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

COURT (CHAMBER)

CASE OF HOKKANEN v. FINLAND

(Application no. 19823/92)

JUDGMENT

STRASBOURG

23 September 1994

In the case of Hokkanen v. Finland*,

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

Mr R. RYSSDAL, President,
Mr Thór VILHJÁLMSSON,
Mr C. RUSSO,
Mr J. DE MEYER,
Mr I. FOIGHEL,
Mr R. PEKKANEN,
Mr J.M. MORENILLA,
Mr J. MAKARCZYK,
Mr K. JUNGWIERT,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 25 March and on 24 August 1994,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 9 December 1993, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 19823/92) against the Republic of Finland lodged with the Commission under Article 25 (art. 25) by Mr Teuvo Hokkanen, a Finnish national, on his own behalf and on that of his daughter, Ms Sini Hokkanen, also a Finnish national, on 10 April 1992. The application was however declared inadmissible in respect of Sini (see paragraph 50 below).

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Finland recognised the compulsory jurisdiction of the Court (Article 46) (art. 46)**. The object of the request was to obtain a decision as to whether the facts of the case disclosed a

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* The case is numbered 50/1993/445/524. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** Note by the Registrar. The declaration dates from 10 May 1990, which is also the date of ratification by Finland of the Convention.

breach by the respondent State of its obligations under Articles 6 para. 1, 8 and 13 (art. 6-1, art. 8, art. 13) of the Convention as well as Article 5 of Protocol No. 7 (P7-5).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr R. Pekkanen, the elected judge of Finnish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 7 January 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr C. Russo, Mr J. De Meyer, Mr I. Foighel, Mr J.M. Morenilla, Mr J. Makarczyk and Mr K. Jungwiert (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Finnish Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence on 26 January 1994, the Registrar received the applicant's and the Government's memorials on 21 February 1994. On 18 March the Secretary to the Commission indicated that the Delegate did not wish to file a memorial in reply.

5. On 22 February 1994, following a request from Sini Hokkanen and her maternal grandparents, Mr Reino and Mrs Sinikka Nick, the President, having consulted the Chamber on the same date, granted Mr and Mrs Nick, but not Sini Hokkanen, leave to submit written observations (Rule 37 para. 2) on any facts which they considered had been dealt with inaccurately in the Commission's report of 22 October 1993. On 8 March the Registrar received their observations.

6. On various dates between 17 February and 16 March 1994 the Commission produced a number of documents, which the Registrar had requested from it on the President's instructions.

7. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 21 March 1994. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr T. GRÖNBERG, Ambassador,
Director General for Legal Affairs, Ministry for Foreign Affairs, *Agent*,
Mr A. KOSONEN, Legal Adviser,
Ministry for Foreign Affairs, *Co-Agent*,
Mr M. HELIN, Adviser on Legislation,

Ministry of Justice, *Adviser*;
- for the Commission
Mrs J. LIDDY, *Delegate*;
- for the applicant
Mr H. SALO, Lawyer, *Counsel*,
Mr J. KORTTEINEN, Lawyer,
Mr A. ROSAS, Law Professor
at Åbo Akademi, *Advisers*.

The Court heard addresses by Mrs Liddy, Mr Salo, Mr Rosas and Mr Grönberg, and also replies to its questions.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

A. Events leading to the first set of custody proceedings

8. Mr Hokkanen, a Finnish citizen, was born in 1953. He lives at Tuusula.

He has a daughter, Sini, who was born in September 1983. Following the death in April 1985 of Mrs Tuula Hokkanen (the child's mother, to whom the applicant had been married since 11 June 1983), Sini was looked after by her maternal grandparents, Mr Reino and Mrs Sinikka Nick (hereinafter referred to as "the grandparents"). According to the applicant, he had agreed to this as a provisional arrangement so that he could deal with various problems caused by his wife's death, including the reorganisation of his farming activities.

In late 1985 the grandparents informed the applicant that they did not intend to restore Sini to him. Efforts, involving the Social Welfare Board (sosiaalilautakunta, socialnämnden) of Tuusula, were made to achieve reconciliation between the applicant and the grandparents, but to no avail.

9. On 2 May 1986 the County Administrative Board (lääninhallitus, länsstyrelsen) of Uusimaa as the competent Chief Bailiff (ulosotonhaltija, överexekutor; see paragraph 44 below) rejected a request by the applicant to have Sini returned in accordance with section 8(2) of the 1975 Act on the Enforcement of Decisions concerning Custody of and the Right of Access to Children (laki 523/75 lapsen huollosta ja tapaamisoikeudesta annetun päätöksen täytäntöönpanosta, lag 523/75 om verkställighet av beslut som gäller vårdnad om barn och umgängesrätt - "the 1975 Act"). It observed that the applicant had consented to the arrangement leaving Sini in the care of

the grandparents. In view of the time which had elapsed since she had moved to them and of the little contact Sini had had with the applicant, returning her could be contrary to her own interests; both parties should therefore institute custody proceedings before the District Court (kihlakunnanoikeus, häradsrätten) of Tuusula. They did so.

