FOURTH SECTION

CASE OF K.A. v. FINLAND

(Application no. 27751/95)

JUDGMENT

STRASBOURG

14 January 2003

FINAL

14/04/2003

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

In the case of K.A. v. Finland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr A. PASTOR RIDRUEJO,
Mrs E. PALM,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 10 December 2002,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 27751/95) 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 a Finnish national ("the applicant") on 6 March 1995.

2. The applicant, who had been granted legal aid, was represented before the Court by Ms Sirpa Niemistö, a member of the Finnish Bar. The respondent Government were represented by their Agents, Mr Holger Rotkirch, then Director-General for Legal Affairs in the Ministry for Foreign Affairs, and Mr Arto Kosonen, Director in the same Ministry.

3. The applicant complained under Article 8 of the Convention that his right to respect for his private and family life and home was violated on account of his children's placement in public care, the decision-making procedure and the implementation of that care.

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). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. On 12 January 2001 the President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

7. By a decision of 25 January 2001 the Chamber declared the application admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties replied in writing to each other's observations.

9. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant and his wife S. have three children, K., born in 1980, A., born in 1981, and J., born in 1986. S. suffers from mental problems and is on early retirement. On 28 January 1992 the Social Welfare Office of the relevant city was contacted by a private individual raising a suspicion that the

children were being sexually abused by their parents. The matter was considered by the child welfare support group of the local Social Welfare Board (*sosiaalilautakunta, socialnämnden*) on 5 February 1992. The group included Drs H.L. and U.K. of the Central Hospital located in the same city, the school welfare officer, a nurse of the child welfare clinic, the leading psychologist of the family advice centre and the director of J.'s nursery. Since no proof of incest was found, no further action was taken.

11. From 24 to 29 February 1992 J.'s development was monitored in the children's ward of the Central Hospital. The examination revealed no signs of sexual abuse. On 16 March 1992 his nursery notified the social welfare authorities that he had shown a strong regression after having remained at home with his mother for one week following his hospital stay, and that similar regression had appeared whenever he had been spending longer periods at home.

12. Between 27 and 30 April 1992 the social welfare authorities were contacted on three further occasions with regard to the family. The information received again raised a suspicion that the mother was sexually abusing the children. It was alleged that the children were watching pornographic films, that the mother was walking around at home nearly naked and that she was using sexually explicit language when talking with and about the children. The parents were allegedly also consuming large quantities of beer on a daily basis.

13. The child welfare support group again considered the matter on 29 April, discussing for the first time the possible need to place the children in public care, and on 25 May 1992. On the same day social officials, the school welfare officer and the school nurse interviewed K. and A. together with their parents. According to the social welfare officer's entry in the Board's records, the daughters had confirmed the suspicions of sexual abuse, whereas the parents denied it. According to the applicant, the parents did not attend this interview. Moreover, A. had denied having been sexually abused by her parents, whereas K., when prompted to discuss her breasts, had stated that the mother had touched them in the sauna.

14. The parents consented to having the children undergo an examination in the child psychiatric department of the Central Hospital. The children were admitted to the Central Hospital on 25 May 1992 and their examination took place between 1 and 17 June 1992. Social welfare officials were in contact with the parents on 1 and 9 June 1992, raising the possibility of taking the children into public care. The parents objected to any such measure.

15. By emergency orders of 12 June 1992 the children were placed in public care in pursuance of section 18 of the Child Welfare Act (*lastensuojelulaki, barnskyddslagen* 683/1983) with a view to ensuring that the incest investigation could be completed. The Court has not been provided with copies of these orders which were apparently issued by the Chairman of the Social Welfare Board on its behalf. In the care orders of 24 June 1992 the Board referred to its decision of 12 June 1992, at paragraph 24 of the minutes, to issue such orders. The social welfare office's case reports contain no entry of that date recording the emergency care. According to the Government, the orders of 12 June were grounded on the need "to ensure the investigations concerning incest following the closing of department B 14 of the Central Hospital of S. and in order to place the children in the children's home of [P.]". The Government explained that as the child psychiatric examination had not been finished by that date – the day when the children's ward was closing due to the summer holidays of the staff – it was necessary to issue emergency care orders allowing for the examination to be completed and for a final assessment of the possible need for further measures.

16. On 15 June 1992 the parents were interviewed at the child psychiatric department by Dr H.L. The interview was followed through a one-way mirror by the two psychologists in charge of examining the children, a doctor and a nurse from the children's ward, the children's nurse at the children's home, a social worker and a nurse from the child psychiatric clinic as well as the social welfare official in charge of the case. The interview was not recorded. The parents were informed that clear evidence had been found of the sexual abuse of the girls, the parents' heavy drinking and domestic violence also directed against the children. The parents denied the sexual abuse and did not, in the opinion of the working group, realise the gravity of the situation.

17. In letters of 22 and 23 June 1992 M. and E. informed the Social Welfare Board of their readiness

to serve as lay helpers to the family, whom they had known for a long time. M., a foster parent herself, stated that the parents and, in particular, the applicant had been taking good care of the children. E., whose daughter had been looked after by S. occasionally, stated that the family was leading a settled and normal life. The applicant's employer attested to his steady employment and the fact that he had not been unnecessarily absent during the preceding year.

18. On 24 June 1992 the Social Welfare Board upheld the emergency orders after having heard the parents in person. The parents had also submitted written observations in which they, *inter alia*, rejected the allegations of sexual abuse contained in the documents to which they had had access. They also assured the Board that they had given up consuming beer. In addition to the parents' written observations and the submissions indicated in the preceding paragraph, the Board had before it a report by the school nurse and school welfare officer dated 29 May 1992 in which they recounted their interview with A. and K. on 25 May 1992. It had also received an opinion by the director of J.'s day care centre.

19. The Social Welfare Board reasoned as follows:

> "1. In addition to the previously appearing difficulties relating to [the parents'] mental health and financial situation, incest has been found to have been directed against the children in the family, which seriously endangers their development and health. In addition, the parents have been consuming alcohol on an everyday basis over a long period of time. In these circumstances the children are not able to receive such care and support from their parents as their age would warrant.
>
> 2. The family has been receiving assistance for domestic chores on a regular basis, in an attempt to support their survival as a family in spite of their problems. In order to support the children's development they have been provided with day care. Subsistence allowance has been granted whenever necessary, in spite of [the parents'] income. As the incest is linked to other serious problems it is not possible to ensure the children's development and health in their home by affording open-care assistance.
>
> 3. The public care and the children's placement out of their home (*sijaishuolto, vård utom hemmet*) will enable them to grow up in secure, stable and stimulating conditions, where they can reach, as best as possible, the stage of development typical for children of their age."

20. The Board ordered that the public care was to be implemented as follows:

> "The children's contact with their parents and other persons important to the children will be supported by organising meetings in the children's home, as need be. The [children's] need for out-of-home care is of long-term nature. Their first placement will be in the children's home and the possibility of providing foster care will be explored at a later stage. The children are in need of special support in the form of therapy, which can be afforded on the premises of the children's home. The overall situation of the family will be taken care of in co-operation with the child psychiatric clinic and the mental health office."

21. The Board decided to reconsider the care orders under section 17 of the Child Welfare Act within thirty days from the date of the emergency care orders, in pursuance of section 18, subsection 2, of the said Act.

22. In an opinion of 25 June 1992 Dr H.L. drew the following conclusions:

> "The investigations have shown that [K. and A.] have been sexually abused by their mother apparently for several years. The father has not been able to protect his daughters, even though aware of the abuse. The family conditions seriously endanger the psychological and physical development of all of the children (the serving of alcohol, violence). The children have to use an unreasonable part of their psychological energy on being concerned about themselves, their siblings, their parents and the family situation in general. This renders the children insecure, distressed, frightened and depressed. In my opinion the parents, even if supported by open-care assistance, are not able to secure the children's situation sufficiently and cater to their physical and psychological needs. The burden caused by the family's situation can already be seen in the disturbed psychological development of the children. In my opinion their physical and psychological development will be seriously endangered if they are returned to their biological parents. In this situation the biological parents ... also need psychiatric help and support. To this end they have been recommended to continue making appointments at the Mental Health Office. The practical arrangements for providing psychotherapy to the children will be considered in the autumn. For now, priority must be given to taking child welfare measures."

