state that games which M. played and pictures he drew were of a destructive nature. According to the notes taken on 30 March, he had lately, while the children were singing together at the day-care nursery, shown immense hatred, threatening "to kill everybody". The occasions when K. fetched him were described as "unpleasant scenes", M. shouting and hitting his mother

who did not react. It was noted, however, that he no longer played doll games with sexual connotations.

17. According to the records of the social welfare authorities, a discussion between K., her mother, T. and a number of social and mental-health care officials took place on 31 March 1993, during which it was mentioned that the authorities might have to intervene in M.'s upbringing, from the child-protection point of view, in a more drastic way than had been the case so far. It appeared that in connection with K.'s recent hospitalisation T. had "forcibly" taken her from a restaurant, which had made K. furious, with the consequence that she had thrown things around; for example, the microwave oven had ended up on the floor. T. had said that K. was unable to control herself.

18. On the following day the child welfare support group, consisting of various social and health authorities, agreed that the aim should be to place M. in a children's home for three months as an assistance measure of open care under section 14 of the 1983 Child Welfare Act (*lastensuojelulaki, barnskyddslag 683/1983* – "the 1983 Act"), during which period psychological examinations of the child would be carried out.

19. On 3 May 1993 a social welfare official decided on behalf of the Social Welfare Board (*perusturvalautakunta, grundtrygghetsnämnden*) of S. to place M. in a children's home for a period of three months. This was to be regarded as a short-term support measure pursuant to the 1983 Act. The applicants had been consulted, together with K.'s mother and sister, on 8 April 1993, in order to find an open-care measure which would be practicable. According to the records of that meeting, no such practical measure had been proposed by any of the participants. The applicants had then been heard again on 21 April 1993 and had not objected to the placing of M. in a children's home.

20. In an opinion of 12 May 1993, requested by the Social Welfare Board, doctors M.L. and K.R. considered that K. was not at that time able to care for M., but that her mental state would not necessarily permanently prevent her from caring for him. Doctors M.L. and K.R. worked at the hospital of H., where K. had been cared for since 1991 during the periods indicated above.

21. On 7 June 1993 it was reported by the social welfare authorities that, when K. and T. had come to the children's home where M. was staying, the boy had undergone a total change in his behaviour, characterised by anger, hatred, swearing, etc. T. had said that he was really tired of the situation and that in his view K. was in need of hospitalisation. When a visit to the health centre had been suggested to her, she had become very angry.

According to a statement of 22 June 1993 by the children's home, K. and T. had come to the home on 17 June 1993. While T. had been playing with M., other children had come to tell the staff that K. had asked a 3-year-old girl what her name was. As the girl did not reply, K. had raised her voice

and shaken the girl, not letting her go until an older girl had given the child's name. The other children had been frightened by K.'s behaviour.

C. Emergency care orders

22. On 11 June 1993 the social welfare official who had decided on 3 May 1993 to place M. in a children's home informed the University Hospital of T. and the local hospital of S. in writing that she was very worried about the health of K. and the baby she was carrying. She requested the hospitals to contact her as soon as K. arrived at the hospital and, more particularly, at the time of the baby's delivery. She also expressed the wish that health-care professionals should pay special attention to the relationship between the mother and the new-born baby from the very beginning.

23. On 18 June 1993 K. was taken to a district hospital, where she gave birth to J. on the same day. According to the hospital records, the mother stayed calm during the delivery. After the delivery a written decision concerning an emergency care order was served on the hospital. The child was taken to the children's ward. The mother's behaviour in the ward was later found to be somewhat restless but not completely disorderly. The hospital records indicate that she understood the situation and wanted to leave hospital the following day. Medication to prevent the secretion of milk was prescribed. It seems that K. left the hospital on 19 June 1993, that is, the following morning, without any post-natal examination. She went to her mother's home, where she started pushing an empty pram around the place.

24. J. was immediately placed in emergency care, pursuant to section 18 of the 1983 Act. After the birth of their child, K. and T. were informed of this decision by two social workers at the hospital of H. The Social Director, who had made the decision on behalf of the Social Welfare Board, noted that K.'s mental state had been unstable during the last stages of her pregnancy. He considered that the baby's health would be endangered since K. had found out about the plans to place the baby in public care. Lastly, he considered that the baby's father, T., could not guarantee its development and safety. In addition the Social Director referred to the family's long-standing difficulties, namely, K.'s serious illness and occasionally uncontrolled emotional reactions which could be traumatic for the children, T.'s inability to care for both J. and K., K.'s reluctance to accept guidance, the impossibility of putting the whole responsibility for J.'s development on T., and the impossibility of providing open-care support measures to the necessary extent. The applicants were not heard prior to the decision. On 24 June 1993 the applicants were notified in writing of the decision to take the new-born baby into public care. The notification was also faxed to K.

25. On 21 June 1993 the Social Director also placed M. in emergency care, citing principally the same reasons as in his decision of 18 June 1993 concerning J.

26. The applicants did not appeal against the emergency care orders.

D. Implementation of the emergency care orders

27. On 21 June 1993 the Social Welfare Board took note of the emergency care orders and prohibited all unsupervised access between K. on the one hand, and J. and M. on the other. The number of supervised visits, however, was not restricted. The Board decided to continue preparations for taking M. and J. into care.

28. A meeting was held by social workers at the family centre on 21 June 1993, before the arrival of the baby from the hospital and in the absence of the applicants. It is mentioned in the report that there was a plan to prohibit the mother's visits for a month on the ground that her reactions could not be predicted as she had, for example, broken things at home. After this initial period she would be allowed to visit the baby without restriction, but accompanied by her personal nurse. However, this plan was not implemented. The following entry appears in the register for 24 June: "The mother may come with her personal nurse if she wants. Other visitors not allowed for the time being."

29. K. was asked to come with T. to the social welfare office on 22 June 1993 at 11.30 a.m. in order to be informed of the decision of 21 June 1993 by the Social Director concerning M. On 24 June 1993 K. and V. (M.'s biological father) were notified in writing of the decision of 21 June 1993. The notification was also faxed to K.

30. On 22 June 1993 K. was hospitalised voluntarily at the hospital of H. on account of psychosis, having obtained a referral from a doctor at a health care centre. She was treated there until 30 June 1993.

31. On 23 June 1993 J. was placed in the family centre. T. visited her the same day.

E. Normal care orders

32. At the beginning of July 1993 T. left the applicants' home, having been told by the social welfare officials that he had to break off his relationship with K. "if he wanted to keep" J. The applicants nevertheless continued their relationship.

33. On 15 July 1993 the Social Welfare Board gave its decisions taking J. and M. into "normal" public care, giving reasons similar to those mentioned in the emergency care orders (see paragraph 24 above), and prolonged the access restriction until 15 September 1993. K. was allowed to see the children only in the company of her personal nurse. The Board essentially considered that K.'s state of health remained unstable; that she was subject to aggressive and uncontrolled emotional moods; and that public care proceedings were a severe mental ordeal for a patient. As

regards J., the Board therefore believed that her personal security could be jeopardised if access were to take place without supervision. As regards M., the Board feared that K.'s visits to the children's home "could no longer be supervised by its staff, which would not be in his interest". Before the decisions of 15 July 1993 the applicants had been heard and had expressed their objection to the care decisions envisaged.

34. On 15 July 1993 K. visited both her children, accompanied by her personal nurse. The register indicates that it was "a difficult situation".

35. On 19 July 1993 T. moved to the family unit of the family centre with J.

36. On 20 July 1993 K. was again hospitalised in voluntary care at the open ward of the hospital of H., suffering from psychosis. She left hospital the following day, however. On 26 July 1993 she was placed under observation with a view to determining whether she should be placed in compulsory psychiatric care. On 30 July 1993 she was committed to compulsory psychiatric care. According to the file, her relatives had earlier been worried about her and had contacted the hospital in order to get her into hospital care. They reported that K. had disappeared from her home, where she had behaved in an unsettled and aggressive manner. Her hospitalisation lasted until 27 October 1993, that is, three months.

37. During the period between 18 June and 31 August 1993 K. visited her children at their respective children's homes. During the visits she was accompanied by her personal nurse from the hospital, who was in contact with the social welfare authorities and arranged the visits having regard to K.'s state of mental health. According to the centre's register, she visited J. twice during this period.

38. According to a statement made by a social worker on 4 August 1993, T. had taken good care of J., first at the hospital until 23 June 1993 and later on at the family centre. It was agreed that J. would stay at the family centre and that T. would visit her every other day. J. would visit her father for the first time from 13 to 15 August 1993, during which time T. would organise her christening. The intention was that the baby could move in with her father later on.

39. After T.'s paternity had been established on 13 July 1993, T. and K. were granted joint custody of J. on 4 August 1993.

40. T.'s travel expenses to the centre were paid for by the social welfare authorities. From the centre's records it can be deduced that T. succeeded in creating a relationship with the baby and learned to take good care of her. The home leaves were spent with T. first at his mother's house and later in his new home.

F. Appeal proceedings against the care orders

41. On 12 August 1993 the Social Welfare Board referred both public care orders to the County Administrative Court (*lääninoikeus, länsrätten*) for confirmation, as the applicants had opposed them. In support of its referrals, the Board submitted a statement by a social welfare official dated 25 August 1993, according to which T. would not be able to care both for M. and the new-born J. alone, since K. was living in the same home and had been psychotic for the last four years. T. had been in contact with J. at the children's home three to four times a week. While staying in a flat attached to a municipal children's home, he had cared for J. for two whole weeks and had subsequently cared for her three days a week in his new home. The Board had therefore begun investigating whether it would be possible to entrust him with the responsibility for J. with the help of support measures taken by the Board.

42. On 9 September 1993 the County Administrative Court confirmed the care order concerning J., considering that K. had been mentally ill; that the applicants had had conflicts "as a result of which T. had moved away from their home at the beginning of July 1993"; that because of K.'s illness and the family's other problems the applicants had been unable to provide J. with adequate care; that the care support provided to the family had not sufficiently improved the family's situation and that the measures could not be expected to satisfy J.'s care needs. No hearing was held.

43. On 11 November 1993 the County Administrative Court confirmed the care order concerning M., repeating the reasons put forward in its decision of 9 September concerning J. No hearing was held.

44. In an appeal to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) against the confirmation of the public care order concerning M., the applicants were represented by the Public Legal Adviser (*yleinen oikeusavustaja, allmänna rättsbiträdet*) of S. The Supreme Administrative Court dismissed the appeal on 23 September 1994.

45. On the same date the Supreme Administrative Court extended the time allowed for an appeal by K. against the confirmation of the care order made in respect of J.

46. On 18 October 1994 K. appealed against the care order in respect of J. as confirmed by the County Administrative Court on 9 September 1993. On 21 August 1995 the Supreme Administrative Court granted K. cost-free proceedings as from 1 March 1994, appointed Ms Suomela as her representative and upheld the County Administrative Court's decision of 9 September 1993.

G. Implementation of normal care

47. By a decision of 21 January 1994 the Social Welfare Board placed J. in a foster home in K., a town some 120 km away from the applicants' home. M. joined her on 7 February 1994. The foster parents had no children of their own. Social welfare officials told the applicants and the foster parents that J.'s and M.'s placement would last "for years". The applicants had proposed that the children's public care be implemented in the homes of relatives.

H. Access to the children during their stay at their respective children's homes

48. In the meantime, on 15 August 1993, J. was christened in the presence of K., T. and M.

49. A consultation was held at the children's home, on 18 August 1993, in the presence of T. According to the records, K.'s mental health was very unstable and her psychiatric treatment was expected to have to be continued for four to five years. T., however, had expressed his hopes that K. and he could, together, take care of J. in the future. It was agreed that J. would stay at the children's home and would visit T. every week from Thursday until Saturday, beginning on 28 August 1993. T. would visit J. on other days, according to an arrangement to be agreed with the children's home.

50. On 14 September 1993 the Social Welfare Board prolonged the access restriction until 15 December 1993.

51. The following notes of a social welfare official appear among those in the case records of the Social Welfare Board:

> "14 September 1993:
>
> …
>
> 2. ... In addition, the importance of future access between J. and T. has now been questioned, since J.'s placement in [public foster care] is under preparation. It will be difficult for T. to give up J. ..."
>
> "13 October 1993:
>
> K. ... states that she is considering moving [back with T.] when she is discharged from the hospital on 29 October. ... [Her] wish is for M. and J. to be placed in the same [foster] family. ..."
>
> "18 October 1993:
>
> ... T. agrees to J.'s placement in a [foster] family. ..."
>
> "25 October 1993:

> ... T. is slightly opposed to J.'s placement in a [foster] family. ... It is again explained [to him] why J. cannot live with him as long as [the applicants] continue their relationship. ..."
>
> "26 October 1993:
>
> ... The essential issue from J.'s point of view is [the applicants'] relationship; if [it] continues, J. cannot stay with T. ... The alternatives are: J. comes back home to T. or is placed in [foster care]. ... [He] can provide the basic care and upbringing alone provided he receives some support. ..."
>
> "27 October 1993:
>
> ... Access between M. and K. has been successful now that T. has been attending [the visits]. ..."
>
> "29 October 1993:
>
> ... The father has been responsible for the care of the institutionalised child. He has been active and acted on his own initiative. He has fed, clothed and bathed the child. He has also taken care of the child's outings and of rocking the baby to sleep. The father has treated the child naturally and with consideration; he has talked a lot to the child and showed her tender emotions. He has enjoyed his time with the child on the child's terms. The father has treated the child patiently and with warmth, taking into consideration the needs of the child.
>
> The mother has visited the child five times and stayed only for a moment each time.
>
> ... J. has had the advantage of regular interrelation with one person who takes care of her, namely her father. A safe relationship with the father has given the child a feeling of basic security, which acts as a basis for positive development of her emotional life. J. has the necessary resources to grow up and develop into a healthy and well-balanced child. In the circumstances, the foundation for the family placement is good."