B. First set of custody proceedings

1. Proceedings before the District Court

10. Following a hearing on 16 July 1986, the District Court ordered provisionally that Sini should remain with her grandparents; at the same time it granted the applicant access rights, according to which Sini was to stay with him every fourth weekend and, from 8 August 1986, every fourth week.

11. On 30 September 1986 the County Administrative Board ordered the grandparents to respect the applicant's visiting rights on pain of an administrative fine (uhkasakko, vite) of 2,000 Finnish marks each. However, they did not comply.

12. On 31 October 1986 the District Court held a further hearing. It adjourned the case and again provisionally granted the applicant access rights: as from 5 November he could visit his daughter at her grandparents' home for two hours every Wednesday and six hours every Sunday and, as from 1 December, she was to visit him at the same times and for the same periods at his home. The grandparents refused to comply with these arrangements.

13. On 21 January 1987 the County Administrative Board rejected a request from the applicant asking it to enforce the right of access granted to him by the District Court on 16 July 1986. It observed that the District Court, in its decision of 31 October 1986, had varied his right of access. The County Administrative Board was therefore of the view that its decision of 30 September 1986 that the grandparents would be liable to pay fines should they fail to comply with the access order (see paragraph 11 above) no longer applied.

14. By judgment of 26 January 1987, the District Court confirmed the applicant's custody and ordered that Sini be handed over to him. It took into account, among other things, a report of 22 January 1987 by the Child Guidance Centre (kasvatusneuvola, uppfostrings- rådgivningen - "the Centre") of Central Uusimaa.

15. On 10 March 1987 the County Administrative Board ordered the grandparents to comply with the District Court's judgment of 26 January on pain of a fine of 8,000 marks each should they fail to do so. The grandparents persisted in not complying.

2. Appeal by the grandparents to the Court of Appeal and measures taken by the County Administrative Board

16. On 6 May 1987, on an appeal by the grandparents, the Court of Appeal (hovioikeus, hovrätten) of Helsinki upheld the District Court's judgment of 26 January. On 23 June it dismissed their appeal against the County Administrative Board's decision of 10 March.

17. On 7 May 1987 the County Administrative Board had again ordered the grandparents to return Sini to the applicant within a week and to pay 2,000 marks each of the fines imposed on them previously. The Board further ordered that, in the event of the grandparents' failure to return her, the Bailiff should use coercion to ensure that she was so returned.

3. Appeal by the grandparents to the Supreme Court

18. On 30 July 1987 the Supreme Court (korkein oikeus, högsta domstolen) granted the grandparents leave to appeal against the Court of Appeal's judgments of 6 May and 23 June 1987. It ordered a stay, or alternatively suspension, of both judgments (see paragraph 16 above).

The Supreme Court, in two separate judgments of 17 May 1988, dismissed the appeal and lifted the two decisions staying execution.

19. The grandparents asked the local Social Welfare Board to investigate whether execution of the Supreme Court's judgments would be in Sini's interests. The Board referred the matter to the National Social Welfare Board (sosiaalihallitus, socialstyrelsen).

At the same time, the grandparents requested the Supreme Court to stay the execution of, and annul, its judgments of 17 May 1988, which it refused to do on 13 September.

C. Requests by the applicant to the police and complaint to the Chancellor of Justice

20. In the meantime, on 13 and 18 May 1987, the applicant had asked the District Chief of Police of Järvenpää to execute the County Administrative Board's decision of 7 May (see paragraph 17 above). On 28 May the authorities discovered that the grandparents had moved Sini and that her whereabouts were unknown. The Järvenpää police then contacted their counterpart in Mäntyharju, where the grandparents had a summer home. Subsequently Sini was found to be with her grandparents at their summer home. On 10 June the applicant requested the Chief of Police of Mäntyharju to return her, but the latter official refused to do so, finding it contrary to the child's interests to interrupt her summer vacation.

21. On 29 May 1987 the applicant complained to the Chancellor of Justice (oikeuskansleri, justitiekanslern), alleging that the authorities had failed to take sufficient action to find and return Sini. The Chancellor

replied on 6 July 1988 that he did not consider that any measures were called for in view of, firstly, the steps taken to execute the County Administrative Board's decision of 7 May 1987; secondly, the Supreme Court's subsequent decision to stay the execution of the Court of Appeal's judgments of 6 May and 23 June 1987 (see paragraphs 16 and 18 above) and, thirdly, the grandparents' request for a stay and annulment in respect of the Supreme Court's judgments of 17 May 1988 (see paragraph 19 above).