23. On 6 July 1992 the parents, heard by social workers, maintained their opposition to the public care of their children. The invitation to that meeting stated that the case-file would be available to them for consultation. On 13 July 1992 the Social Welfare Board heard the parents, who denied the

allegations concerning abuse and neglect of the children. They handed in written observations as well as a copy of J.'s patient records at the local Health Centre, arguing that they had regularly used its services in matters relating to the children's health and that nothing in the records suggested that J. had been subjected to physical violence. The parents requested that the Board hear their daughter's teachers, domestic helpers and others familiar with conditions in the family. They further requested that lay helpers or support families be appointed for the family. They objected to a categorical statement made by one social welfare official to the effect that they would not get their children back.

24. On the same day the Board maintained the public care on the grounds relied on in its decision of 24 June 1992. The parents appealed to the competent County Administrative Court (*lääninoikeus, länsrätten*) without the assistance of legal counsel. In a statement to the court M. also questioned the care orders. On 19 October 1992 the County Administrative Court, without having held an oral hearing, rejected the appeal and confirmed the public care orders with the following reasoning:

> "According to the evidence transpiring from the documentation on file, the shortcomings in the children's care and the other conditions in their home seriously jeopardise the children's health and development. The open-care assistance has proved to be insufficient and care outside the home has been deemed to be in the children's best interests. The Social Welfare Board has therefore been under an obligation to place [the children] in the care of [the Board]."

The parents appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*), requesting an oral hearing.

25. The care plan was reviewed at a meeting on 7 December 1992 attended by the parents. The parents and the children would continue to meet three times a week and psychotherapy was to be provided to the children starting the same month. The parents objected to foster care for the children and preferred to await the outcome of the appeal proceedings. According to the Government, meetings took place four times a week from 12 June to 20 November 1992.

26. The care plan was again reviewed on 26 February 1993 at a meeting attended by the applicant. The children and the parents had continued to meet three times a week and the children had been on three weekend leaves to visit relatives. The possibility of placing the children in foster care was again raised but the applicant remained opposed to such care, preferring to await the outcome of the appeal. He was told that the Supreme Administrative Court would not necessarily reverse previous decisions and that the foster care needed to be planned at a sufficiently early stage. Moreover, on 17 February 1993 the children themselves had been consulted about their possible foster care.

27. On 16 March 1993 the Supreme Administrative Court rejected the parents' appeal without holding an oral hearing and without adducing further reasons.

28. The care plan was again reviewed on 5 April 1993 in the presence of the parents. They were told a decision now had to be made as to whether the children should remain in the children's home or be placed in a foster family. When consulted by a social welfare official the children had preferred to be placed in a foster family, "if they could not return home". The applicant stated he would pursue his attempts to have them returned home. Meanwhile, they should stay in the children's home. The applicant was told that even if the children were placed in a foster family, they would continue to see their biological parents, "although naturally not as frequently". The meeting was adjourned at the applicant's request until 13 April 1993. At that meeting the parents were informed that a foster family had already been found and that the children had repeated their willingness to move there, "since their return to their [original] home was not possible". The parents were informed that the Social Welfare Board would receive a proposal for transferring the children into the foster family, since such care was in many respects a better alternative than care in an institution, considering that the public care was going to continue and given the children's best interests.

29. At a further meeting on 31 May 1993 the parents were informed that between 1 July 1993, when the children would be transferred to the foster family, and October-November 1993 they would not be able to meet with the children. Subsequently, four meetings a year would be organised. According to the care plan of 1 June 1993, the temporary absence of meetings was aimed at ensuring a peaceful implementation of their transfer and adaptation to their new family, school and nursery. The care plan was to be reviewed at the end of 1994 or earlier, if necessary.

30. On 16 June 1993 the Social Welfare Board decided to transfer the children into foster care and adopted the updated care plan. It noted that the family conditions had been deemed seriously to endanger the children's development and, as the matter concerned incest, their future health and development could only be secured by long-term foster care. Placing them in a foster family was thus in their best interests. The Board had regard to a written statement by the director of the children's home and a joint statement by the leading social welfare official, the aforesaid director and the children's individual nurses.

31. The applicant appealed, seeking to have the public care revoked or, in the alternative, to have meetings organised more frequently and to have the care plan reviewed at the latest in December 1993. On 12 October 1993 the County Administrative Court declined to examine the merits of the appeal, as it was not competent to examine, in the first instance, the request for termination of the care. The adoption of the care plan had not comprised any binding decision on the applicant's right to see his children. Any access restriction had to be ordered separately by the Social Welfare Board pursuant to section 25 of the Child Welfare Act. The expected time-limit for reviewing the care plan had the character of a guideline, since under the law such a plan was to be reviewed whenever necessary. The County Administrative Court relied on sections 11, 20, 24 and 25 of the Child Welfare Act and on section 4 of the Child Welfare Decree. The applicant did not appeal further to the Supreme Administrative Court in respect of the decision to transfer the children into foster care.

32. On 1 November 1993 the applicant requested that the public care be terminated. On 19 January 1994 the Social Welfare Board refused the request. It found that continued public care was in the best interests of the children, considering "the difficulties relating to the mental health and the use of alcohol as well as the incest directed against the children", which had formed the background to their placement in public care. In a meeting with the leading social welfare official on 8 December 1993 and in their written statements of the same day K. and A. had stated their wish to remain in the foster family. J. had not been heard due to his young age. The Board also had regard to Dr H.L.'s opinion of 25 June 1992. Moreover, in a written statement of 30 December 1993 two teachers of J.'s nursery had attested to his gain of self-confidence. The foster parents noted that the children were adapting to the foster family. It was therefore in the children's best interests to remain there. The Board also had regard to a one-page background summary by leading social worker P.V.

33. In his appeal the applicant stated, *inter alia*, that he would move away from his wife and request sole custody of the children. In its opinion to the County Administrative Court the Social Welfare Board maintained its view that the biological parents' living situation had not changed significantly. Terminating the public care would therefore not be in accordance with the children's best interests.

34. In an entry into the case-notes on 18 April 1994 social worker P.V. wrote that the divorce proposed by the applicant would change nothing, as the children had been placed in long-term care, "up to their adulthood, in my opinion".

35. On 6 June 1994 the County Administrative Court rejected the appeal with the following reasoning:

> "According to the evidence transpiring from the documentation on file, the County Administrative Court considers that the need for public care outside the [children's original] home still exists. The Social Welfare Board has therefore been under an obligation to maintain the public care of the children."

36. On 30 November 1994 the Supreme Administrative Court rejected the applicant's further appeal without adducing further reasons.

37. According to the care plan adopted on 28 February 1997 the biological parents had not, at a meeting on 17 January 1997, expressed any wish to meet the children more frequently. On 10 April 1997 the leading social welfare official invited the parents to clarify their wishes in respect of meetings with the children. The parents, now represented by counsel, requested that unsupervised meetings with their children be allowed in their home every weekend during one day. They stressed that the access restrictions should be based on the circumstances at that time and not on the events and allegations described in Dr H.L.'s opinion of 1992. K. and A. wished to have at least six meetings year, whereas J. and the foster parents objected to any increase.

38. On 6 May 1997 the local Basic Welfare Board (*perusturvalautakunta*, *grundtrygghetsnämnden*; previously the Social Welfare Board) maintained the access restriction but allowed six supervised visits a year. The restriction was to remain in force until the respective children had turned 18, i.e. until 8 May 1998, 30 May 1999 and 14 August 2004. The Board recalled the incest as established in Dr H.L.'s opinion of 1992 and also had regard to the children's own opinions.

39. The parents' appeal was rejected by the County Administrative Court on 17 October 1997, except with regard to the access restriction applicable to J., which was ordered to remain in force only until 30 May 1999. The parents were refused cost-free proceedings, as domestic law did not provide for such an award in respect of access restrictions.

40. On 8 May 1998 K. reached the age of majority and her public care ceased pursuant to section 20 of the Child Welfare Act.

41. According to the care plan adopted on 14 January 1999, A. and J. and the biological parents would be allowed to meet three times up to the end of May 1999.