I. First care plan

52. On 27 October 1993 K. was discharged from the hospital of H.

53. On 2 February 1994 the Social Welfare Board drew up a plan concerning the implementation of the public care. The applicants' alternative plan was allegedly ignored. For instance, the children could not meet their maternal grandmother at her home.

54. After the adoption of the care plan on 2 February 1994, the applicants requested a relaxation of the access restriction. For example, T. had been permitted to see J. only once a month.

55. On 21 March 1994 the applicants requested, *inter alia*, that the Social Welfare Board should draw up a public care plan aiming at the reunification of the family.

56. On 3 May 1994 the social welfare authorities organised a meeting in order to revise the care plan of 2 February 1994. The applicants and their representative did not attend the meeting.

J. Access restrictions of 17 May 1994

57. On 17 May 1994 the Social Director restricted both applicants' access to the children to one monthly visit at the foster home, to take place under supervision and last three hours. The Social Director considered that the grounds for public care still existed. In his view, although the applicants were dissatisfied with the visits set out in the care plan, affording the children an unlimited right to see their parents would create an obstacle to their successful placement. The applicants appealed.

58. On 28 September 1994 the County Administrative Court held an oral hearing concerning the access restriction imposed on 17 May 1994. It took evidence from two psychiatrists, who had interviewed K. One of them, Dr T.I.-E., did not know K. personally but commented on a diagnosis concerning her mental state by indicating that K. had a tendency to react in a psychotic manner to conflict situations. Dr K.P. stated that K.'s state of health did not prevent her from caring for her children. Consequently, if her illness had been the reason for the access restriction, that reason no longer existed.

59. In a written expert opinion, requested by the Social Welfare Board and submitted to the County Administrative Court, Dr E.V., a child psychiatrist, expressed the opinion that the children should be permanently cared for by the foster parents and that the applicants' visits should, for the time being, be discontinued so as to protect the children and the foster parents. According to the applicants, Dr E.V. had not met them or the children, nor had he consulted the other psychiatrists before making his proposal.

60. On 11 October 1994 the County Administrative Court upheld the access restriction issued on 17 May 1994. It noted that neither of the witnesses who had been heard orally had been willing to state any opinion as regards the children's development. It reasoned, *inter alia*, as follows:

> "... [By allowing] access to take place once a month and [by allowing contact through correspondence] it will be ensured that the children will retain knowledge

about their biological parents. If the grounds for public care later cease to exist, a reunification of the family will thus be possible. ...”

61. The County Administrative Court dismissed the applicants’ request for exemption from costs, since the relevant legislation did not cover disputes concerning access restrictions. At the court’s hearing, the applicants were nevertheless assisted by Ms Suomela.

K. The applicants’ request for discontinuation of public care

62. On 26 May 1994 the applicants requested that the Social Welfare Board discontinue the public care of M. and J.

63. On 18 September 1994 the Social Director allegedly told the applicants that any further children born to them would also be placed in public care. According to the Government, the Social Director only told them, when expressly asked, that it was possible that any further children born would be taken into public care.

64. In an opinion of 22 September 1994 submitted at the Social Welfare Board’s request, Dr K.P., a psychiatrist, commented on the possibility of revoking the public care orders. She concluded that K.’s mental state would not prevent her from having custody of the children. According to Dr K.P., K.’s efforts to have public care discontinued and access restrictions relaxed showed that she possessed psychological resources. She noted, *inter alia*, that T. was K.’s closest support in the care and upbringing of the children. In addition, K.’s mother, at the time her guardian *ad litem*, was ready to help in caring for them. Dr K.P., however, added that she could not, as a psychiatrist for adults, take any stand as regards the interests of the children. Dr K.P.’s opinion was also based on a report submitted by Dr K.Po., a psychologist, who had come to the same conclusion as regards K.’s ability to have custody of her children.

65. The Public Legal Adviser advised against requesting revocation of the care orders.

66. K. was hospitalised from 15 to 24 February and from 11 April to 29 May 1995, apparently on account of psychosis.

67. On 14 March 1995 the Social Welfare Board rejected the applicants’ request of 26 May 1994 that the care order be revoked, stating as follows:

> “At the moment the health of the children’s mother, K., is better and the family situation has changed in other respects in comparison with the situation in 1993 when the decisions to take the children into care were made.

...

According to Dr K.P., a psychiatrist, K. still has ‘a lot of instability’ in her emotional life as well as fragility, brought about by the last five years’ experiences and the diagnosis of mental illness for which she needs – and will need for a long time to come – therapeutic support and treatment. A regular medication is also needed in order to guarantee her continued well-being and to make it possible for her to manage in open care and to have custody of her children. Dr K.P., however, did not give her more precise opinion as to K.’s ability to take care of and bring up her children even though Dr K.P. was explicitly asked to give such an opinion.

K. can have custody of her children. She cannot, however, be responsible for the needs and education of the children – not even with the support of T. and the open-care support measures. Their ability to act as educators taking care of the children’s needs is inadequate.

According to the statement given by the children’s clinic of the municipality of K., the ability of K. and T. to understand the needs of the children and to respond to them is very limited. Even though T. is capable of interaction with the children, he finds it difficult to respond to the children’s emotional needs. K. is also incapable of creating an emotional relationship with the children. At an earlier stage, Dr J.H., a psychologist at the local health care centre, reached the same conclusion in her statement given during the custody proceedings concerning K.’s oldest child. In his expert statement Dr E.V., a child and youth psychiatrist, reached a similar conclusion. Already in the spring of 1992 Dr J.H. realised that K.’s problem was related to the fading of the boundaries between her and her children. She stated that K. amalgamated herself and her children into a single entity without being able to see the unique and individual nature of the children. According to J.H., K. was also unable to take into account the children’s needs in relation to their age. Dr E.V. finds that the children do not seem to be objects independent of K. but that she sees them as ‘self-objects’. She finds it difficult to realise that children are individual human beings in need of love and care. Instead, she sees them as if they were meant for her own personal use.”

68. The applicants appealed on 5 April 1995, requesting that they be granted exemption from costs and afforded free legal representation. They also requested an oral hearing.

69. On 7 April 1995 a further child, R., was born to the applicants. Having given birth, K. left the hospital for a while on the same evening with the new-born baby wrapped in a blanket, walking barefoot in the cold weather until the hospital staff realised what had happened and intervened.

70. On 13 April 1995 K. was committed to compulsory psychiatric care and treated at the hospital of H. until 29 May 1995, while R. was being cared for by T. According to a psychiatrist’s observation of 10 April 1995, K. “must have been suffering from paranoid schizophrenia for some time”.

71. On 15 June 1995 the County Administrative Court granted the applicants exemption from costs and appointed Ms Suomela as their

representative in the case concerning their appeal against the Social Welfare Board's decision of 14 March 1995. It decided not to hold a hearing in respect of the applicants' request for a revocation of the care orders and provided the parties with an opportunity to supplement their written observations.

72. On 28 September 1995 the County Administrative Court rejected the applicants' appeals of 5 April 1995 without holding an oral hearing. The court noted, *inter alia*, that according to the medical certificates, K.'s state of health had improved but her emotional life was still unstable. She therefore continued to be in need of psychotherapy and medication. In addition, a further child had been born to the applicants and K. had again been treated at the hospital of H. These two factors had caused an additional strain militating against a revocation of the care orders.

L. Revisions of the care plan and relevant appeals

1. First revision

73. On 17 November 1994 social welfare officials revised the public care plan, proposing that the children meet the applicants once a month on neutral premises at the Family Advice Centre of K., where the foster parents were living. The applicants objected to this proposal, considering that it would have entailed a further restriction of their access to the children. Instead, they requested two meetings a month, one of which was to be at their place of residence. On 22 December 1994 they asked for a separate written decision concerning their access request, so that they could appeal against it.

74. In a letter of 22 December 1994 the Social Director informed the applicants that there were no longer any grounds for the access restriction. Meetings between the applicants and the children were nevertheless only authorised for three hours once a month on premises chosen by the Social Welfare Board. They were also informed that the meetings would be supervised.

75. In his decision of 11 January 1995 the Social Director confirmed that there were no longer any grounds for the access restriction. On 31 January and 28 February 1995 the Social Welfare Board confirmed the decision of 11 January 1995. The applicants appealed.

76. As regards the applicants' appeal against the Social Welfare Board's decisions of 31 January and 28 February 1995, the County Administrative Court considered, on 15 June 1995, that the revised care plan drawn up on 17 November 1994 had already entailed an access restriction which had later been renewed by further decisions, without the applicants having been properly heard, in respect of their access request. The matter was referred back to the Social Welfare Board for further consideration.

77. In the light of the County Administrative Court's decision the Acting Social Director, on 28 June 1995, formally restricted the applicants' access to the children to one meeting a month up to 31 May 1996. The meetings were to take place in the foster home. In addition, the foster parents were to visit the applicants with the children every six months. The Director considered, *inter alia*, that it was important that the children settle themselves in the foster family environment in which they would grow up. Closer contacts with their parents would mean change and insecurity as well as the creation of a new crisis in their development. The process of settling which had started well would be jeopardised. For the children's progress it was therefore necessary that their situation remain stable and secure. The Director's decision was confirmed by the Social Welfare Board on 22 August 1995. The applicants appealed.

78. On 3 November 1995 the County Administrative Court rejected the applicants' appeal against the access restriction confirmed on 22 August 1995.

2. *Second revision*

79. On 25 May 1996 social welfare officials revised the public care plan, proposing that the children meet the applicants once a month on the premises of a school at the children's place of residence. As the applicants were not present when the proposal was made, the care plan was again revised on 9 October 1996 in so far as the access restriction was concerned. The applicants then proposed that the children meet them without supervision once a month. The public care plan was, however, revised as proposed by the social welfare officials.

80. On 17 June 1996 the Social Director restricted both applicants' access to the children, until 30 November 1997, to one monthly visit on the premises of a school at the children's place of residence, where access was to take place under supervision for three hours. One of the foster parents was also ordered to be present at the time of the access. The Social Director's decision was confirmed by the Social Welfare Board on 20 August 1996. The applicants' appealed against the decision to the County Administrative Court, requesting an oral hearing. The court obtained a statement from a child psychiatrist, Dr J.P., who was also recommended by the applicants' representative to the Social Welfare Board. Dr J.P.'s statement included the following observations:

> "The right of access of M. and J. to the persons close to them must primarily be examined in the light of their psychological growth and development and their health. This requires an examination of the quality, permanence and durability of their human relationships, because psychological growth and development take place in interaction with human relationships. In my opinion, the human relationships are to be examined from the children's point of view. ...

... In conclusion, I note that before M. was placed in the children's home ... the mother had been in psychiatric hospital for treatment eight times, making a total of thirteen months. Thus, M. had lived with his mother for forty-five months, namely, three years and nine months. The longest that they spent together was two years and one month. ... T. has, as 'stepfather', helped to look after M. for at most ten months. ... the foster parents have so far looked after M. for three years and three months without interruption. ... In practice, M. has not had any kind of relationship with his biological father ...

In the light of the above, I note that the human relationships in M.'s early childhood have, owing to the circumstances, been non-continuous, short-term and changing. The most stable and continuous relationships have been with his foster parents ... Therefore, these relationships are the most relevant and important ones for M.'s psychological growth and development.

... J. was born in June 1993. She was taken into public care immediately after she was born. At first, she stayed in the district hospital for a short time, and later at a reception home for small children. T., as the biological father of J., looked after her for two weeks in June and August 1993. J. was placed in the foster family ... in January 1994, when she was some seven months old. So far, J. has stayed with her foster family for some three years and three months without interruption. J. is now a little over 3 years and 10 months old.

In the light of the above, I note that, due to the circumstances, J. has not had any significant and important relationships other than those with her foster parents. J.'s relationship with her foster parents is of primary importance for her psychological growth and development. ...