42. According to the care plan adopted on 7 May 1999, J. and his biological parents would be allowed to meet twice a month up to the end of 1999. As from the end of August 1999 the meetings would no longer be supervised.

43. On 30 May 1999 A. reached the age of majority and her public care ceased.

44. According to the care plan adopted on 31 January 2000, J. and his biological parents would be meeting once a month. The plan was preceded by several consultations with the biological and foster parents. The applicant had requested that meetings be allowed with the same frequency and that every other meeting take place over a weekend in the home of the biological parents, whereas J. had favoured one meeting a month involving no overnight stay.

45. On 28 February 2000 the biological parents again requested the Social Welfare Board to terminate J.'s public care. On 13 March 2000 S. informed a social welfare official that she was no longer in therapy. According to a case entry, she was told that J. now needed to undergo a child psychiatric examination. The request for a termination of J.'s care was apparently refused at a later date.

46. No police investigation was conducted into the suspected incest or sexual abuse of the applicant's children, and no request to that end was made by the social welfare authority.

II. MATERIAL OBTAINED BY THE GOVERNMENT FOR THE PURPOSE OF THE CONVENTION PROCEEDINGS

47. In support of their observations to the Court the Government have adduced extracts from the Mental Health Office's patient records concerning the applicant and his wife. The extracts contain social welfare official P.-N.J.'s summaries of their statements during some thirty visits which they paid to the Office, either together or separately, between 17 June 1992 and 19 August 1996. One summary is written by R.L., a specialised medical doctor. The summaries also contain an evaluation of certain statements as well as of the parents' conditions both prior to and after the taking into care of their children.

48. The material submitted by the Government also feature extracts from A.'s patient records at the Central Hospital, dated in June and September 1993 and containing statements by her therapist P.L.

49. The Government have also relied on notes drawn up in November 1997 by a nurse of the children's home after she had supervised a meeting between the children and their biological parents.

50. The Government have furthermore produced a report by Dr H.L. on 4 September 1996 according to which the out-of-home placement of the children had been successful and they were no longer in need of therapy. The circumstances were nevertheless not such as to support a termination of the public care.

51. In a further report dated 25 October 2000 Dr T.S., a specialist in child psychiatry at the Central Hospital of S., concludes however, *inter alia*, that J.'s foster parents are able to see his need for therapy.

52. Finally, the Government have also adduced information obtained from the municipal legal aid office and relating to the applicant's contacts with that office in 1994.

III. RELEVANT DOMESTIC LAW

A. Taking a child into care and substitute care

53. The relevant legislation is outlined in the Court's judgment in *K. and T. v. Finland* ([GC], no. 25702/94, §§ 94-136, ECHR 2001-VII). Those and further provisions of particular relevance to the present case are described below.

54. When the need for child welfare is caused primarily by inadequate income, deficient living conditions or lack of housing, or when these factors constitute a serious obstacle to the rehabilitation of a child and family, local authorities must provide adequate financial support without delay, and improve the family's housing conditions. Open-care assistance includes both general support measures in accordance with the Social Welfare Act (*sosiaalihuoltolaki*, *socialvårdslag* 710/1982) and specific assistance, *inter alia* by appointing a lay helper or a support family, by providing adequate therapy and by assisting the child in his or her personal needs through financial and other support. The assistance shall be provided in co-operation with the child and its parents or other carers (section 13 of the Child Welfare Act).

55. According to section 16 of the Child Welfare Act, the Social Welfare Board shall take a child into care and provide substitute care for him or her out of the home if (a) the child's health or development is seriously endangered by lack of care or other conditions at home, or if the child seriously endangers his or her health and development by abuse of intoxicants, by committing an illegal act other than a minor offence, or by any other comparable behaviour, (b) the measures of assistance in open care are not appropriate or have proved to be inadequate; and (c) substitute care is considered to be in the best interests of the child. Substitute care shall be provided without delay where it is needed and is in the best interests of the child (section 9, subsection 2). The public care ceases when the child turns 18 (the age of majority) or marries (section 20).

56. If a child is in imminent danger for a reason stated in section 16 of the Child Welfare Act or is otherwise in need of an urgent care order and foster care, the Social Welfare Board may take him or her into care without submitting the decision to the County Administrative Court for prior approval (section 18). An emergency care order shall expire within fourteen days of the decision, unless referred for reconsideration under section 17 of the Child Welfare Act. An ordinary care order pursuant to section 17 must be issued within thirty days, or on special grounds within sixty days, of the emergency order. Both ordinary and emergency care orders may be appealed to the administrative courts.

57. The Social Welfare Board shall terminate the public care when there is no longer any need for such care and an out-of-home placement, provided such termination is clearly not contrary to the best interests of the child (section 20).

58. In accordance with Section 56 of the Social Welfare Act the social welfare authorities are entitled to obtain the necessary information from other authorities in the performance of their work, without prejudice to the obligation to respect confidentiality.

59. If, in the course of his or her activities, an employee or elected official in health care, social welfare, education, the police or a parish finds out that a child is in evident need of family-oriented or individual child welfare, he or she shall notify the Social Welfare Board without delay. Any other person may also contact the Social Welfare Board to this end (section 40 of the Child Welfare Act).

60. The municipality may appoint a support group to assist the Social Welfare Board in child welfare matters. The group shall consist of representatives of the social authorities, experts on children's growth and development as well as other specialists (section 42 of the Child Welfare Act).

B. Participation in the decision-making

61. The child's custodians, biological parents and *de facto* carers shall be heard in respect of a proposal to issue or revoke a public care order or to place a child outside his or her original home. They shall further be notified of the decision taken (section 17, subsection 1, of the Child Welfare Act, as

amended by Act no. 139/1990). The hearing procedure is governed by the Administrative Procedure Act (*hallintomenettelylaki, lag om förvaltnings-förfarande* 598/1982). Under section 15 of the said Act a party shall be afforded the opportunity to reply to any claims put forward by others as well as to any evidence that may affect a decision to be taken. The Administrative Procedure Act does not lay down any minimum period of time which a party shall have at his or her disposal for preparing such a reply. A matter may be decided without a preceding hearing of a party *inter alia* if such a hearing would be manifestly unnecessary, would jeopardise the purpose of the decision or if the decision cannot be postponed. Section 17 of the Administrative Procedure Act requires that the competent authority duly investigate the matter before it and ensure the equality of the parties.

62. A child who has attained the age of 15 is entitled to state his or her opinion in child welfare matters. A child who has attained the age of 12 is entitled to be heard as stipulated in section 15 of the Administrative Procedure Act; he or she is also entitled to demand the social services and other support measures (section 10, subsection 2, of the Child Welfare Act).

C. Right of access and other contact

63. According to section 24 of the Child Welfare Act, a child who is being cared for outside his or her original home shall be ensured those important, continuous and secure human relations which are important for his or her development. The child is entitled to meet his or her parents and other close persons and to keep in touch with them (subsection 1). The Social Welfare Board shall support and facilitate the child's contacts with his or her parents and other close persons (subsection 2).

64. According to section 25 of the Child Welfare Act and section 9 of the Child Welfare Decree (*lastensuojeluasetus, barnskyddsförordning* 1010/1983), the Social Welfare Board or the director of a children's home may restrict the right of access of a child in foster 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 if (b) such a restriction is necessary for the safety or security of the parents, or the children or staff in the children's home. The restriction shall be limited in time. It shall mention the persons whose rights are being restricted, the kind of contacts concerned by the restriction and the extent of the restriction.

65. Any decision concerning public care, the transfer of a child into foster or other care outside his or her home, access restrictions and isolation of the child shall be drawn up on a form approved by the Ministry for Social Welfare and Health Affairs (section 14 of the Child Welfare Decree, as amended by Decree 421/1992 which entered into force on 1 July 1992).

D. Care plan

66. The care plan to be drawn up in respect of a child in public care shall mention (a) the purpose and objectives of the placement; (b) what kind of special support will be organised for the child, for the persons in charge of the child's care and upbringing and for the child's parents; (c) how the child's right of access to its parents and other persons close to the child will be organised; and (d) how after-care is going to be organised. According to section 4 of the Child Welfare Decree, the care plan shall be elaborated in cooperation with those involved.