... From the children's point of view, especially, but naturally also from that of the foster parents, the foster family is a family to which the principles concerning family life enshrined in the United Nations Convention on the Rights of the Child and in the European Convention on Human Rights can be applied in the same way as to biological families. This point of view is especially important when, due to the circumstances, the biological family has not lived together.

In the light of the above, I note that the arrangements for helping and supporting the foster parents of M. and J. are in the best interests of the children. The arrangement will, in the first place, ensure the important, continuous and safe human relationships of M. and J. with their foster parents ...

It is also important for M. and J.'s psychological growth and development that, in the safe and stable conditions provided by the foster family, they are able to form and maintain a good internalised picture of their biological parents ... from whom they have been separated because of the circumstances.

In my opinion, this can be done by complying with the decision of the Social Welfare Board of S. of 20 August 1996 concerning the right of access. At present, an unrestricted right of access or a right of access of the extent suggested by the applicants is not in the interests of the children, because K. and T. are not capable of meeting the emotional needs of M. and J. ... Such arrangements concerning the right of access would clearly endanger the health and development of M. and J. In my opinion, the question of an unrestricted right of access should be evaluated when the children have attained the age of 12."

81. In a statement of 10 September 1996 Dr K.P. stated that in her opinion K.'s psychiatric state did not preclude K.'s having custody of her daughter R.

3. Third revision

82. On 2 April 1997 the care plan was again revised by the social welfare authorities. The applicants had been informed of the time of the meeting concerning the revision of this care plan on home visits on 15 January and 10 March 1997. Their representative had also been informed of the meeting by a letter sent on 10 February 1997. The applicants did not attend the meeting, and neither did their representative. The applicants were thus not explicitly heard in this connection but, as they had expressed their opinion on other occasions, the authorities recorded their point of view in the plan.

83. On 12 June 1997 the County Administrative Court rejected the applicants' appeal against the Social Welfare Board's decision of 20 August 1996 to restrict the applicants' access right (see paragraph 80 above). It refused the applicants' request for an oral hearing.

84. Although the applicants had stated only in their reply that the appeal was also made on R.'s behalf, the County Administrative Court found in its decision that it was in part made in her name. The court stated that a person to whom a decision was directed, or upon whose right, duty or interest it had a direct effect, had the right of appeal. The court considered that the Board's decision, which concerned R.'s siblings' and parents' right of access, was not such a decision.

85. On 28 November 1997 the Social Director restricted the applicants', and consequently their youngest child R.'s, access to J. and M. to one monthly visit of three hours on the premises of a school at the children's place of residence until the end of 1998. The applicants did not appeal.

4. Fourth revision

86. The care plan was again revised on 1 December 1998.

87. According to a statement made on 3 July 1998 by Dr K.M. (formerly Dr K.P.), K. had not been hospitalised since May 1995 and her health had been stable since the beginning of 1995. There had been no problems concerning the care of R. (who had lived with her parents all the time and had not been taken into care). It was recommended by Dr K.M. that the social welfare authorities should reduce or discontinue control visits to the applicants' home in order to give K. the possibility of settling down to normal life without constant supervision by the authorities.

88. The restriction orders were extended by the Social Director on 11 December 1998, until the end of 2000. The visits were to take place under supervision on the premises of a school at the children's place of

residence. However, one of the visits was to take place at the applicants' home in the presence of the foster parents. The Social Director considered, *inter alia*, that the reunification of the family was not in sight as the foster family was now the children's *de facto* home; that the applicants' access to the children once a month and through correspondence was enough to maintain the children's awareness of their biological parents; and that closer contacts with the applicants would endanger the children's development, bring change and insecurity and create a new crisis in their development. The applicants appealed against this decision to the Social Welfare Board which, on 2 February 1999, rejected the appeal and upheld the Social Director's decisions. In its reasoning, the Board quoted both the County Administrative Court and Dr J.P.

89. According to the reports drawn up by the supervisor who attended the meetings of the children and the applicants during the period from 25 May 1996 to 10 January 1999, the adults got on quite well together during the meetings. J. often played games with M. When R. was smaller, J. played by herself, but later it seemed that the girls, J. and R., spent more time together. On the other hand, it seemed that the first applicant made very little contact with J. and M. According to the supervisor's description, especially in the earlier reports, the first applicant seemed to have concentrated on R.

M. Further decisions given after the delivery of the Chamber judgment

90. M. visited K. and T. at their home for the weekend of 21 to 23 July 2000 without supervision.

91. The applicants appealed against the Social Welfare Board's decision of 2 February 1999, concerning the right of access, to the Administrative Court (formerly the County Administrative Court). An oral hearing, at which M. was also heard, was held on 3 October 2000. In its decision of 13 October 2000 the administrative court upheld the Social Welfare Board's decision.

92. The social authorities reviewed the care plan on 23 November 2000, having consulted the applicants, among others. It was decided that the children would remain in the foster home. According to the care plan, M. and J. are allowed to meet K. and T and others close to them, as from 1 January 2001 until 31 December 2001, without supervision once a month alternately at the applicants' home and the foster parents' home. The meetings at the applicants' home will take place from Saturday 11 a.m. until Sunday 4 p.m., and the meetings at the foster parents' home on Sundays, from 11 a.m. until 5 p.m. The children are also allowed to meet their other relatives freely during those meetings. In addition to the above, the children

will also spend a day and a night with the applicants each Christmas, and two weeks each summer during their school holidays.

93. J. and M.'s foster mother died in May 2001.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Principles of the Child Custody and Right of Access Act and the Child Welfare Act

94. Section 1 of the Child Custody and Right of Access Act (*laki lapsen huollosta ja tapaamisoikeudesta, lag ang. vårdnad om barn och umgängesrätt 361/1983*) defines what is meant by child custody and what is required from the person having custody.

95. The Child Custody and Right of Access Act requires both the parents and the authorities to ascertain the wishes and views of the child when making and implementing a decision concerning the child, if this is possible in view of the age and stage of development of the child (sections 4(2), 8, 9(4), 11, 34(1)(3); and sections 34(2), 39(1) and (2) and 46(2)). Court decisions concerning custody and access cannot be executed against the will of a child who has attained the age of 12.

96. According to the Child Welfare Act (*lastensuojelulaki, barnskyddslag 683/1983* – "the 1983 Act", as amended by Law no. 139/1990), a child who has attained the age of 12 is given an independent right to be heard in most important child welfare decisions related to his or her person and to appeal against them.

97. In situations where the child does not live with its parents or where they are separated because of the need for protection or some other relevant reason, the child has in principle the right to maintain personal relations and contacts with its parents. However, this right may be limited on specific grounds and by certain procedures prescribed by law, for example, where there is a danger or threat caused by contacts or on the basis of the best interests of the child (section 2 of the Child Custody and Right of Access Act; sections 19(2), 24 and 25 of the 1983 Act; Articles 9 and 10 § 2 of the Convention on the Rights of the Child).

98. According to section 1 of the 1983 Act, a child is entitled to a secure and stimulating growth environment and a harmonious and well-balanced development, and has a special right to protection. The objective of the 1983 Act is that a child will in all circumstances get such care and upbringing as is required by the Child Custody and Right of Access Act.

B. Assistance in open care

99. Where the parents or those who have custody of the child are not able to provide the child with sufficiently secure conditions for its growth and development, the social welfare board and its officials must take the necessary measures in accordance with the 1983 Act. These measures include the assistance in open care referred to in sections 12 to 14 and the duty to take a child into care and provide substitute care referred to in section 16.

100. According to section 13(1) of the 1983 Act (as amended by Law no. 139/1990), where the need for child welfare is caused primarily by inadequate income, deficient living conditions or lack of housing, or when these factors constitute a serious obstacle to the rehabilitation of a child and family, or a young person in the process of becoming independent who had been a recipient of social welfare assistance before attaining the age of 18, local authorities must provide adequate financial support without delay and correct deficiencies in housing conditions or provide housing according to need.

101. Assistance in open care, referred to in section 13(2) of the 1983 Act, includes general assistance in accordance with the Social Welfare Act (*sosiaalihuoltolaki, socialvårdslag 710/1982*). In addition to general assistance, special forms of assistance are mentioned. These include voluntary help or help from a supporting family; appropriate therapy; holiday and recreational activities; and assisting a child in his or her education and training, in job and home finding, and in his or her leisure activities and other personal needs, by providing financial and other support. The assistance must be provided in cooperation with the child or young person and the parents or other persons caring for him or her.

C. Taking a child into care and substitute care

102. According to section 16 of the 1983 Act, the social welfare board must take a child into care and provide substitute care for him or her if (a) the child's health or development is seriously endangered by lack of care or other conditions at home, or if the child seriously endangers his or her health and development by alcohol or drug abuse, by committing an illegal act other than a minor offence or by any other comparable behaviour; (b) the measures of assistance in open care are not appropriate or have proved to be inadequate; and (c) substitute care is considered to be in the best interests of the child.

103. If a child is in imminent danger for a reason stated in section 16 or is otherwise in need of an urgent care order and substitute care, the social welfare board may take him or her into care without submitting the decision to the county administrative court for approval (section 18 of the 1983 Act).

104. According to section 9(2) of the 1983 Act, substitute care must be provided without delay where it is needed and is in the best interests of the child.

105. An emergency care order expires within fourteen days of the decision unless a normal section 17 care order is applied for during that period. Such a care order must be made within thirty days or, on special grounds, within sixty days of the emergency order. A decision on emergency care can be appealed against in the normal way.

106. Taking into care differs from adoption in that the parents are able to keep limited rights and responsibilities regarding custody and guardianship.

D. Duration and termination of care

107. Care in accordance with section 16 of the 1983 Act terminates when the child attains the age of 18 or marries. Public care may be terminated earlier where the conditions for the termination of care exist.

108. According to section 20 of the 1983 Act, the social welfare board must discharge a child from care when there is no longer any need for the care or substitute placement referred to in section 16, unless such discharge is clearly contrary to the best interests of the child.

E. Competence of the social welfare board

109. On the custody of a child in care, section 19(1) of the 1983 Act stipulates:

> "When the social welfare board takes a child into care, it shall be empowered to decide on the child's care, upbringing, supervision, other welfare and residence. The board shall, however, make every effort to cooperate with the parents or other persons having custody of the child."

F. Right of access

110. Through a decision to take a child into care the social welfare board automatically takes over the power to decide on contacts between the child and its parents and other persons close to the child (section 19(2) of the 1983 Act).

111. According to section 24 of the 1983 Act, a child who is in substitute care must be guaranteed the continuous and secure human relations that are important for his or her development. The child is entitled to meet his or her parents and other persons close to him or her and to keep in touch with them. The social welfare board must support and facilitate the child's access to his or her parents and to other persons close to him or her.

112. According to section 25 of the 1983 Act, the social welfare board or the director of a residential home may restrict the right of access of a

child in substitute care to its parents or other persons close to him or her if (a) such access clearly endangers the development or safety of the child, or (b) such a restriction is necessary for the safety or security of the parents, the children or the staff in the residential home. On the above-mentioned grounds, the social welfare board may decide that a child's whereabouts shall not be disclosed to its parents or custodians while the child is in care.

113. According to section 25 of the 1983 Act and section 9 of the Child Welfare Decree (*lastensuojeluasetus, barnskyddsförordning 1010/1983*), a decision concerning restriction of the right of access is valid for a specified time, and it must name the persons whose rights are restricted. In addition, the decision must specify what kind of contacts are restricted and the scope of the restriction.

114. A decision to restrict the right of access restricts the child's right to meet its parents and other persons close to it. Such persons close to the child are the child's guardian or other legal representative, relatives and those persons who have kept in touch with the child before and after he or she was taken into care.

G. Care plan

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

116. In the case of a child taken into care (section 16 of the 1983 Act) or a child placed in residential care as a form of assistance in open care (section 14 of the 1983 Act) the care plan must specify (a) the purpose and objectives of the placement; (b) what kind of special support will be organised for the child, for the persons in charge of the child's care and upbringing and for the child's parents; (c) how the child's access to its parents and other persons close to the child will be organised; and (d) how after-care will be organised.

117. According to section 4 of the Child Welfare Decree, the care plan must be drawn up in cooperation with those involved.

H. Child welfare authorities

118. According to section 4 of the Social Welfare Act, a social welfare board, with several members elected by the municipality, is responsible for providing social welfare in its area, and is charged with the responsibilities assigned to social welfare boards in other Acts.

119. According to section 12 of the Social Welfare Act, the decision-making authority of a municipal social welfare board can be delegated to

officials subordinate to the board, with the exception of decisions involving compulsory welfare for an individual.

I. Appeals under the Child Welfare Act

120. According to section 17(2) of the 1983 Act, a decision made by the social welfare board on taking a child into care or placing him in substitute care, must be submitted within thirty days to the county administrative court for approval if a child who has attained the age of 12 or the persons having custody of him or her oppose the measure or if the hearing required by section 17(1) of the Act could not be arranged.