E. Appeals

67. A county administrative court's decision in respect of a public care order, the transfer of a child into foster care or the termination of public care may be appealed further to the Supreme Administrative Court. Other decisions of a county administrative court relating to child welfare measures cannot be so appealed (section 37 of the Child Welfare Act).

F. Legal assistance

68. According to the Act on Cost-Free Proceedings (*laki maksuttomasta oikeudenkäynnistä, lagen om fri rättegång* 87/1973), as in force at the relevant time, a physical person who was a party *inter alia* to a case before an administrative court involving the taking into public care of a child, the child's out-

of-home placement or the termination of such care, could be granted cost-free proceedings in full or in part if he or she could not without difficulty meet all costs and expenses. No grant was to be made, however, if the case was of minor importance to the party (sections 1-2).

69. The grant of cost-free proceedings covered, *inter alia*, the fees of the legal counsel whom the competent court had appointed or approved under the 1973 Act. If a party who had been granted cost-free proceedings was unable to defend his or her rights and interests in an appropriate manner without the assistance of counsel, the court was under an obligation to appoint one (sections 7 and 10).

70. The Act on Cost-Free Proceedings excluded from its scope proceedings concerning, for example, an access prohibition issued on the basis of the Child Welfare Act.

71. Under the 1973 Public Legal Aid Act (*laki yleisestä oikeusavusta, lagen om allmän rättshjälp* 88/1973), as in force at the relevant time, a person who, given his or her financial situation, could not without difficulty afford to seek legal assistance, was entitled to request free assistance from the municipal legal aid office, provided the matter was not of minor significance or abusive in nature (sections 1-2 and 14). If the person qualified for such assistance in full or in part but the local legal aid office in question was unable to provide it in exceptional cases, for example due to the particular nature of the matter or due to a lack of confidence between the applicant and the local legal aid counsel, the applicant was to be directed to a private practitioner or to a legal aid office in another municipality. The fees and costs incurred on account of such a grant were to be covered in part or in full by the municipality in which the applicant was resident (sections 13-14 and 17).

72. The municipal legal aid board's decisions could be appealed against in accordance with the rules in the 1976 and 1995 Municipalities Acts (*kunnallislaki, kommunallag* 953/1976 and 365/1995) on the procedure for challenging decisions of municipal organs (section 30 a of the Public Legal Aid Act, as in force up to 1 January 1997).

73. The Public Legal Aid Act did not exclude the provision of legal aid in the proceedings before a social welfare board relating to the public care of a child or related access restrictions.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 8 OF THE CONVENTION

74. The applicant complained that his right to respect for his private and family life and home was violated on account of his children's placement in public care, the decision-making procedure, the implementation of the care and the failure to terminate it.

75. Article 8 of the Convention reads, as far as relevant, as follows:

> "1. Everyone has the right to respect for his private and family life, home ...
>
> 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. The taking of the applicant's children into public care

1. Submissions of the parties

(a) The applicant

76. The applicant complained that the local social welfare authority and the administrative courts failed to examine the conditions in his home in a thorough and unprejudiced manner when issuing and upholding the care orders of 1992. The social authorities never tried to keep the family together by providing it with sufficient open-care assistance or by allowing it to accept the help offered to them by

other families. No representative of the Board ever came to verify the family conditions on the spot and the children were not properly heard. From the moment when the suspicions of incest or sexual abuse had been voiced by sources unknown to the family, the social welfare authority consistently considered the sexual abuse an established fact, even though the parents denied it, the suspicions were never corroborated and a police investigation never even requested.

77. Prior to the public care proceedings no deficiencies had been identified in the care and upbringing of the children. The social authority's prior contacts with the family had concerned other matters such as subsistence allowance. The case-notes adduced to the Court show that between January 1988 and February 1992 social workers paid only eight visits to the applicant's home. None of the notes from those visits contained any negative observation relating to his and his wife's life-style and capabilities, and their use of alcohol was not mentioned at all. Due to the mother's mental illness, her capacity for verbal communication was limited and her behaviour might have appeared child-like. When the public care proceedings begun the parents stopped consuming alcohol.

78. The expectation that the children's well-being would improve if they were placed in public care was not a sufficient ground for the purposes of Article 8 § 2 of the Convention. The care orders were issued and upheld solely by referring to certain provisions of the Child Welfare Act or by reproducing their wording. The applicant's submissions, including his request to have witnesses heard and his request for open-care assistance in the form of psychological expertise, were not discussed by the Social Welfare Board or the County Administrative Court in their decisions which, moreover, contained no assessment whatsoever of the evidence adduced.

79. In the applicant's view the care orders of 1992 were essentially based on the hasty conclusions drawn by Dr H.L., who had examined the children during a few days only, who had interviewed the biological parents only once and who had never set foot in their home. Nor had he contacted the daughters' teachers, the domestic helpers, friends of the family or others in their closest network. Yet no other expert opinion was sought by the Social Welfare Board or the administrative courts – not even from the local health care centre, even though it was widely known that there had been many misinterpretations of children's behaviour when investigating suspicions of incest or similar abuse.

80. The children's mental distress, as noted by Dr H.L, was a result of their unexpected removal from their home and their separation from their parents. In his opinion of 25 June 1992 Dr H.L. further failed to weigh his findings against the opinion of the director of J.'s nursery, according to whom the applicant appeared to be the centre of J.'s life. The interview with the parents on 15 June 1992 was carried out in a humiliating manner affecting their behaviour during the interview.

81. In addition, Dr H.L. could not be considered an objective expert, as he had participated in the child welfare support group which had begun preparing the care orders even before the child psychiatric examination had commenced. Even before it had been completed, the parents were told that their children would be taken into public care. When K. was heard on 4 July 1992 the possibility of her returning home was not presented as an option. In its care orders of 13 July 1992 the Social Welfare Board stated, without convincing reasons, that the children would be in need of long-term public care. The Board found that therapy "could" be provided in the children's home but failed to explain why it would have been impossible to provide such therapy if the children had returned home. Moreover, even if they were considered to be in urgent need of therapy, thus necessitating their placement in the children's home and the access restrictions, their therapy began only in December 1992.

82. It was the applicant's view that in examining whether sufficient safeguards were afforded to him during the decision-making the Court should have regard only to the circumstances obtaining at the relevant time and only in light of the reasons which the authorities and courts relied on at that time. Had the applicant and his wife been charged in criminal proceedings, they would have been afforded all of the guarantees which form part of a fair trial and their innocence would have been presumed during the proceedings. Instead they were deprived of the procedural safeguards inherent in Article 8 throughout the various sets of care proceedings and the burden of proving their innocence in respect of the suspected sexual abuse was shifted to them. They had to defend themselves against general allegations by anonymous persons, were unable to cross-examine Dr H.L. or even to obtain a counter-expertise. The

lack of any hearing before a court also deprived them of their possibility of examining witnesses of their own choosing.

83. Finally, the applicant submitted that no social worker or court ever advised the parents to seek legal representation. They could not afford to hire a lawyer at their own expense. The Act on Cost-Free Proceedings did not provide for the possibility of seeking free legal assistance for the purpose of the proceedings before the Social Welfare Board. The administrative courts failed to appoint a lawyer *ex officio*. As the municipal legal aid counsel had been appointed by the applicant's *de facto* adversary, the applicant did not trust, and could not be expected to have appointed, a counsel from that office to assist him. To illustrate his reasons for distrusting counsel of that office, the applicant pointed out that then Government had adduced to the Court confidential communications between him and the municipal legal aid office in 1994, which in itself amounted to a breach of the lawyer-client privilege.

(b) The Government

84. The Government maintained that there had been no violation of Article 8 as a result of the initial taking into care of the applicant's children. The interference with his right to respect for his family life was based on various provisions of the Child Welfare Act and the related decree which are intended to protect the best interests of children. The placement of the applicant's children in public care was proportionate to that aim and thus necessary in a democratic society as required by Article 8 § 2. The public care orders were grounded and upheld on the basis of a large number of reports by social authorities and doctors, all concluding that the children had to be taken into care.

85. The Government stressed that when issuing a decision relating to child welfare the social authorities are obliged to use an official form on which they must indicate the facts which seriously endanger the child's health and development. The decision must further include an account of the open-care measures so far taken and explain why such assistance is no longer appropriate, adequate or possible. Finally, the decision must explain how the public care will contribute to the best interests of the child in the future. In practice, a care order does not usually include all negative details about the biological family. By relying, as in the applicant's case, mainly on the most relevant grounds and by providing other details as necessary in order to convince the decision-making officials of the necessity of the measure, the social authority sought to ensure a working relationship between the children, the biological parents and the foster parents which would be based on their and the authorities' mutual trust.

86. The Government furthermore referred to case-notes drawn up by P.-N.J. of the Mental Health Office after meeting with the biological parents between June 1992 and February 1996. In the Government's view the applicant admitted to that official that his children had been subjected to incest. The Government also referred to a psychiatrist's case-notes from sessions with the applicant's daughter A. in 1993 as well as to notes drawn up by a nurse of the children's home after meeting with the children in 1997 (see paragraphs 47-49).

87. The Government were furthermore of the view that the applicant had been sufficiently involved in the decision-making process leading to the issuing of the initial care orders as well as at the appeal stage. The procedural guarantees inherent in Article 8 were not as far-reaching as those of Article 6. Already when the initial care orders were being considered he and his wife were advised to contact the municipal legal aid office. They failed to do so, choosing instead to seek the help of P.N.-J. of the Mental Health Office who assisted them with drafting various submissions. On 25 May 1992 social officials, the school welfare officer and the school nurse interviewed the parents and the children together. In two meetings with the biological parents in early June 1992 officials of the Social Welfare Board raised the possibility of placing the children in public care, which the parents opposed. The parents were further heard by the Social Welfare Board prior to its decisions of 24 June and 13 July 1992 and were provided with the complete material on which the Board based its decisions. At any rate, as the family conditions had been monitored since 1987 the authorities were well aware of the views and interests of the parents. The health care authority had expressed concern about J.'s development from his first year and as he grew older a significant delay had been observed in the development of his faculty of speech and overall progress.

2. The Court's assessment

(a) Preliminary considerations

88. Before examining the merits of this complaint, the Court notes that the Government have sought to justify the public care of the applicant's children in part by relying on notes which an official in the Mental Health Office had drawn up after having met with the applicant and his wife on numerous occasions between 1992 and 1996. The Government have also adduced various extracts from A.'s patient records of 1993 as well as information obtained from the municipal legal aid office and relating to the applicant's contacts with that office in 1994.

89. The Court is in principle not prevented from taking into account any additional information and fresh arguments in determining the merits of a complaint, 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 Contracting State. Such "new" material takes the form either of further particulars as to the facts underlying the complaints declared admissible or of legal argument relating to those facts. Accordingly, the Court is not precluded from taking cognisance of such material in so far as it is judged to be pertinent (see the aforementioned judgment in *K. and T. v. Finland*, § 147).

90. At the same time, however, it cannot be the Court's task to examine a grievance in light of information which did not appear in the file available to the authorities, the courts and – in normal circumstances – the parties at the time when they reached the decisions which this Court has been called upon to scrutinise. Therefore, in so far as the various material which the Government have relied on to justify the continued public care of the applicant's children was not so available to the decision-making bodies and the parties to the proceedings, it cannot be deemed pertinent for the purposes of examining whether Article 8 has been violated as a result of the taking into care nor for that matter, as a result of its continuation.

91. The Court notes, moreover, that the aforementioned material was obtained by the Government for the purpose of corroborating their observations to the Court, but without seeking the applicant's or his daughter's consent. Inclusion of, and reliance on, such material which any party might present to this Court without the consent of the persons concerned might discourage parents, children and others affected by a public care order or any other interference with their Convention rights, to seek psychiatric or medical treatment with the resultant legitimate expectation that such treatment would be covered by the appropriate secrecy rules.

(b) Merits of the complaint

92. The Court recalls that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life and that domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8. An interference with that right constitutes a violation of this provision 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". 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.

93. In determining whether such a "necessity" existed in the given circumstances at the given time the Court will consider whether the reasons adduced to justify these measures were relevant and sufficient for the purpose of paragraph 2 of Article 8 of the Convention. 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, often at the very stage when care measures are being envisaged or immediately after their implementation (see *K. and T. v. Finland,* cited above, §§ 151, 154 and 173).

94. It follows from the aforementioned 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. The wide 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 the importance of protecting a child in a situation which is assessed to seriously threaten his or her health or development and, on the other hand, the aim to reunite the family as soon as circumstances permit (see *K. and T. v. Finland,* cited above, §§ 154-155 and 173).

95. The Court considers it appropriate to examine the emergency care orders and the normal care orders separately as they were the product of separate decision-making processes, even though one measure followed immediately after the other. When an emergency care order has to be made, it may not always be possible, because of the urgency of the situation, to associate fully in the decision-making process those having custody of the child. Nor 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. Whatever the urgency of the matter, it is for the respondent State to establish that a careful assessment of the impact of the proposed care measure on the parents and the children, as well as of the possible alternatives to taking the children into public care, was carried out prior to placing the children in emergency care (cf. *K. and T. v. Finland,* cited above, §§ 165-166).

(i) The emergency care orders of June 1992

96. It is common ground that the placement of the applicant's three children in public care interfered with his right to respect for his family life. The Court notes that according to section 16 of the Child Welfare Act, the Social Welfare Board is under an obligation to take a child into public care *inter alia* if the child's health or development is seriously endangered by lack of care or other conditions at home, provided that open-care assistance is not appropriate or has proved to be inadequate and on the further condition that public care is considered to be in the best interests of the child. Section 18 of the Child Welfare Act provides for the issuing of an emergency care order if the child is deemed to be in imminent danger for a reason stated in section 16 or is otherwise in urgent need of public care (see paragraphs 55-56).

97. The Court has not been provided with the emergency orders of 12 June 1992 and notes that the social welfare office's case reports contain no entry recording the emergency care commencing on that date. The Court notes however that a reference to those orders appeared in each of the Social Welfare Board's decisions of 24 June 1992 in which it upheld the orders for a maximum period of thirty days (see paragraphs 18-20). Moreover, according to their wording – as reproduced by the Government and not contested by the applicant – the orders of 12 June were grounded on the need to ensure the completion of the child psychiatric examination following the closing of the children's ward.

98. The Court notes that the emergency orders of June 1992 were issued in light of findings which, in the Social Welfare Board's opinion, amounted to a discovery of incest directed against the applicant's children, in addition to the family's problems relating to their mental health and finances. Those orders further noted that the parents had been consuming alcohol daily over a longer period of time. The open-care assistance which the family had been receiving was no longer deemed possible in view of the conclusion that there had been incest (see paragraph 19). The children were considered to be in need of long-term care outside their home. Taking the children into public care would enable them to grow up in a secure, stable and stimulating environment, where they could reach the stage of development typical for children of their age.

99. Against the aforementioned background the Court accepts that the emergency orders of June 1992 met the requirements under sections 16 and 18 of the Child Welfare Act in that they provided a

sufficiently detailed account of the open-care measures so far taken and adequately described why such assistance was no longer possible. Accordingly, the interference with the applicant's family life in the form of the emergency orders was "in accordance with the law".

100. Accepting also that the interference in question aimed at protecting the children's health and rights, the Court must next determine whether the social welfare authorities and the administrative courts remained within their margin of appreciation in ordering and confirming the emergency care orders of June 1992 and in refusing the applicant's appeals.

101. The Court has already noted that when the children were removed from their home by virtue of the emergency orders the child psychiatric examination requested in light of the incest suspicions had not yet been completed. Keeping in mind that the authorities' primary task was to safeguard the interests of the children, the Court can accept that the Social Welfare Board could reasonably consider that placing the applicant's children in public care for some time was in their best interests, in anticipation of the outcome of the child psychiatric examination and the conclusions to be drawn in light of its findings.

102. The Court considers however that in the present case it cannot satisfactorily assess whether the reasons given for the emergency care orders of June 1992 were "relevant" and "sufficient" for the purposes of Article 8 § 2 without at the same time determining whether the applicant was involved in the decision-making process to a degree sufficient to provide him with the requisite protection of his interests.