121. According to section 36, decisions concerning taking into care or placement in substitute care can be appealed against in the county administrative court within thirty days of notification of the decision. During that time, such an appeal may also be lodged with the local social welfare board, which must forward it to the county administrative court together with its own statement within fourteen days. The submission and the appeal shall in this case be dealt with and decided at the same time.

122. According to section 37(1) of the 1983 Act, appeals against a decision on care orders, on placement in substitute care, on termination of care or on a matter concerning housing, as specified in section 13(1) of the Act, made by the county administrative court in pursuance of this Act, may be lodged with the Supreme Administrative Court.

123. According to section 37(2) of the 1983 Act, decisions other than those contemplated in subsection (1), relating to family-oriented and individual child welfare rendered by the county administrative court in pursuance of the 1983 Act, cannot be appealed against.

124. According to section 35(2) of the 1983 Act, a child who has attained the age of 12, his or her parents, the persons having custody of him or her or the person responsible for his or her care and upbringing or who was responsible immediately prior to the case in question, may appeal in cases concerning the taking of a child into care, placement in substitute care or termination of the care.

J. Other provisions regarding appeals

125. A person challenging a decision made by an official subordinate to a municipal social welfare board has the right, under the Administrative Procedure Act (*hallintomenettelylaki, lag om förvaltningsförfarande 598/1982*), to have the decision reviewed by a municipal social welfare board within fourteen days of being informed of the decision. The social welfare board's decision can be appealed against in the county administrative court.

126. According to section 46 of the Social Welfare Act, a decision made by the social welfare board is subject to appeal to a county administrative court within thirty days of service of the decision. Certain decisions by the county administrative court can be appealed against in the Supreme Administrative Court.

127. When the decision of an authority can be appealed against, the authority in question must attach to its decision information about the appeal procedure.

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

129. When an appeal has been lodged, the appellate authority can stay enforcement of the decision or order that enforcement be suspended.

130. Section 38(1) of the Administrative Judicial Procedure Act (*hallintolainkäyttölaki, förvaltningsprocesslag 586/1996*), which entered into force on 1 December 1996, contains rules on the right to an oral hearing before administrative courts.

K. Interested parties and their rights

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

132. Section 17(1) of the 1983 Act lists the parties to be heard in matters concerning taking a child into care, placing a child in substitute care and termination of care. According to this section, the following persons have the right to be heard in accordance with section 15 of the Administrative Procedure Act: (a) the person having custody of the child; (b) a biological parent who does not have custody of the child; (c) a person currently in charge of the child's care and upbringing or who was in charge immediately prior to the case in question; and (d) a child who has attained the age of 12. They must also be notified of a decision concerning the taking of a child into care and termination of care following the procedure for special notification. The authorities also have an obligation to inform them, where appropriate, of the possibility of an appeal.

133. Section 15(1) of the Administrative Procedure Act lays down a general obligation to hear the parties. Before any decision is made, a party

must be afforded an opportunity to reply to the claims put forward by others as well as to any evidence that may affect the decision.

L. Supervision of the activities of child welfare authorities

134. The county administrative board (*lääninhallitus, länsstyrelsen*), in the capacity of a regional State authority, has general powers to supervise the activities of municipalities. Following a procedural appeal, the county administrative board can also investigate whether a local authority has acted in accordance with the law.

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

136. The Parliamentary Ombudsman and the Chancellor of Justice (*oikeuskansleri, justitiekansler*) are empowered to supervise the legality of the measures taken by any authorities.

THE LAW

I. PRELIMINARY ISSUES

A. Scope of the case before the Court

137. In their request for the referral of the case to the Grand Chamber, the Government expressly asked the Court to re-examine only those issues where the Chamber in its judgment of 27 April 2000 had found a violation of Article 8 of the Convention, that is to say, in respect of the decisions of the domestic authorities to take the applicants' children into public care and in respect of their refusal to terminate the public care measures.

138. The applicants did not contest this request nor did they submit a request under Article 43 of the Convention for a re-examination of the case by the Grand Chamber in other respects.

139. The Court must therefore determine to what extent it is called upon to rule on the case, in particular whether it can limit its examination to the issues raised by the Government in their request under Article 43 of the Convention, which reads:

> “1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
>
> 2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance.
>
> 3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.”

140. The Court would first note that all three paragraphs of Article 43 use the term “the case” (“*l’affaire*”) for describing the matter which is being brought before the Grand Chamber. In particular, paragraph 3 of Article 43 provides that the Grand Chamber is to “decide *the case*” – that is the whole case and not simply the “serious question” or “serious issue” mentioned in paragraph 2 – “by means of a judgment”. The wording of Article 43 makes it clear that, whilst the existence of “a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance” (paragraph 2) is a prerequisite for acceptance of a party’s request, the consequence of acceptance is that the whole “case” is referred to the Grand Chamber to be decided afresh by means of a new judgment (paragraph 3). The same term “the case” (“*l’affaire*”) is also used in Article 44 § 2 which defines the conditions under which the judgments of a Chamber become final. If a request by a party for referral under Article 43 has been accepted, Article 44 can only be understood as meaning that the entire judgment of the Chamber will be set aside in order to be replaced by the new judgment of the Grand Chamber envisaged by Article 43 § 3. This being so, the “case” referred to the Grand Chamber necessarily embraces all aspects of the application previously examined by the Chamber in its judgment, and not only the serious “question” or “issue” at the basis of the referral. In sum, there is no basis for a merely partial referral of the case to the Grand Chamber.

141. The Court would add, for the sake of clarification, that the “case” referred to the Grand Chamber is the application as it has been declared admissible (see, *mutatis mutandis*, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 63, § 157). This does not mean, however, that the Grand Chamber may not also examine, where appropriate, issues relating to the admissibility of the application in the same manner as this is possible in normal Chamber proceedings, for example by virtue of Article 35 § 4 *in fine* of the Convention (which empowers the Court to “reject any application which it considers inadmissible ... at any stage of the proceedings”), or where such issues have been joined to the merits or where they are otherwise relevant at the merits stage.

B. Admissibility of the applicants' complaints concerning the emergency care orders

142. In their request for referral of the case to the Grand Chamber the Government submitted that the issue of emergency care orders had not been declared admissible by the Chamber at all and that, consequently, it should not have been open to the Chamber to examine this part of the proceedings. Furthermore, the Government argued that the issue of emergency care orders should not be examined before the Grand Chamber as no appeal had been lodged against the relevant emergency care orders by the applicants during the domestic proceedings, and as the issue of emergency care orders had not been raised by them before this Court until the oral hearing before the Chamber on 8 June 1999.

143. The applicants maintained that the issue of emergency care orders had been raised already in the original application and that it was clearly to be seen as an inseparable part of the "taking into care" issue as a whole. According to the applicants, in their submissions at the oral hearing before the Chamber in June 1999 they had only developed their initial complaints concerning the emergency care orders. They furthermore pointed out that the Government had not objected to that during the Chamber hearing, nor had they made any other comments on the subject then.

144. The applicants submitted that they had not appealed against the emergency care orders because such orders, issued by the principal social welfare officer, could be made only for a limited time of fourteen days, and could not be appealed against directly in the county administrative court but only before the social welfare board, which would in practice deal with the emergency care order and the normal, final care order at the same meeting. Thus, an appeal against the emergency care order would not have had any *de facto* suspensive or remedial effect. Furthermore, the applicants argued that the Government's objection should have been raised during the admissibility proceedings at the latest and should be rejected by the Grand Chamber.

145. The Court first notes that the emergency care orders were mentioned in the application form submitted on 26 October 1994. The applicants did indeed raise the alleged violation of Article 8 of the Convention in respect of the emergency care orders in their original application and they reverted to the issue prior to admissibility at the oral hearing on 8 June 1999. There can therefore be no doubt that their complaints in this respect are covered by the decision of the same date on the admissibility of the application, as is in fact borne out by the Chamber's subsequent proceedings on the merits, where the emergency care orders were examined together with the subsequent normal care orders. Consequently, this aspect of the case is not excluded from the Grand Chamber's examination.

As regards the Government's further argument that the applicants had failed to exhaust domestic remedies in respect of the emergency care orders, the Court would recall that, according to Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application submitted under Rule 51 or 54, as the case may be. In the present case, no such plea of inadmissibility was made by the Government in their written or oral observations at the admissibility stage. Moreover, having regard to the provisional and temporary character of the emergency care orders, whose ratification in the form of the normal care orders was in effect confirmed by the Social Welfare Board on 15 July 1993 (see paragraph 33 above), the Court accepts the applicants' argument that, in the particular circumstances of the case, they could in any event be dispensed from filing a separate appeal against the emergency orders. In conclusion, the Government's arguments in this respect must also be rejected.

C. New material submitted by the parties

146. Before the Grand Chamber the applicants objected to the taking into account of "new material" which the Government had submitted to the Court, either in the proceedings before the original Chamber or in the present Grand Chamber proceedings, but which had not previously been relied on before the national courts. In this connection, the applicants argued that no new material should be admitted as the child welfare authorities had had access to this material already at the time of the domestic proceedings but had chosen not to submit it to any of the courts. They also stressed that they had not had an opportunity to challenge that material before the national courts in adversarial proceedings.

147. As is well established in its case-law (see, *inter alia*, *Gustafsson v. Sweden*, judgment of 25 April 1996, *Reports of Judgments and Decisions* 1996-II, pp. 654 and 655, §§ 47 and 51, and *Cruz Varas and Others v. Sweden*, judgment of 20 March 1991, Series A no. 201, p. 30, § 76), the Court is not prevented from taking into account any additional information and fresh arguments in determining the merits of the applicants' complaints under the Convention if it considers them relevant. New information may, for example, be of value in confirming or refuting the assessment that has been made by the respondent State or the well-foundedness or otherwise of an applicant's fears. Furthermore, such "new" material as is included in the Government's submissions takes the form either of further particulars as to the facts underlying the complaints declared admissible by the Chamber or of legal argument relating to those facts (see *McMichael v. the United Kingdom*, judgment of 24 February 1995, Series A no. 307-B, p. 51, § 73).

Accordingly, the Court is not precluded from taking cognisance of this material in so far as it is judged to be relevant.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

148. Both before the original Chamber and the Grand Chamber the applicants complained that their right to respect for their family life as safeguarded by Article 8 of the Convention had been violated on account of the placement of M. and J. in public care. Article 8 reads as follows:

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

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

149. The Government acknowledged that there had been interferences with the applicants' right to respect for their family life as guaranteed by Article 8 § 1 of the Convention, but contended that these interferences were justified under the terms of Article 8 § 2 of the Convention. The Government, however, raised certain doubts as to the scope of the family life which in the present case could be said to be protected by Article 8 in so far as the second applicant, T., was concerned. He is not the father of M. and while there has never been any doubt as to his paternity in respect of J., T. only obtained custody of J. on 4 August 1993.

150. The Court would point out, in accordance with its previous case-law (see, among others, *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, pp. 14-15, § 31), that the existence or non-existence of "family life" is essentially a question of fact depending upon the real existence in practice of close personal ties. Both the applicants had lived together with M. until he was voluntarily placed in a children's home and later taken into public care (see paragraph 12 above). Prior to the birth of J., the applicants and M. had formed a family with a clear intention of continuing their life together. The same intention existed as regards the new-born baby, J., for whom T. actually cared during some time soon after her birth and before he became her custodian in law (see paragraphs 35 and 38 above). In these circumstances, the Court cannot but find that at the time when the authorities intervened there existed between the applicants an actual family life within the meaning of Article 8 § 1 of the Convention, which extended to both children, M. and J. Accordingly, the Court will not

draw any distinction between the applicants K. and T. as regards the scope of the "family life" which they jointly enjoyed with the two children.

151. As is well established in the Court's case-law, the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (see, among others, *Johansen v. Norway*, judgment of 7 August 1996, *Reports* 1996-III, pp. 1001-02, § 52). The impugned measures, as was not disputed, evidently amounted to interferences with the applicants' right to respect for their family life as guaranteed by paragraph 1 of Article 8 of the Convention. Any such interference constitutes a violation of this Article unless it is "in accordance with the law", pursues an aim or aims that are legitimate under paragraph 2 of Article 8 and can be regarded as "necessary in a democratic society".

B. Whether the interferences were justified

1. "In accordance with the law"

152. It was undisputed, and the Court is satisfied, that all the impugned measures had a basis in national law.

2. Legitimate aim

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

3. "Necessary in a democratic society"

154. 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 purpose of paragraph 2 of Article 8 of the Convention (see, *inter alia*, *Olsson v. Sweden (no. 1)*, judgment of 24 March 1988, Series A no 130, p. 32, § 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 interests of the child is in every case of crucial importance. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned (see *Olsson v. Sweden (no. 2)*,

judgment of 27 November 1992, Series A no. 250, pp. 35-36, § 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 taken by those authorities in the exercise of their power of appreciation (see, for example, *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55, and *Johansen*, cited above, pp. 1003-04, § 64).

155. 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, such as, on the one hand, the importance of protecting a child in a situation which is assessed as seriously threatening his or her health or development and, on the other hand, the aim to reunite the family as soon as circumstances permit. When a considerable period of time has passed since the child was originally taken into public care, the interest of a child not to have his or her *de facto* family situation changed again may override the interests of the parents to have their family reunited. The Court thus 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 in respect of any further limitations, such as restrictions placed by the authorities on parental rights of 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 (see *Johansen*, cited above, ibid.).

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

(a) The emergency care orders

(i) Submissions of the parties

(α) The applicants

156. The applicants maintained that the authorities never gave them a chance to work out their problems with the help of their relatives and by taking advantage of various support measures provided by the social and health care authorities. Instead, the authorities hastily proceeded to the emergency care order which was too drastic a measure to begin with. The applicants also alleged that the emergency care orders had in fact already been taken in advance and only implemented at the time of J.'s birth and

that the emergency care orders could not, therefore, be justified by K.'s behaviour.

157. As regards J. in particular, the applicants stressed that she was placed in public care without having been given an opportunity to bond with the applicants and to be breastfed by her mother. According to them, she should at least have been entrusted to her father who had no problems capable of justifying an emergency care order. The applicants found it shocking that the new-born baby was taken into care directly from the hospital's delivery room – the decision being based merely on speculation concerning the possible danger to the child – without the applicants being consulted in any way. The parents had no access to her at all during the first days of her life.

158. As regards M. in particular, the applicants again stressed that he had already been placed in the children's home at the time of the emergency care order and that he was obviously in no imminent danger of the kind that was a precondition for such an order.

159. In so far as they complained that they were not heard in respect of the emergency care orders, the applicants stressed that the authorities had based their decision on the assumption that J. would be in danger if K. were to find out that they were preparing a care order concerning her two children. The emergency care orders, the applicants noted, had already been under preparation weeks before they were issued. As a result of the authorities' assumption, the applicants had not been heard at all before the decision was taken. They maintained that Article 8 of the Convention provides also for a proper hearing and sufficient involvement of parents in the decision-making process and that this requirement was not met in the present case. The applicants submitted that the authorities were not prevented from informing the applicants about the emergency care orders because of the state of K.'s mental health at the time, since K.'s mental health was then fairly good – as was also found by several doctors – and as there was nothing wrong with T.'s mental health. According to the applicants, the limits of even a wide margin of appreciation were clearly exceeded by the authorities in the present case.

(β) The Government

160. The Government noted that the applicants had already benefited from measures of the social welfare authorities for at least four years at the time of the care decisions and that the care orders were based on direct contact with the applicants. Numerous assistance measures in open care had been taken in view of the family's difficulties and the authorities therefore had no other option than to take the children into care, as assistance in open care did not sufficiently ensure the adequate development of the children and they were obliged by law to take the children into public care. The

authorities had not acted hastily in making the care orders, which they found to be in the best interests of the children.

161. As regards J. in particular, the Government stressed that the very aim of taking J. into care was to protect the child, the mother being seriously mentally ill. Had the mother and the baby stayed in the same room, protection could not have been guaranteed by the hospital staff or anybody else, as it was obvious that – even in hospital conditions – it was not possible to supervise the patients all the time. The Government also pointed out that the hospital records contained no indication that K. had ever visited or even attempted to visit the baby in the children's ward, or that she had been prevented from doing so. The fact that K. was the sole person having custody of J. was also of importance, as she could have left the hospital with the baby any time after the delivery had there been no care order. Whether or not J. was given the opportunity of being breastfed should not be considered a legal argument and should not have any significance for the decision-making in the case as – due to her antipsychotic medication – K. could not have breastfed J. in any event. Finally, the Government noted that they could not rely on T.'s ability to safeguard the health and well-being of the new-born baby.

162. As regards M. in particular, the Government explained that he had been placed in a children's home to undergo psychological examinations as he had developed behavioural problems. According to them, a disturbed development was clearly a risk that constituted grounds for both the emergency care order and the normal care order. The previous arrangements with extensive open-care measures had not been sufficient to meet the needs of M. as far as his development was concerned. The Government stressed that M. needed a secure and stable environment for his development, and that K. was not able to provide this in her home, even with the help of T., who was not M.'s father.

163. As to the fact that the applicants were not heard before the emergency care orders were made, the Government argued that K.'s mental health at the time of the emergency care orders was so bad that the authorities could not inform the applicants about their intention to take the children into public care without risking the health and well-being of K. and the baby she was carrying. According to the Government, K. had behaved violently and threatened to use violence against the children before. It was also noted that K. had been released from mental hospital only a month earlier and that she was not being treated for her mental illness at the time of giving birth. A week before J. was born the social welfare authorities had reached the conclusion that K. would probably not be capable of looking after M. and the new-born child at the same time, even with the help of T. and assistance measures of open care. The Government also observed that T. had called the health care centre only three days before J. was due to be born, expressing concern about K.'s mental health. K.'s mother had also

apparently been worried about her daughter's mental health immediately before J.'s birth on 18 June 1993. The Government further expressed their concern that, if Article 8 were to be read as entitling parents to be involved in the decision-making process leading to emergency care orders, such orders would in many cases lose their meaning or would be impossible to implement. According to the Government, such an interpretation would be detrimental to the protection of children within the jurisdiction of Finland.

(ii) The Court's assessment

164. In its judgment of 27 April 2000 the Chamber examined the question of the taking of the children into care as a whole, without treating separately the emergency care orders and the so-called normal care orders. It considered that the reasons adduced to justify the care orders were not sufficient and that the methods used in implementing those decisions had been excessive. Its conclusion was that in taking the care measures the national authorities had exceeded their margin of appreciation and that the measures could not therefore be regarded as "necessary" in a democratic society. Accordingly, it held that the taking of the two children into public care constituted a violation of the applicants' right to respect for their family life under Article 8 of the Convention.

165. The Grand Chamber, for its part, considers it appropriate to examine the emergency care order and the normal care order for each child separately as they were different kinds of decision, which had different consequences – an emergency care order being of short, limited duration and a normal care order being of a more permanent nature – and which were the product of separate decision-making processes, even though one measure followed immediately after the other. In the Grand Chamber's view, there are substantive and procedural differences to be taken into account which warrant examining the two sets of decisions separately.

166. The Court accepts that, when an emergency care order has to be made, it may not always be possible, because of the urgency of the situation, to associate in the decision-making process those having custody of the child. Nor, as the Government point out, may it even be desirable, even if possible, to do so if those having custody of the child are seen as the source of an immediate threat to the child, since giving them prior warning would be liable to deprive the measure of its effectiveness. The Court must however be satisfied that in the present case the national authorities were entitled to consider that in relation to both J. and M. there existed circumstances justifying the abrupt removal of the children from the care of the applicants without any prior contact or consultation. In particular, it is for the respondent State to establish that a careful assessment of the impact of the proposed care measure on the applicants and the children, as well as of the possible alternatives to taking the children into public care, was carried out prior to the implementation of such a measure.

167. The Court acknowledges that it was reasonable for the competent authorities to believe that if K. had been forewarned of the intention to take either M. or the expected child away from her care, this, in view of her fragile mental health, could most likely have had dangerous consequences both for herself and for her children (see paragraph 24 above). The Court also accepts as reasonable, in the light of the evidence before the national authorities, their assessment that T. was not capable of coping with the mentally ill K., the expected baby and M. on his own. Likewise, associating only T. in the decision-making process was not a realistic option for the authorities, taking into account the close relationship between the applicants and the likelihood of their sharing information.

168. However, the taking of a new-born baby into public care at the moment of its birth is an extremely harsh measure. There must be extraordinarily compelling reasons before a baby can be physically removed from the care of its mother, against her will, immediately after birth as a consequence of a procedure in which neither she nor her partner has been involved. The shock and distress felt by even a perfectly healthy mother are easy to imagine.

The Court is not satisfied that such reasons have been shown to exist in relation to J.

K. and J. were both in hospital care at the time. The authorities had known about the forthcoming birth for months in advance and were well aware of K.'s mental problems, so that the situation was not an emergency in the sense of being unforeseen. The Government have not suggested that other possible ways of protecting the new-born baby J. from the risk of physical harm from the mother were even considered. It is not for the Court to take the place of the Finnish child welfare authorities and to speculate as to the best child care measures in the particular case. But when such a drastic measure for the mother, depriving her totally of her new-born child immediately on birth, was contemplated, it was incumbent on the competent national authorities to examine whether some less intrusive interference into family life, at such a critical point in the lives of the parents and child, was not possible.

The reasons relied on by the national authorities were relevant but, in the Court's view, not sufficient to justify the serious intervention in the family life of the applicants. Even having regard to the national authorities' margin of appreciation, the Court considers that the making of the emergency care order in respect of J. and the methods used in implementing that decision were disproportionate in their effects on the applicants' potential for enjoying a family life with their new-born child as from her birth. This being so, whilst there may have been a "necessity" to take some precautionary measures to protect the child J., the interference in the applicants' family life entailed in the emergency care order made in respect of J. cannot be regarded as having been "necessary" in a democratic society.

169. On the other hand, the Court is of the view that different considerations come into play as far as the other child, M., is concerned. It cannot ignore that the national authorities had good cause to be concerned as to K.'s capacity, even with the aid of T., to continue caring for her family in a normal way immediately following the birth of her third child. The applicants themselves recognised this through the voluntary placement of M. in the children's home. Moreover, M. was showing signs of disturbance and thus a need for special care. The emergency care order made in respect of M., even coming as it did immediately after the birth of J., was not capable of having the same impact on the applicants' family life as that made in respect of his half-sister J. He was already physically separated from his family as a result of his voluntary placement in the children's home, the order was necessary in that he could have been removed from the safe environment of the home at any time, and the order was made for a limited period of time. As stated above, the lack of association, both of T. and K., in the decision-making process was understandable in order not to provoke a crisis in the family before the stressful event of J.'s birth.

The Court is therefore satisfied that the national authorities were entitled to consider that it was necessary to take exceptional action, for a limited period, in the interests of M. as from the birth of his half-sister.

170. Accordingly, the Court finds that there has been a violation of Article 8 of the Convention in respect of the emergency care order concerning J., and no violation of Article 8 in respect of the emergency care order concerning M.

(b) The normal care orders

(i) Submissions of the parties

(α) The applicants

171. The applicants maintained that the authorities had exceeded their margin of appreciation when taking the children into care. They submitted that a social welfare board is not a court but a political body, lacking the skills and knowledge required to investigate a case objectively and neutrally. They argued that the picture created by the social welfare workers of the applicants in their reports had been an utterly negative one and had affected the staff at the children's home. Instead of understanding and support for the family, the facts of the case revealed a merely hostile attitude on the part of the social welfare authorities towards the family life of the applicants. The powers and measures at the disposal of the authorities were used to break down the applicants' family life, in a way that showed a firm determination on their part. The applicants found it most disturbing that the social welfare authorities had kept secret the report submitted to them by the children's home, where it was clearly stated that T. had been able to provide

exemplary care and support for his baby J., creating a warm and loving bond between himself and the baby. Regardless of this statement, the authorities had claimed before the domestic courts, as did the Government before the Court, that T. would not have been able to take care of J. even with the help of supportive measures. According to the applicants, the taking of the children into public care had clearly been an overreaction to the applicants' family situation.

(β) The Government

172. The Government maintained that a number of reports and certificates issued by the social welfare authorities as well as medical statements had been available to the Social Welfare Board and subsequently to the domestic courts when they had considered the care issues. The measures had been supported by detailed information which had been collected by psychiatric and social welfare authorities from 1989 onwards. The Government argued that the relevant social welfare authorities' thorough knowledge of the applicants' family situation which had been gained over a period of four years not only from frequent personal contacts but also, *inter alia*, from ample medical and other expert evidence, and which had resulted in numerous assistance measures in open care taken in view of the family's economic and social difficulties, should be sufficient to convince the Court that the authorities had acted within the margin of appreciation allowed to the national authorities.

(ii) The Court's assessment

173. The fact that a child could be placed in a more beneficial environment for his or her upbringing will not on its own justify a compulsory measure of removal from the care of the biological parents; there must exist other circumstances pointing to the "necessity" for such an interference with the parents' right under Article 8 of the Convention to enjoy a family life with their child. Keeping in mind that the authorities' primary task was to safeguard the interests of the children, the Court has no reason to doubt that the authorities could in the circumstances of the present case consider that placement in public care as from 15 July 1993, in particular in a foster home as from early 1994, was called for rather than continuation of the open-care measures or even introduction of new open-care measures (see paragraphs 32-47 above). Nor, in the Court's view, can it be said that the normal care orders were implemented in a way which was particularly harsh or exceptional. In a situation in which, as detailed in the medical and social reports, the mother of the children was seriously mentally ill, there were social problems in the family and the prospects for the healthy development of the children in foster care appeared far more positive than the expected development in the care of their biological parents, the authorities could reasonably base the contested decisions on the

assessment that was made of what was in the best interests of the children. As to the procedural guarantee inherent in Article 8, the evidence shows that the applicants were properly involved in the decision-making process leading to the making of the normal care orders and that they were provided with the requisite protection of their interests (see paragraph 33 above). Furthermore, they could and did appeal on two court levels against the Social Welfare Board's decision (see paragraphs 41-46 above).