103. In the Court's view it follows from a simultaneous consideration of the aforementioned two requirements inherent in Article 8 – that a care order be based on "relevant" and "sufficient" reasons and that the parent be entitled to participate adequately in the decision-making – that any order related to the public care of a child should, firstly, be capable of convincing an objective observer that the measure is based on a careful and unprejudiced assessment of all evidence on file, with the distinct reasons for the care measure being stated explicitly. The reasoning adopted should reflect the careful scrutiny which the competent organs can be expected to carry out in a matter of such magnitude by weighing the various evidence militating in favour and against the care measure.

104. Secondly, Article 8 requires that the decision-making authorities and courts provide such detailed reasons as to enable the parent or custodian to participate in the further decision-making by appealing their decisions adequately. A mere reference to "documentation on file" or to "information" contained in appendices to a decision will not provide such a party to the proceedings with sufficient guidance for the purpose of a possible appeal and thus not involve him or her sufficiently in the decision-making process. Nor does such a vague description of the decisive considerations provide sufficient guidance to the appellate bodies as to whether the care measure may reasonably be considered to have been based on "relevant" and "sufficient" reasons (cf. *Olsson v. Sweden (no. 1)*, no. 10465/83, Commission's report of 2 December 1986, Series A no. 130, p. 56, § 153).

105. Moreover, this Court has found it essential that a parent be placed in a position where he or she may obtain access to information which is relied on by the authorities in taking measures of protective care. A parent may claim an interest in being informed of the nature and extent of the allegations of abuse made by his or her child or by persons outside the family. This is relevant not only to the parent's ability to put forward those matters militating in favour of his or her capability in providing the child with proper care and protection but also to enable the parent to understand and come to terms with traumatic events affecting the family as a whole. Situations may arise where a parent can claim no absolute right to obtain disclosure of, for example, a child's statement, if a careful consideration leads to the conclusion that such disclosure could place the child at risk. As a general rule, however, the positive obligation on the Contracting State to protect the interests of the family requires that all case-material be made available to the parents concerned, even in the absence of any request by them (see *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, §§ 78-83, ECHR 2001-V, and *P., C. and S. v. the United Kingdom*, no. 56547/00, §§ 136-138, ECHR 2002-...).

106. The applicant has essentially complained that the Social Welfare Board and the administrative courts failed to ensure his ability to present adequate arguments and expertise against the taking of his children into public care. At any rate, in issuing and upholding the care orders solely by referring to

certain provisions of the Child Welfare Act or by reproducing their wording, the Social Welfare Board and the courts failed in the applicant's view to assess, in an unbiased and explicit manner, the various evidence militating against the taking into care. As a result the parents were expected to prove their innocence, even though they were not assisted by legal counsel and, at any rate, could not defend themselves against unspecified allegations by anonymous persons.

107. The Government, for their part, have explained that under Finnish law a care order must include an account of the open-care measures so far taken, describe why such assistance is no longer appropriate, adequate or possible, and explain how the public care will contribute to the best interests of the child in the future.

108. The Court notes that even though the orders of June 1992 were issued under the emergency procedure provided for by section 18 of the Child Welfare Act, the possibility of taking the children into public care had been considered since 29 April 1992 (see paragraph 13). The situation was therefore not an emergency in the sense of being unforeseen.

109. The Court has already accepted (see paragraph 99) that the emergency orders of June 1992 met the requirements of the Child Welfare Act in that they provided a sufficiently detailed account of the open-care measures so far taken and adequately described why such assistance was no longer possible. Given that the Social Welfare Board and its officials had well over a month at their disposal to prepare the emergency orders, the Court nevertheless entertains some doubts as to whether the orders can be said to have spelled out in an adequate manner the particular evidence which the Social Welfare Board found decisive in ordering the removal of the children from the applicant's home.

110. It is true that in the emergency care proceedings the applicant and his wife acted without the assistance of legal counsel, the Act on Cost-Free Proceedings excluding the possibility of seeking assistance by a court-appointed private practitioner for the proceedings before the Social Welfare Board (see paragraph 68). The Court notes, however, that the applicant was advised to seek the assistance of the municipal legal aid office which, under the Public Legal Aid Act, might have directed him to a private practitioner or to a legal aid office in another municipality (see paragraphs 71 and 73). It is undisputed that the applicant made no contact with the local legal aid office until 1994, apparently when seeking to have the ordinary care orders revoked (see paragraph 52).

111. The Court notes that on 25 May 1992 social workers, the school welfare officer and the school nurse interviewed the parents together with their two older children K. and A. On 5 June 1992 they were interviewed by Dr H.L., while their behaviour was being monitored by a number of other specialists from another room as they were being informed of the incest suspicions against them. Social workers had also been in contact with the parents on 1 June 1992 and a further contact took place on 9 June 1992. On those occasions the possibility of taking the children into care was discussed and the parents objected to any such measure. On 24 June 1992 the parents were formally heard before the Social Welfare Board when it was considering whether to uphold the emergency orders issued meanwhile, i.e on 12 June 1992.

112. The Court has already acknowledged that when an emergency care order is being prepared, it may not always be desirable to associate fully in the decision-making process those having custody of the child, particularly if those having custody of the child are seen as the source of an immediate threat to the child (see paragraph 95). Given that the social welfare authority and the specialists consulted by it strongly suspected that the children had been sexually abused, the Court can accept that the applicant was not at that stage informed of the identities of the persons from whom the suspicion had been originating. It has not been alleged that actual material on the case-file was not made available to the applicant. Nor did the fact that the incest suspicion was not at that stage being investigated by the police preclude the social authorities from taking the action they deemed necessary under the Child Welfare Act.

113. In any case, the written observations which the parents submitted to the Board for its meeting on 24 June 1992 indicate that the applicant had been made aware of the nature of the suspicions against them. He was able to respond to the allegations of sexual abuse both in writing and orally before the Social Welfare Board issued the care orders of that date.

114. Against this background the Court can accept that the emergency orders of June 1992 were based on a sufficiently careful assessment of the impact of the initial care on the parents and the children, as well as of the possible alternatives to taking the children into public care. Accordingly, the Court can accept that the emergency orders were grounded on "relevant" and "sufficient" reasons.

115. The Court can also accept that the applicant was sufficiently involved in the decision-making, given the circumstances prevailing up to 24 June 1992. In particular, even assuming that he could not, in the circumstances at hand, have been required to make use of the services of his local legal aid office for the purposes of his proper involvement in the decision-making process, it has not been shown that the authorities and the courts failed to take all necessary steps to render his involvement in the decision-making process as effective as possible.

(ii) The ordinary care orders of 13 July 1992

116. The Court accepts that the ordinary care orders issued on 13 July 1992 were "in accordance with the law" and aimed at protecting the children's health and rights for the purposes of Article 8 § 2.

117. Turning to the question whether those orders were based on "relevant" and "sufficient" reasons and whether the applicant was able to participate adequately in the decision-making process, the Court notes that before issuing the orders the Social Welfare Board heard the applicant and his wife anew. In their oral and written submissions they continued to deny the various allegations concerning abuse and neglect of the children. They also submitted a copy of J.'s patient records at the local health centre which, in their view, in no way suggested that he had been subjected to physical violence. The parents finally requested that the Board hear their daughters' teachers, the domestic helpers and others familiar with conditions in the family, and that lay helpers or support families be appointed for the family.

118. In sum, the Social Welfare Board had before it a wealth of various evidence and submissions which in part spoke in favour and in part spoke against the issuing of ordinary care orders. The Board nevertheless issued those orders on exactly the same grounds as those on which it had relied in its emergency orders of 24 June 1992. In dismissing the parents' appeal the County Administrative Court relied on "the evidence transpiring from the documentation on file", "the shortcomings in the children's care" and "the other conditions in their home" which had seriously jeopardised the children's health and development. The Supreme Administrative Court rejected the parents' further appeal without adducing any reasons of its own (see paragraph 27).