174. In the light of the foregoing, the Court is satisfied that the taking of the children into public care on 15 July 1993 was based on reasons which were not only relevant but also sufficient for the purposes of paragraph 2 of Article 8 and that the decision-making process satisfied the requirements of that provision. Accordingly, the Court finds that in respect of neither child was there a violation of Article 8 of the Convention as a result of the decision to make the so-called normal care orders.

(c) The alleged failure to take proper steps to reunite the family

(i) Submissions of the parties

(α) The applicants

175. The applicants maintained that the Social Welfare Board and the courts failed to carry out a proper examination of the applicants' request for reunification of their family, and thus exceeded their margin of appreciation. The applicants stressed that taking into care should be regarded as a temporary measure to be discontinued as soon as possible and that, in the present case, care was expected to be of long duration, as the authorities' presumption from the very beginning was that these children would never be returned to their biological parents. The meetings with the children under strict supervision were, in the applicants' opinion, so unnatural that the parents and the children were not able to form normal family ties and they never had an opportunity to have a normal family life together. As the Government's intention not to reunite the family was also repeated several times by the Government before the Court, the violation of Article 8 of the Convention in this respect had been established. The authorities had acted in a clearly arbitrary way without any intention at all to terminate the care, whatever the circumstances.

(β) The Government

176. The Government admitted during the Chamber proceedings that no physical reunification of the family was foreseen and that no measures aimed at such reunification had been carried out. They stressed, however, that the care orders were in force "for the time being". Even though the authorities expected that the children would need to remain in care for a long time, it had not been established that such a presumption could not be

rebutted if need be. During the Grand Chamber proceedings, the Government submitted that the applicants had only once requested the Social Welfare Board to revoke the normal care orders. The social welfare authorities had then agreed with the applicants' counsel that an expert opinion would be sought from the family counselling clinic of K. as a basis for the future decision. It had been at the request of the applicants' counsel that the same clinic had then assessed both the foster parents' and the applicants' relationship with J. and M. According to this opinion, K. and T. were unable to create such contacts with the children as would have been appropriate to the children's age. In the Government's opinion, these steps certainly amounted to serious efforts to consider the termination of public care.

(ii) The Court's assessment

177. In its judgment of 27 April 2000, the Chamber noted that the competent authorities seemed to have consistently assumed that long-lasting care and placement in a foster family were necessary. It took into account the fact that the obstacles put in the way of the reunification of the family by this attitude had no doubt been increased by the restrictions and prohibitions on the applicants' access to their children. It found a violation of Article 8 of the Convention in so far as the refusal to terminate the care was concerned, on the ground that there was a lack of any effort to consider seriously the termination of public care despite evidence of an improvement in the situation which had prompted the care orders. In the Chamber's opinion, this amounted to such a lack of a fair balance between the various interests involved as to constitute a violation of Article 8 (see paragraphs 155-64 of the Chamber's judgment).

178. The Grand Chamber, like the Chamber, would first recall the guiding principle whereby a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child (see, in particular, *Olsson (no. 1)*, cited above, pp. 36-37, § 81). The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child.

179. In the instant case, the Court notes that enquiries were made in order to ascertain whether the applicants would be able to bond with the children (see paragraph 67 above). They did not, however, amount to a serious or sustained effort directed towards facilitating family reunification such as could reasonably be expected for the purposes of Article 8 § 2 – especially since they constituted the sole effort on the authorities' part to

that effect in the seven years during which the children have been in care. The minimum to be expected of the authorities is to examine the situation anew from time to time to see whether there has been any improvement in the family's situation. The possibilities of reunification will be progressively diminished and eventually destroyed if the biological parents and the children are not allowed to meet each other at all, or only so rarely that no natural bonding between them is likely to occur. The restrictions and prohibitions imposed on the applicants' access to their children, far from preparing a possible reunification of the family, rather contributed to hindering it. What is striking in the present case is the exceptionally firm negative attitude of the authorities.

Consequently, the Grand Chamber agrees with the Chamber that there has been a violation of Article 8 of the Convention as a result of the authorities' failure to take sufficient steps towards a possible reunification of the applicants' family regardless of any evidence of a positive improvement in the applicants' situation.

(d) The access restrictions and prohibitions

(i) The parties' submissions

(α) The applicants

180. The applicants pointed out that M. had already been placed on a voluntary basis in a children's home before the emergency care measure and that later, after the care order was finalised, he was placed with a foster family. They observed that the decision concerning the right of access to J. was not given until 21 June 1993, that is, three days after the birth of the baby, but the baby was nevertheless taken from K. and placed in the children's ward of the hospital on the day she was born. In the applicants' view, the above decision was unlawful because the restriction was not made for a fixed period. The applicants had been allowed to meet M. in the children's home and T. had been allowed to meet J. almost daily from 23 June 1993. K. had not met her children very often in the summer of 1993, but her hospitalisation had made it difficult. The authorities had allowed access to the children for the first time after they had been placed in their foster family and then only for two hours under supervision. Even after that, the applicants' access to the children had been subjected to severe restrictions.

181. The applicants also pointed out that for the last six years the rationale for the continuation of the access restrictions had been that the children had to get attached to their foster family and that too close a relationship with the applicants jeopardised this objective. For the authorities, it had been sufficient that the children were aware of their parents' existence. Once this had been accepted by the administrative

courts, it had been used by the authorities as a basis for all the subsequent restriction decisions.

182. The applicants stressed that the only reason given for the restriction orders was K.'s unstable health. Such reasoning did not, however, meet the strict preconditions set by the law. On 14 September 1993 a social worker had made a note to the effect that the access of T. to J. was to be questioned as J.'s placement with the foster family was under preparation, and it was to be expected that it would be difficult for T. to give up J. According to the applicants, from this moment the plan to alienate J. from her parents was systematically pursued.

183. The applicants also noted that their decision to move back together was made at the beginning of 1994, when the children had already been taken into care and it was already known that they would be placed in a foster home. When T. had found out, after all the promises and the trouble he had gone through, that he could not live with his daughter, he had no reason whatsoever not to move back to live with K. At this time both the applicants knew that the children would never be returned.

184. According to the applicants, the decisions imposing severe access restrictions were not made in a democratic way, as they had no opportunity of taking part in the decision-making. The procedure did not meet the principal requirements of the law, such as the need to act with utmost delicacy, according to the principle of least possible interference, and in the best interest of the children. For example, in December 1993, it had been suggested to the applicants that they could keep in touch with their children by post. As J. was then under one year of age, she clearly could not read or understand this kind of communication. On one occasion, the social workers had told the applicants not to speak to M. about his placement in a family, and when K. then told M. about the placement – the most important event in the child's life so far – she had been punished by further access restrictions.

185. The applicants emphasised that their access to M. was restricted during his placement at the children's home as a voluntary open care measure, as M. was not allowed to visit his home. Such a decision limiting access was clearly illegal as, according to the law, no restrictions are allowed when the child is placed voluntarily at a children's home. The first legal decisions concerning access rights were made only much later, on 21 June 1993.

186. The applicants pointed out that on 15 July 1993 the care orders and the restriction orders concerning K.'s right of access to her children were ratified by the Social Welfare Board. The restrictions were based on K.'s aggressive behaviour and emotional outbursts. Yet, the social workers had noted that the meeting between K. and the children had gone well. She had never harmed or threatened to harm her children in any way. The fact that she had been aggressive towards the authorities – who had deprived her of her children – was not a legal basis for restricting access or for denying the

applicants the right to a family life with their children. On the contrary, such a decision had only increased K.'s stress and psychotic reactions.

(β) The Government

187. The Government disagreed. They argued that a physical connection was not the only way to ensure family ties. In Finland, the child welfare measures referred to in the Child Welfare Act, such as taking a child into care and substitute care, were forms of assistance directed towards the child. The purpose of such assistance was not to alter the biological ties of the child to his family. The mother and the father remained the legal guardians of the child who had been taken into care. The fact that a child had been taken into care and placed in a foster family did not prevent the child from meeting his or her parents as an equal adult later, when he or she had reached the age of majority, thereby creating normal family ties. However, the taking into care inherently implied some practical and natural restrictions to the right of access.

188. The Government doubted whether all the complaints concerning access restrictions had been declared admissible by the Court. In any case, the Government emphasised that the time-limits and other conditions set forth in the Child Welfare Act had been met.

189. The Government also stressed that T. had been assisted by the authorities in various ways in his efforts to create a relationship with the baby at the beginning. He had been supported and guided at the family centre, and also supported financially. Furthermore, it had been agreed that monthly appointments would be made for T. to see a family counsellor. Considering that the aim was that T. should live with the baby, it was also to organise a support family, as well as weekly domestic help. At the same time, T. had continued to meet K. frequently. Apparently, he hoped that her health would improve to such an extent that they could bring up the baby together despite the fact that his cooperation with the authorities was based on the idea that he alone would take care of the baby.

190. The Government further emphasised that at the beginning of the placement of M. in the children's home, the visits by K. and T. and by other relatives were unlimited. The applicants were given the opportunity to spend nights in the children's home at weekends. The visits had to be limited only when K.'s health deteriorated, and her behaviour during the visits caused strong negative emotional reactions in M. as well as confusion and disruption in the activities and atmosphere of the children's home as a whole.

The restrictions on the right of access to M. while in the children's home had been directed especially at K., because of her acute psychiatric illness. The subsequent decisions on the right of access had concerned both applicants and had been based on various statements by doctors and other experts.

191. The Government also recalled that the applicants had had the opportunity to maintain contact with their children by letter and telephone. Two different domestic courts, when dealing with separate issues concerning K.'s access to her children, had found exceptionally important reasons to restrict her access rights. The applicants had, however, been allowed to meet their children regularly.

(ii) The Court's assessment

192. In its judgment of 27 April 2000 the Chamber considered that it was not necessary to examine the access restrictions as a separate issue, except in so far as the situation obtaining at the time was concerned. In that respect, the Chamber observed that the applicants had – since 1994 – had access to the children once a month. While this may have been unreasonably restrictive earlier, the Chamber could not overlook the fact that by then the children had been in public care for almost seven years. In view of that, the Chamber accepted that the national authorities, within their margin of appreciation, were entitled to consider such restrictions necessary in the light of the existing interests of the children. Accordingly, it found no violation of Article 8 of the Convention in that respect.

193. This aspect of the applicants' complaints was not mentioned in the Government's request for referral of the case to the Grand Chamber, the Government having requested the referral only in so far as a violation of Article 8 of the Convention had been found by the Chamber. Furthermore, in their pleadings before the Grand Chamber neither the applicants nor the Government directed any specific argument to the question whether the restrictions and prohibitions on access gave rise to a separate violation of Article 8. This question, as one aspect of the complaint formulated by the applicants under Article 8 of the Convention in the initial proceedings before the Chamber, nonetheless falls to be decided in the present judgment since it forms part of "the case" that has been referred to the Grand Chamber (see paragraph 140 above).

194. Like the Chamber, the Grand Chamber considers that, in so far as the complaint concerning the access restrictions is covered by the finding of a breach of Article 8 as a result of the failure to take sufficient steps for the reunification of the family, it is not necessary to examine the impugned measures as a possible separate source of violation. As regards the present situation, including the period after the delivery of the above-mentioned Chamber judgment, the Grand Chamber likewise arrives at the same conclusion as the Chamber. It observes that, whilst national authorities must do their utmost to facilitate reunion of the family, any obligation to apply coercion in this area must be limited since the best interests of the child must be taken into account. Where contacts with the parents appear to threaten those interests, it is for the national authorities to strike a fair balance between them and those of the parents (see, *inter alia*, *Hokkanen*,

cited above, p. 22, § 58). Having regard to the situation of the children in this later period, it cannot be found that the assessment of the Finnish child welfare authorities fell foul of Article 8 § 2. In that respect, the Court finds no violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

195. In the proceedings before the Chamber the applicants contended that no effective remedy had been available to them in respect of the violation of their right to respect for their family rights under Article 8 of the Convention. Article 13 of the Convention reads as follows:

> "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."

196. The Government contested this allegation, referring to the possibility of requesting in court, under paragraph 2 of section 93 of the Constitution Act (now paragraph 3 of section 118 of the 2000 Constitution) and the relevant provisions of the Penal Code, that the officials concerned be prosecuted and possibly made liable to pay damages, and to the possibility, under the Compensation Act, that the State be ordered to pay damages.

197. The complaint under Article 13 of the Convention, although not mentioned by the Government in their request under Article 43 of the Convention, forms part of "the case" referred to the Grand Chamber for decision by way of a judgment (see paragraph 140 above).