119. The Court notes that whereas the Social Welfare Board maintained that the applicants' children had been subjected to incest in their home, no criminal investigation into those suspicions was opened during the ordinary care proceedings. The Court would not suggest that a public care measure should always be reconsidered in the absence of a judicial finding of guilt in respect of a parent suspected of having abused the child in question (cf. *L. v. Finland*, no. 25651/94, § 127, 27 April 2000, unreported). The Court does consider, however, that the continued absence of a conclusive judicial finding of such guilt – or innocence – increases the onus on the social authorities and the courts reviewing the care measure to produce sufficient justification for maintaining it and to continue to involve the parent in question sufficiently in the decision-making process. That positive obligation on the part of the authorities includes sharing, with the parent or his or her counsel, any information which has been recorded by the social authority, irrespectively of whether it speaks in favour or against the continuation of a care measure.

120. The Court notes that in the present case the applicant was provided with the opportunity of being heard by a social worker on 6 July 1992, i.e. before the ordinary care orders were issued. While the applicant was not informed of the identities of the persons who had reported the suspicions of sexual abuse to the Social Welfare Office, he was nevertheless able to study the case-file prepared for the decision-making procedure. In addition, the parents were, on 13 July 1992, heard in person by the Board to which they had also forwarded four written submissions (see paragraph 23). These reveal that the parents were aware of the reasons invoked in favour of the planned ordinary care orders.

121. The Court notes, moreover, that the applicant could and did appeal against the ordinary care orders to two levels of administrative courts and that he was able to comment on the Social Welfare

Board's submissions to the administrative courts in the appeal proceedings. Moreover, even though no oral hearing was held before either court, Article 8 cannot be interpreted as requiring in every situation a hearing before a "tribunal" within the meaning of Article 6 § 1 of the Convention (see *T.K. v. Finland* (dec.), no. 29347/95, unreported).

122. The Court is, moreover, satisfied that the applicant could sufficiently comprehend what material was deemed decisive by the Social Welfare Board and the administrative courts in maintaining the public care in the form of ordinary care orders.

123. Accordingly, in the overall circumstances the applicant's possibility of being involved in the decision-making concerning the taking into care of his children was sufficient for the purposes of Article 8.

(iii) Conclusion

124. The Court concludes that there has been no violation of Article 8 either in respect of the justification of the care orders issued in 1992 or in respect of the applicant's involvement in the decision-making concerning the taking of his children into public care.

B. The implementation of the public care and the alleged failure to terminate it

1. Submissions of the parties

(a) The applicant

125. The applicant submitted that the authorities failed to take his interests and views into account when elaborating and adjusting the care plans. The manner in which the public care was implemented was in disproportion to the aim sought to be achieved. When the children were transferred from the children's home into a foster home, access was first prohibited and later excessively restricted. The applicant contests having agreed to the access restrictions. Prior to 1997 they were not issued in the form of decisions which he could have appealed against.

126. Even though the biological parents were co-operating with the social welfare authority, were showing a considerable improvement in their conditions and were at no stage endangering the children's development, the authority never genuinely considered the possibility of reuniting the family. Meetings remained supervised and rare, which effectively prevented close and affectionate contact and estranged the children from their biological parents. Even their telephone calls were made conditional upon the children's undisturbed adaptation to the foster family. The children's emotional outbursts after they had met with their biological parents were consistently interpreted as militating against increased contact. The biological parents were repeatedly told that any increase in the number of meetings would hamper the children's adaptation to their foster parents. The children's own opinions were never established in an objective manner. Even though the social welfare authority had been suspecting only the mother of incest, they never seriously considered the option of terminating the public care following the applicant's proposed divorce. More than once, social workers told the applicant that the public care would last until the children had reached the age of majority.

127. In the applicant's opinion the social authorities lost all interest in his and his wife's conditions as soon as their children had been placed in public care. When refusing to terminate the care in January 1994, the Social Welfare Board acted on the basis of a general and biased impression of the applicant and his wife, referring to "the difficulties relating to the mental health and the use of alcohol as well as the incest directed against the children". In so doing, it relied in part on Dr H.L.'s opinion, even though it had been issued almost a year and a half earlier for the purpose of the initial care proceedings. The Board also relied on a one-page summary by the leading social worker which had focused on the "established" incest, while omitting the fact that no evidence corroborating that suspicion had been reported from the children's school, nursery or health care centre. Nor did the summary mention that the domestic helpers had excluded the possibility of incest in the family.

128. The applicant considers it clear from the material adduced by the Government that a number of

facts recorded by the social welfare officials and showing an improvement in the applicant's conditions were ignored by the Social Welfare Board when considering his request for a termination of the public care: he had steady employment; he had shown considerable responsibility in caring for his children and his mentally ill wife; there were no reports that he had a drinking problem; the only recorded assessment of his mental capabilities dated back to 1988 when a social worker had described him as a "docile, gentle and simple-minded man"; the anonymous sources had no first-hand information supporting the suspicions of sexual abuse; and the domestic helpers, heard in March 1992, had noticed nothing in the home pointing towards such abuse.

129. In sum, the Board failed to indicate the facts underlying its conclusions as to the applicant's "difficulties" as well as "the incest" and never assessed his capabilities and conditions at that very moment, in particular with regard to his mental health, alcohol use and his ability to care for his children.

130. In addition, it was impossible for the applicant to see from the County Administrative Court's decision of 6 June 1994 – which again referred to "the documentation on file" – what precise pieces of evidence led it to dismiss his appeal against the refusal to terminate the public care. The reasoning of the Supreme Administrative Court was even more insufficient. The Government's reference to the various material before the Social Welfare Board and the courts does not in itself clarify how the evidence was assessed and what pieces of evidence were considered decisive at the time of the decision-making. At any rate, no evidence of such nature as to support the Social Welfare Board's refusal could be found in the material on the case-file from that time.

131. The applicant underscored that the case-notes emanating from the Mental Health Office had been written by a social worker working in that office, had never been relied on in the domestic proceedings and had been unknown to the applicant until the Government produced them to the Court. The applicant never admitted to the social worker in question that incest had taken place in his family. At any rate, the social worker was in no way an expert in the field of suspected incest and must be presumed to have acted in co-operation with the local social welfare authority when consulted by the applicant and his wife.

132. Finally, the applicant pointed out that even though one of the Social Welfare Board's reasons for considering that the children were in need of long-term care had been the children's need of therapy, A.'s and K.'s therapy had ended already in October 1993 and February 1994, respectively, whereas J.'s therapy had ended in June 1995. Given such a lengthy interruption of J.'s therapy, it was particularly difficult to see his need for the therapy which his foster parents had recognised as late as in 2000, according to the report by Dr T.S. on which the Government have relied (see paragraph 51).

(b) The Government

133. The Government argued that the refusal to terminate the public care of the applicant's children in 1994 was based on reasons as relevant and sufficient as those underlying the care orders of 1992. The children's need for long-term public care had been recognised early on. The requisite therapy could be provided in the children's home, whereas the child psychiatric clinic and the Mental Health Office were to deal with the family as a whole. After the children had lived in the children's home with temporary carers for one year it was crucial for their development that they be provided with secure and emotionally stable conditions. Once they were transferred into foster care the number of meetings with the biological parents naturally had to be reduced, in part so as not to interfere excessively with the children's bonding with the foster parents. In December 1993 the applicant's daughters, then 13 and 12 years old, considered four supervised meetings per year an appropriate number. Meetings continued to be allowed in accordance with the care plan, even if during one meeting the biological parents blamed their daughter K. for the public care and told their son J. that he would soon come home. Correspondence and telephone contacts were not restricted. The children were all placed in the same foster home not far from the home of the biological parents. In sum, the access restriction was justified under Article 8 § 2.

134. It was the Government's contention that when seeking to have the public care terminated the

applicant did not argue that his personal or family conditions had changed. In order to review those conditions it would have been necessary for the social welfare authority to co-operate with the Mental Health Office, that being the only authority towards which the applicant maintained a somewhat positive attitude. As the social welfare authority did not wish to endanger the support and therapy which the Mental Health Office was providing to the parents, it was decided not to obtain a report from the Mental Health Office against their will. If the applicant was of the view that the therapy records would have supported his request for the public care to be terminated, he could himself have forwarded them to the Social Welfare Board.