198. In its judgment of 27 April 2000 the Chamber reached the following conclusion:

> "179. The Court notes that the applicants could apply to administrative courts against the care order, refusal to terminate the care and various access restrictions. It is true that the applicants' appeals did not prove successful. However, the effectiveness of the remedy for the purpose of Article 13 does not depend on the certainty of a favourable outcome (see the Vereinigung demokratischer Soldaten Österreichs and Gubi v. Austria judgment of 19 December 1994, Series A no. 302, § 55). There is no indication that the Finnish administrative courts would not, as a general matter, fulfil the requirements of an 'effective remedy' within the meaning of Article 13. Taking also into account the other remedies invoked by the Government, the Court considers that the applicants had available remedies satisfying the requirements of that provision. Accordingly, there is no violation of Article 13 of the Convention."

199. The Grand Chamber sees no reason to depart from the Chamber's findings concerning this aspect of the case. The Court therefore concludes that, for the reasons indicated by the Chamber in its judgment, no violation of Article 13 of the Convention has been established.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

200. Article 41 of the Convention provides:

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

A. Damage

201. The applicants argued that the minimum compensation that should be awarded to them for the violation of their rights guaranteed in the Convention was the amount specified in the judgment of the Chamber, namely 40,000 Finnish marks (FIM) each. They submitted that the Court should, however, also take into account the mental stress caused by the events of the present case to the first applicant during her fourth pregnancy and her fear of losing that child to the authorities as well. Before the Chamber, they had claimed a total amount of FIM 816,000. According to them, the compensation should be further increased on account of the fact that the authorities had withheld essential information from them during the proceedings. In addition, the prolongation of the proceedings, which had caused additional stress and anguish, should be compensated, since it resulted from the Government's referral of the case to the Grand Chamber.

202. During the Chamber proceedings, the Government acknowledged that, if the Court were to find a breach of Article 8 of the Convention, its judgment should include sufficient just satisfaction in respect of non-pecuniary damage. However, the sums claimed by the applicants were to be regarded as greatly excessive. The Government left the decision to the Court's discretion.

The Government did not comment on the applicants' claims concerning, *inter alia,* the additional stress before the Grand Chamber.

203. In its judgment of 27 April 2000, the Chamber awarded the applicants FIM 40,000 each, that is FIM 80,000 in total, as just satisfaction for non-pecuniary damage attributable to the violation of Article 8 of the Convention.

204. The Grand Chamber, like the Chamber, has found a violation of Article 8 by reason of the failure of the Finnish child welfare authorities to pay sufficient heed to the possible reunification of the applicants' family when implementing the care measures (see paragraphs 177 and 179 above). On the other hand, its finding of a violation in relation to the taking into care as such of the children is grounded on a somewhat narrower basis than that of the Chamber: the Grand Chamber has restricted its finding to the emergency care order and to one child, J. (see paragraphs 164-70 and 173-74 above). Notwithstanding this difference, the Court considers it

appropriate in equity to award the applicants the same sums by way of just satisfaction as those awarded by the Chamber: the stress, unhappiness and frustration caused to the applicants by the shortcomings held by the Grand Chamber to be in violation of Article 8 cannot have been significantly less than the suffering attributable to the violations found by the Chamber. In so far as any reduction in the amount recoverable might at all have been warranted, this is offset by the need to take account of the delay in the receipt by the applicants of the award of just satisfaction resulting from the prolongation of the proceedings consequent upon the Government's referral of the case to the Grand Chamber. The Court accordingly awards each applicant the sum of FIM 40,000 as just satisfaction for non-pecuniary damage attributable to the violations of Article 8 of the Convention.

B. Costs and expenses

205. Before the Chamber the applicants claimed FIM 5,190 in respect of their own costs and expenses relating to their representation. They had also sought FIM 249,475 in respect of the costs which were borne on their behalf by the Society for Family Rights in Finland (PESUE). The Chamber awarded them FIM 5,190 from which the 2,230 French francs (FRF) already received from the Council of Europe by way of legal aid had to be deducted. Before the Grand Chamber, they claimed reimbursement of FIM 289,475 in respect of their own costs and expenses relating to their representation by Mr Kortteinen as their counsel before the Chamber, and FIM 119,070 in respect of their own costs and expenses relating to their representation before the Grand Chamber. No mention was made of costs having been borne on their behalf by PESUE.

206. The Government noted that the applicants were now seeking reimbursement in their own name of FIM 249,475 in respect of costs and expenses which they had earlier declared to have been borne on their behalf by PESUE, increased by an additional FIM 40,000 for letters drafted after the admissibility hearing. The Government submitted that such variation in the claim made was not possible and that the transferred claim and the delayed additional claim could not be accepted.

The Government further submitted that the total sum claimed for costs and expenses before the Grand Chamber appeared to be excessive, in general as regards the working hours and hourly rates charged and in particular as regards translation costs and payments charged by the family's adviser. The Government, however, left the assessment to the Court's discretion.

207. The Court would first observe that the applicants have not shown either that their own legal costs and expenses before the Commission and the Chamber amounted to more than the FIM 5,190 originally claimed or that the sum of FIM 249,475 originally claimed on behalf of PESUE was in fact owed by them to Mr Kortteinen as their legal counsel. The Grand Chamber cannot therefore but arrive at the same conclusion as the Chamber. Neither does the Court accept the late submission of the claim of FIM 40,000 for letters drafted after the admissibility stage.

In respect of the applicants' costs and expenses before the Grand Chamber, the Court finds the applicants' claim of FIM 119,070 excessive.

The present case is admittedly an exceptionally complex and voluminous one as far as the facts are concerned, and the applicants did not themselves request the referral of the case to the Grand Chamber. Making its assessment on an equitable basis, the Court awards the applicants FIM 5,190 in respect of the proceedings leading up to the Chamber's judgment and FIM 60,000 in respect of the Grand Chamber proceedings, that is FIM 65,190 in total for their costs and expenses together with any value-added tax that may be chargeable, from which must be deducted the FRF 2,230 and 2,871.54 euros already received from the Council of Europe by way of legal aid.

C. Default interest

208. According to the information available to the Court, the statutory rate of interest applicable in Finland at the date of the adoption of the present judgment is 11% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* by fourteen votes to three that there has been a violation of Article 8 of the Convention in respect of the emergency care order concerning J.;

2. *Holds* by eleven votes to six that there has been no violation of Article 8 of the Convention in respect of the emergency care order concerning M.;

3. *Holds* unanimously that there has been no violation of Article 8 of the Convention in respect of the normal care orders in regard to either child;

4. *Holds* unanimously that there has been a violation of Article 8 of the Convention by reason of the failure to take proper steps to reunite the family;

5. *Holds* unanimously that there has been no violation of Article 8 of the Convention in respect of current access restrictions;

6. *Holds* unanimously that there has been no violation of Article 13 of the Convention;

7. *Holds* unanimously
(a) that the respondent State is to pay the applicants within three months:
(i) for non-pecuniary damage, FIM 40,000 (forty thousand Finnish marks) each, that is a total of FIM 80,000 (eighty thousand Finnish marks);
(ii) for legal fees and expenses, FIM 65,190 (sixty five thousand one hundred and ninety Finnish marks) less FRF 2,230 (two thousand two hundred and thirty French francs) and EUR 2,871.54 (two thousand eight hundred and seventy one euros fifty-four cents) to be converted into Finnish marks;
(b) that simple interest at an annual rate of 11% shall be payable from the expiry of the above-mentioned three months until settlement;

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

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 12 July 2001.

Luzius WILDHABER
President

Paul MAHONEY
Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:
(a) concurring opinion of Mr Pellonpää joined by Sir Nicolas Bratza;
(b) partly dissenting opinion of Mrs Palm joined by Mr Gaukur Jörundsson;
(c) partly dissenting opinion of Mr Bonello;

(d) partly dissenting opinion of Mr Ress joined by Mr Rozakis, Mr Fuhrmann, Mr Zupančič, Mr Panţîru and Mr Kovler.

L.W.
P.J.M.

CONCURRING OPINION OF JUDGE PELLONPÄÄ JOINED BY JUDGE Sir Nicolas BRATZA

I have voted with the majority on all points in this case. I disagree, however, as to the reasons for finding a violation in respect of the emergency care order concerning J. According to the judgment, both "the making of the emergency care order ... and the methods used in implementing that decision were disproportionate" (paragraph 168). While I find the criticism concerning the implementation of the emergency care order justified, I disagree with the conclusion that the making of the order as such was in violation of Article 8.

I recall that the basic reasons for the emergency care order of 18 June 1993 were the same as those relied on in support of the normal care decision rendered on 15 July 1993 and found by the Court to be in conformity with Article 8, namely, K.'s serious illness and occasionally uncontrolled emotional reactions which could be traumatic for the child, etc. (see paragraphs 24 and 33 of the judgment). The additional reason behind the emergency care order was the urgency of the situation. It can be inferred from the judgment that, according to the majority opinion, there was no such urgency as to justify the emergency care order.

In this respect I recall that the Court accepted the emergency care order with regard to M. on the ground that, without such an order, he could have been removed from the safe environment of the children's home at any time, and on account of the limited duration of the order (paragraph 169 of the judgment). In my view these arguments are equally, not to say to some extent *a fortiori*, valid with regard to J. as well. Without the emergency care order, nobody would have been legally entitled to prevent K., the person having sole custody of J., from taking the baby with her when leaving the hospital. That the fragile mental health of the applicant could, in such a situation, have entailed risks for the well-being of the child (cf., for example, paragraph 167 of the judgment) was an eventuality which the authorities must have been entitled to take into account.

Indeed, even the majority seems to accept that the reasons relied on by the national authorities were "relevant". They were, however, not deemed "sufficient", among other reasons on the ground "that the situation was not an emergency in the sense of being unforeseen" (see paragraph 168 of the judgment). This is as such correct and undisputed. It is precisely because of the foreseeability of the birth of a new baby that the authorities seem to have taken certain precautionary steps (see paragraph 22). In so far as it appears to be suggested that an emergency care order is compatible with Article 8 only in situations of unforeseen emergency, I recall that in the case of M. the Court accepts that the emergency care order was justified even in the absence of an unforeseen emergency. Moreover, under domestic law, section 18 of the Child Welfare Act (see paragraph 103), an emergency care

order (*kiireellinen huostaanotto*, literally "urgent taking into care") is foreseen not only for suddenly arising emergencies but also for other situations of urgency where delays could endanger the well-being of the child. In my view the authorities, within their margin of appreciation, could reasonably consider that this was such a situation. A care order was not thinkable before the birth of the child, whereas any delay thereafter could have entailed the risks indicated earlier.

When the proportionality of the making of the emergency care order is discussed, it should also be recalled that the legal consequence of the order was the removal of the baby from K.'s immediate control as regards the right to decide on J.'s place of residence and like questions. In practical terms, the decision to take J. urgently into care prevented K. from removing the child from the hospital. Beyond this, the emergency care order as such could not legally restrict K.'s access to the child. For such restrictions, a separate decision was needed (and rendered on 21 June 1993, when unsupervised – but not other – access was prohibited; see paragraph 27 of the judgment). Therefore I have some difficulty in reconciling the characterisation of the emergency care order as a whole – as distinct from the way in which it was implemented – as "drastic" (see paragraph 168) with the unanimous finding that the normal care order was compatible with Article 8. After all, the last-mentioned care order arguably had, at least in some respects, more drastic consequences for the applicants' family life than the temporary emergency care order.

In view of the above, I do not think that the national authorities exceeded their margin of appreciation when coming to the conclusion that an emergency care order was needed to protect the new-born baby. For reasons similar to those mentioned in paragraph 167 of the judgment, I also accept that, in the circumstances of the case, it was justified not to involve the applicants in the decision-making concerning the emergency care order.

What, however, constituted a violation of Article 8 was the harsh manner in which the decision of 18 June 1993 was implemented. Taking the child from the mother immediately after the delivery and placing her in the children's ward went beyond the exigencies of the situation and cannot, even in the difficult situation in question, be accepted as a proportionate means of securing the legitimate purpose of the emergency care order. No convincing explanation has been submitted by the Government as a justification for what, prima facie, appears to have been an overreaction by the hospital staff to the emergency care order and, perhaps, to the letter of 11 June 1993 (see paragraph 22 of the judgment). That the staffing situation of the hospital may have caused practical problems for a less severe manner of executing the care order (see paragraph 161) is not an explanation releasing the Government from their responsibility.

Nor is a sufficient explanation provided by the Government's argument according to which K. was not prevented from visiting the baby at the

children's ward (see paragraph 161 of the judgment). A person in the applicant's mental and emotional situation could hardly be expected to take steps to exercise her right to see the child on her own initiative. As there is no indication of any positive measures resorted to in order to facilitate contacts between K. and J. after the delivery, K.'s theoretical access to the baby at the children's ward cannot be given much importance in the evaluation of the situation from the point of view of Article 8.

In view of the above, I conclude that the emergency care measure with regard to J. constituted a violation of Article 8 because of the manner in which it was implemented.

PARTLY DISSENTING OPINION OF JUDGE PALM JOINED BY JUDGE GAUKUR JÖRUNDSSON

I have voted with the majority for the finding of no violation of Article 8 in respect of the normal care orders concerning both the children M. and J. and the emergency order in respect of M. However, I cannot agree with the majority that there has been a violation of the same Article in respect of the emergency order concerning J.

The main reasons for the care order were the mother's serious mental illness and her incapacity to safeguard the healthy development of the children. She had, in 1989, been diagnosed as suffering from schizophrenia and had on several occasions been hospitalised on account of a mental disorder. While these reasons, according to the majority, were relevant and sufficient for the normal care orders on 15 July 1993 in respect of both M. and J. and for the emergency care order in respect of M. on 21 June 1993, they were found relevant but not sufficient in respect of the emergency order concerning the new-born child J. on 18 June 1993.

The majority has put special emphasis on the fact that when the mother gave birth to J. at the hospital, the child was immediately taken away and put in the children's ward of the same hospital.

According to the majority, the competent Finnish authorities ought to have examined whether some less intrusive interference with family life was not possible before making and implementing an emergency care order.

The Court has consistently held that, in exercising its supervisory function, it cannot confine itself to considering the impugned decisions in isolation but must look at them in the light of the case as a whole (see, *inter alia*, *Olsson v. Sweden (no. 1)*, judgment of 24 March 1988, Series A no. 130, p. 32, § 68). As stated in paragraph 154 of the present judgment, 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 taken by those authorities in the exercise of their power of appreciation.

I also subscribe to what is said in paragraph 155 of the judgment, namely, that the national authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care.

In fact the Court has, in all earlier judgments concerning the taking of children into public care, accepted the national authorities' assessments of the necessity of the care order. In the present judgment, the Court rejects for the first time the competent national authorities' understanding of the necessity of the measure they took at the time.

K. and her family had been in contact with the welfare and health authorities since 1989. From March to May 1989 K. was voluntarily hospitalised, having been diagnosed as suffering from schizophrenia. From

August to November 1989 and from December 1989 to March 1990 she was again hospitalised for this illness. Later in 1991 and again in 1992 she was hospitalised on several occasions on account of psychoses. She was in compulsory care between 15 May and 10 June 1992 and, according to a medical report of 15 May 1992, she was considered to be paranoid and psychotic. In March 1993 K.'s mother was in contact with the social welfare authorities and said that she was worried about K.'s health condition, which was really bad, and that K. had destroyed her mother's wedding photograph and pierced the eyes of all those appearing in the photograph. At the end of March 1993 until 5 May 1993 K. was in voluntary care. On 31 March a discussion took place between K., her mother, T. and a number of social and mental-health care officials concerning the possible intervention by the authorities in M.'s upbringing and in May 1993 it was decided to place M. in a children's home.

When the emergency order in respect of J. was made and immediately implemented on 18 June 1993, the competent Finnish authorities had been monitoring and supporting K.'s family since 1989. They had had innumerable personal contacts with all involved and were thus well equipped to assess the necessary measures to take in the children's interest. The authorities were prepared to issue an emergency order if the situation called for it but they waited until they found it necessary because of the fear that the new-born child would come to harm. The grounds given by the authorities for the emergency order were, *inter alia*, K.'s illness and occasionally uncontrolled emotional reactions and the fact that K.'s mental state had been unstable during the last stages of her pregnancy, that the baby's health would be endangered since K. had found out about the plan to place the baby in public care and that the baby's father could not guarantee its development and safety.

Even if, with the benefit of hindsight, it may seem harsh to separate a new-born baby from its mother, the authorities were at that time forced to take an immediate decision as to whether it was a risk for the child to stay with a mother who was mentally ill and totally unpredictable and who remained free to leave the hospital with the child if no decision was taken.

Under these circumstances and having regard to their margin of appreciation, I find that the Finnish authorities were reasonably entitled to think that it was necessary to take J. into emergency care.

In the first place, it is difficult to say many years later whether the Finnish authorities could have or should have acted in any other way as regards an emergency decision that they were called upon to take and its immediate implementation. This alone speaks in favour of a more cautious approach in reviewing the behaviour of the local authorities. More importantly, it should be borne in mind that the essence of an emergency care order is that action must be taken on the spot in order to prevent particular harm from occurring. There is little room for the authorities,

pressed to take an immediate decision, to reflect on whether lesser measures can be taken since the situation is such that time is of the essence. The Court, in my view, should be more sensitive to the real dilemmas facing the authorities in situations where emergency steps must be taken. If no action is taken, there exists the real risk that harm will occur to the child and that the authorities will be held to account for their failure to intervene. At the same time, if protective steps are taken, the authorities tend to be blamed for unacceptable interference with the right to respect for family life. I believe that it is recognition of this type of genuine dilemma that supports and justifies a generous application of the margin of appreciation in this area in a manner which affords the benefit of doubt to the welfare of the child at risk. I would have thought it appropriate for the Court to be particularly cautious where the rights of the child are imperilled. Indeed, a failure to do so may not only complicate the exercise of discretion by local authorities in their endeavours to protect children but may also lead to children being placed in danger.

In conclusion, the Court's finding that the measures taken at the time amounted to a violation of Article 8 goes beyond the supervisory function that the Court has under the Convention in such situations.

PARTLY DISSENTING OPINION OF JUDGE BONELLO

1. Among other issues, the Court had two things to determine: firstly, whether the making of the emergency order at the birth of the applicants' infant violated their right to family life; secondly, whether the (later) failure of the authorities to take proper steps to reunite the family amounted to another violation. It found unanimously that Finland had violated the applicants' right to family life in respect of the second issue. I voted in favour of that finding. I could, however, detect no violation either in respect of the making of an emergency order to remove the new-born child from the mother or of the methods used in implementing that decision.

2. The Finnish child care authorities faced a distressing dilemma: whether to act in a way which would injure the mother, or in a way which could injure her baby. Theirs were agonising options. It is less painful to choose between good and bad than between bad and worse.

3. The applicant mother had amassed dreadful records of mental illness. Repeatedly hospitalised since 1989, compulsorily or at her own request, she was diagnosed as suffering from schizophrenia and "atypical and indefinable psychosis"; subsequent psychiatric reports also certified her as paranoid and psychotic.

4. The applicant's mother described her daughter's mental health as "really bad"; she destroyed family mementoes and had "pierced the eyes" of all those appearing in her mother's wedding photo. The record is heavy with episodes of aberrant aggression.

5. At birth, the health assistants took the infant to the children's ward. An emergency care order was concurrently served on the hospital on the following grounds: the applicant's "mental state had been unstable during the last stages of her pregnancy"; "the baby's health would be endangered since (the applicant mother) had found out about the plan to place the baby in public care"; "the baby's father … could not guarantee its development and safety"; and, finally, the applicant mother's "serious illness and occasionally uncontrolled emotional reactions … could be traumatic for the children".

6. Even after the birth of the infant, the applicant mother experienced various psychotic relapses and suffered from "aggressive and uncontrolled emotional moods".

7. At the relevant time, the applicant mother had three children, each by a different father (P., a daughter, M., a son, and J., another daughter). She lost custody of P. by court order in 1992; her son M. succumbed to very grave mental disturbances, harbouring "immense hatred" and "threatening to kill everybody" and was also committed to care. The present opinion refers solely to the youngest child J., taken away by the authorities at birth.

8. I would not care to query the majority's view that taking the infant from the mother at birth constituted a "drastic" measure. I find it difficult to

envisage, for a mother, a more shattering emotional calamity. But surely the question is not whether that measure was drastic, but whether it was avoidable.

9. Time and time again, this Court has underwritten the dogma that, in situations of conflicting rights, it is the child's best interests that should be paramount.

10. The Finnish authorities were confronted with a situation in which a vulnerable new-born infant would be at the mercy of someone in relentless captivity to recurrent psychosis, a person about whom the only predictable thing was her unpredictability. A person from whom uncontrollable reactions were as inseparable as was the resort to destructive violence. The infant's best interests, if that article of faith were to retain any meaning, would have been poorly served by making her the responsibility of the irresponsible. Perfectly "normal" mothers, in the embrace of post-natal trauma, have turned the best-honed maternal instincts to the destruction of their offspring. Why that possibility is factored in when dealing with normal mothers, but discounted when dealing with guaranteed psychopaths, still, I believe, calls for explanation.

11. The majority found a violation because "it was incumbent on the competent national authorities to examine whether some less intrusive interference into family life, at such a critical point in the lives of the parents and the child, was not possible". In other words, the authorities should have had recourse to other options. It would have been helpful had the majority specified which.

12. In my view, the Finnish care services, faced with harrowing alternatives, acted soundly, in the only rational and accountable manner open to them, achieving a fair balance between wrong inflicted and wrong prevented. They who preferred to place a child beyond the reach of harm have now been branded violators of human rights. I enquire what the majority would have styled them had the infant, left with the applicant mother, suffered mischief. Had I, like the Finnish authorities, been faced with choosing whether to be cruel to the mother or to the child, I know which way I would have looked.

PARTLY DISSENTING OPINION OF JUDGE RESS JOINED BY JUDGES ROZAKIS, FUHRMANN, ZUPANČIČ, PANŢÎRU AND KOVLER

To my great regret I cannot share the majority's opinion that there has been no violation of Article 8 of the Convention in respect of the emergency care order concerning M.

1. One should recall that on 3 May 1993 K.'s son M. was placed voluntarily in a children's home for a period of three months after some disorderly behaviour of K. and after M. had shown some aggressive behaviour (see paragraphs 16-20 of the judgment). Even if M.'s behaviour in the children's home did not immediately show satisfactory progress (see paragraph 21), there was no drastic change which could have justified the decision of 21 June 1993 to place him in emergency care as well (see paragraph 25). Just as for the emergency care order in respect of J., the new-born baby, there were no special circumstances justifying an emergency care order in respect of M.

2. Before public authorities have recourse to emergency measures in such delicate issues as care orders, the imminent danger should be actually established. An imminent danger is the precondition for an emergency care order. If it is still possible to hear the parents of the child and to discuss with them the necessity of the measure, there should be no room for an emergency action.

M. was in no imminent danger since he had already been placed in a children's home. The whole procedure gives the impression of a *coup de force*. A procedure by which normal care orders were prepared with the involvement of the parents would, under the circumstances, have been a reasonable and fully satisfactory one.

3. There is no doubt, as the Government have stressed, that M. needed a secure and stable environment for his development but the decision on how to secure this and where to place M. could also have been taken in accordance with the normal procedure involving K. and T., namely the parents. It is true that in obvious cases of danger no involvement of the parents is called for, but in relation to M., where no imminent danger was visible, the involvement of the parents in the decision-making process was necessary, which did not mean that it would be impossible to implement the care order. I cannot see that such a normal procedure in the case of M. would have been detrimental to his protection. The reasons the majority of the Court have advanced not to accept the necessity of the emergency care order in respect of J. (see paragraph 168 of the judgment) apply also in my view *a fortiori* in relation to M. There were no reasons why the normal procedure for taking children into care could not have been followed. When K. and J. were in hospital and M. in the children's home, there was no emergency situation. It has further to be taken into account that M. was

placed voluntarily by his parents in the children's home. There was no indication of a change of the parents' intention to let M. stay in the children's home or to get special care if needed. The emergency action in respect of M. aggravated the harsh measure which the authorities took in relation to J. and her mother. The fact that M. could have been removed from the safe environment of the children's home at any time (see paragraph 169) could not justify an emergency measure. It is a danger which had already existed for a long time, since the voluntary placement of M. in the children's home. I am unable to see under these circumstances why a danger should suddenly be deemed to have arisen and I cannot accept the Court's reasoning that the lack of association of both T. and K. in the decision-making process was understandable in order not to provoke a crisis in the family before the stressful event of J.'s birth. Both T. and K., as parents, were even more closely associated with the decision-making process after the emergency measures, when they tried to take action against them. So this argument is rather counter-productive. Also, the argument that the order was limited in time to fourteen days does not justify the emergency action, as no danger existed. In fact, it was not an emergency action, it was a *preparatory* action for the normal care orders, but Finnish law does not foresee such a "preparatory stage" for normal care orders.

4. A more fundamental issue is the review of the interpretation and application of the notion of danger and emergency in relation to care orders. How far is it possible to supervise national courts in this respect under article 8 of the Convention? When it becomes obvious that there was no danger but only a mere "possibility" of revoking the permission to let M. stay in the children's home and that there was no factual indication of an intent of the parents to reverse their decision, then it becomes rather obvious that there was no sufficient factual basis for the conclusion of the national authorities and courts. That is precisely why the Court of Strasbourg had to fulfil its supervisory function.