135. As for the applicant's involvement in the decision-making, he and his wife were properly heard both in the elaboration of the care plan and prior to the Social Welfare Board's decision of 19 January 1994 to refuse the request for a termination of the public care. In reaching that decision the Board had regard, *inter alia*, to Dr H.L.'s expert opinion of June 1992 which was adequate also for the purpose of those proceedings. Duly invited, the applicant commented on the whole case-file in the County Administrative Court, but failed to respond to an invitation to comment on the case-file of the Supreme Administrative Court.

136. As the County Administrative Court had no reasons of its own to depart from the conclusions reached by the Social Welfare Board it was unnecessary for the court to reproduce *in extenso* the reasons relied on by the Board. The court furthermore referred to the documents annexed to the Board's decision as well as to other documents submitted to the court.

137. It was therefore the Government's contention that Article 8 had not been violated whether as a result of the implementation of the public care or as a result of the refusal to terminate it in 1994.

2. The Court's assessment

138. As the Court has reiterated time and again, the taking of a child into public care should normally be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and any measures implementing such care should be consistent with the ultimate aim of reuniting the natural parent and the child. The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the responsible 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. After 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.

139. Whereas the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into public care, a stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by those authorities on parental rights of access. Such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed. 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 child are not allowed to meet each other at all, or only so rarely that no natural bonding between them is likely to occur (see *K. and T. v. Finland*, cited above, §§ 151, 154-155, 173, 178-179).

140. The Court has already found that, in so far as the various material obtained by the Government for the purpose of the Convention proceedings has not been relied on by the actual decision-making bodies, nor made available to the parties to the domestic proceedings while those were still pending, it cannot be deemed pertinent for the purposes of examining whether Article 8 has been violated as a result of the alleged failure to terminate the public care (see paragraph 90).

141. The Court would also note the discrepancy between, on the one hand, the Government's position as reflected by their submission of documents without the parents' consent and, on the other hand, the Government's argument that the social welfare office was unable, at the time when the parents sought to have the public care terminated in 1994, to carry out a detailed assessment of their situation, not wishing to rely on privileged reports and notes from the Mental Health Office, since the parents had

not consented to such co-operation between the two offices.

142. On the facts of the present case the Court cannot discern any serious and sustained effort on the part of the social welfare authority directed towards facilitating a possible family reunification such as could reasonably be expected for the purposes of Article 8 § 2 during the many years during which the children were, or have been, in care. The need for a regular review of whether the conditions for maintaining the public care continue to be met is also evident from section 20 of the Child Welfare Act. In the case in point, however, the restriction of contact between the biological parents and their children and the failure of the social welfare authorities to review that restriction genuinely and sufficiently frequently, far from facilitating a possible reunification of the family, rather contributed to hindering it.

143. On the contrary, the picture transpiring from the facts of the present case is one of determination on the part of the local social welfare authority and the administrative courts not to consider the reunification of the original family as a serious option, instead firmly proceeding from a presumption that the children would be in need of long-lasting public care in a foster home. Moreover, the severe restrictions on the applicant's right to visit his children reflect an intention on the part of the social welfare authority to strengthen the ties between the children and the foster family than to reunite the original family (see *K. and T. v. Finland*, cited above, § 177, as well as the Chamber judgment in the same case, no. 25702/94, § 164, 27 April 2000, unreported).

144. The Court notes that when the applicant's daughter K. was heard on 4 July 1992 the possibility of her returning home was not presented as an option. In its care orders of 13 July 1992 the Social Welfare Board stated that the children would be in need of long-term public care. At the latest by February 1993 foster care was being planned for the children, the children themselves – at the time twelve, eleven and eight years old respectively – being heard in respect of such an option, even though the applicant's final appeal against the care orders had not yet been examined by the Supreme Administrative Court and he had expressly opposed foster care while awaiting the outcome of his appeal (see paragraphs 25-26). In April 1993, when that appeal had been dismissed, the children were heard anew, preferring a placement in a foster home as opposed to remaining in the children's home, their possible return to the applicant's home apparently not having been presented as an option whether in the longer or the shorter perspective (see paragraph 28).

145. Finally, the Court notes the leading social worker's entry into the case-notes on 18 April 1994 to the effect that the divorce proposed by the applicant in support of his request for a termination of the care would change nothing, as the children had been placed in "long-term" care, "up to their adulthood" (see paragraph 34).

146. The Court concludes that there has been a violation of Article 8 of the Convention as a result of the authorities' failure to take sufficient steps directed towards a possible reunification of the applicant and his children – beginning with an assessment of the evidence which in his view showed an improvement of his conditions already in late 1993.

147. In light of this conclusion it is not necessary for the Court to examine, as possible separate sources of violation, whether the applicant was sufficiently involved in the decision-making process relating to his request for a termination of the public care, and whether the access restrictions were justified (see *K. and T. v. Finland*, cited above, § 194).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

148. 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

149. The applicant claimed FIM 300,000 (EUR 50,456.38) in compensation for the non-pecuniary damage suffered as a result of the violation of Article 8 which effectively broke the bonds between him

and his children, generated significant sorrow and distress and stigmatised the applicant.

150. Should the Court conclude that Article 8 had been violated, the Government considered that the applicant should be awarded appropriate compensation for the non-pecuniary damage suffered. Finding the applicant's claim excessive, the Government suggested an amount of FIM 20,000 (EUR 3,363.76) but left the matter to the Court's discretion.

151. The Court has no doubt that the violation[s] of the applicant's right to respect for his family life must have caused him a great deal of suffering and distress. Making an evaluation on an equitable basis, the Court therefore awards him EUR 8,000 (FIM 59,457.30) as just satisfaction for non-pecuniary damage.

B. Costs and expenses

152. The applicant requests the reimbursement of his legal fees and expenses as incurred at the domestic level and before the Convention organs, in the amount of FIM 86,910 (EUR 14,617.21) corresponding to 124 hours of work by counsel at 700 FIM (EUR 117.73) per hour. The legal aid received from the Council of Europe should be deducted, however. The remaining amount should be increased by 22% to compensate for value-added tax.

153. The Government left it to the Court's discretion to decide whether the applicant's claim was supported by the relevant documentation normally required by the Court. Further, the number of hours billed by counsel appeared somewhat excessive.

154. The Court reiterates that an award under this head may be made only in so far as the costs and expenses were actually and necessarily incurred in order to avoid, or obtain redress for, the violation found. Not only the costs and expenses incurred before the Strasbourg institutions but also those incurred before the national courts may be awarded. However, only those fees and expenses which relate to a complaint declared admissible can be awarded (see, for example, *Posti and Rahko v. Finland,* no. 27824/95, §§ 103-104, 24 September 2002, ECHR 2002-).

155. The Court notes that the applicant's current counsel has been representing him since January 1997 before the domestic authorities and courts as well as in the Convention proceedings. The costs and expenses incurred in the domestic proceedings amount to FIM 7,400 (EUR 1,244.59), whereas the costs incurred before the Convention organs amount to FIM 79,510 (EUR 13,372.62).

156. The Court is satisfied that the claim for compensation of counsel's fees and expenses has been properly substantiated and reiterates that the applicant's complaints were declared admissible in their entirety. Making its assessment on an equitable basis, the Court awards the applicant EUR 12,000, together with any relevant value-added tax. From this award must be deducted the FRF 4,100 and EUR 155 already received in legal fees from the Council of Europe by way of legal aid, totalling EUR 780.04.

C. Default interest

157. The Court considers that the default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 124, ECHR 2002-).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 8 of the Convention on account of the taking of the applicant's children into public care;

2. *Holds* that there has been no violation of Article 8 of the Convention on account of the applicant's involvement in the decision-making;

3. *Holds* that there has been a violation of Article 8 of the Convention by reason of the failure to take

sufficient steps with a view to reuniting the applicant's family;

4. *Holds*

(a) that the respondent State is to pay to the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:

(i) EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage;

(ii) EUR 11,219.96 (eleven thousand two hundred and nineteen euros and ninety-six cents) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(b) that simple interest at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;

5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 14 January 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS Nicolas BRATZA
Deputy Registrar President

K.A. v. FINLAND JUDGMENT