D. Second set of custody proceedings

1. Administrative proceedings

22. On 30 May 1990 the National Social Welfare Board recommended that the Social Welfare Board in Tuusula take steps to have custody of Sini transferred from Mr Hokkanen to the grandparents, to obtain access for the applicant and to have a person other than him appointed Sini's guardian.

On 25 July 1990, at the Social Welfare Board's request, the Guardianship Board (holhouslautakunta, förmyndarenämnden) of Tuusula submitted an opinion on the above matter, stating that the applicant had performed his duties as a guardian in a satisfactory manner. It did not consider the transfer of custody and guardianship advisable and concluded that he should continue as Sini's custodian and guardian.

2. Proceedings before the District Court and applicant's requests for enforcement of his right of access

23. On 13 August 1990 the Social Welfare Board of Tuusula asked the District Court to transfer custody to the grandparents. The Board noted that the applicant was a fit person to bring Sini up and was able to offer her a good home environment. The Board placed emphasis on the fact that since 1985 she had been living with the grandparents, with whom she had close relations. In view of the fact that Sini had not met her father for many years it was necessary for their meetings in the autumn of 1990 to be well prepared and that they should take place in a neutral environment. It also recommended that the applicant remain Sini's guardian.

24. On 19 September 1990 the District Court held a hearing but adjourned the case until 14 November after deciding to obtain an opinion from the Guardianship Board. The Board submitted a report on 31 October, recommending that the applicant cease to be the child's guardian.

At the hearing scheduled for 14 November 1990 the District Court again adjourned the case, this time until 8 May 1991, pending an opinion from the Child Guidance Centre of Central Uusimaa. On 7 May 1991 the Child and Family Guidance Centre (perhe- ja kasvatusneuvola, familje - och uppfostringsrådgivningen) of Tuusula, which had taken over the former's

functions, confirmed the views expressed by that Centre in its opinion of 22 January 1987 (see paragraph 14 above). It observed that the grandparents had refused to allow Sini to be subjected to an examination (requested by the National Board of Social Welfare) and to participate in related interviews. It also referred to a statement of 13 December 1989 by a working group of the Lastenlinna Children's Hospital that, although Sini related to the grandparents as her psychological parents, there were no psychological obstacles as far as she was concerned to her meeting the applicant; on the contrary, such meetings were in her interests.

25. During the proceedings before it the District Court had, on 14 November 1990, provisionally ordered that Sini remain with the grandparents and granted the applicant certain rights of access: in December 1990 and January 1991 he was to be permitted to meet his daughter for six hours on the first Sunday of the month at a place chosen by the Board and in the presence of one of its officials; as from January they were in addition to meet from Saturday noon to Sunday noon on the third weekend of the month and, as from February, also the first weekend.

However, the grandparents would not allow the applicant to meet the child outside their home. On 20 December 1990 he asked the County Administrative Board to take enforcement measures. He renewed this request on 31 January 1991.

26. On 28 March 1991 the Board ordered the grandparents to comply with the District Court's provisional order of 14 November 1990 and decided that failure to do so would make them liable to pay an administrative fine of 5,000 marks each. The grandparents persisted in their refusal to comply. The applicant did not request the enforcement of the fines, such a request being a legal condition for their imposition.

27. The District Court, by judgment of 8 May 1991, rejected the Social Welfare Board's request to transfer custody and guardianship. It moreover noted that its provisional access order of 14 November 1990 no longer applied.

3. Appeals to the Court of Appeal and refusal of leave to appeal by the Supreme Court

28. On 24 July 1991, on separate appeals by the grandparents and the Social Welfare Board, the Court of Appeal ordered a stay of execution of the District Court's judgment of 8 May 1991 (see paragraph 24 above).

29. By judgment of 25 September 1991 the Court of Appeal, by a majority, held that the applicant should remain Sini's guardian but transferred custody to the grandparents, finding that the fact that she had lived with them since 30 April 1985 militated strongly in favour of her remaining in their care. It referred to the above-mentioned opinion of 13 December 1989 by the Children's Hospital (see paragraph 24 above), according to which she had strong ties of security, confidence and affection

with her grandparents and perceived their home as her own. No substantial changes should be made to this situation. She should be able to meet the applicant and develop a normal relationship with him. In view of her low age (eight at the time) and the fact that she had not been in a position to form her views independently, the Court of Appeal considered that no significant importance could be attached to Sini's own wish not to see the applicant, mentioned in the Child and Family Guidance Centre's opinion of 7 May 1991 (see paragraph 24 above).

The judgment prescribed the following access arrangements: during the first three months the applicant and his daughter were to meet for four hours one Saturday each month, at a place chosen by the Tuusula Social Welfare Office, in the presence of one of its officers and, after that, every other weekend between Saturday noon and Sunday noon. She was to spend Christmas with her grandparents and two weeks of the following summer with the applicant; subsequently her stays during holidays should alternate between the applicant and the grandparents.

30. On 19 December 1991 the Court of Appeal quashed the County Administrative Board's order of 28 March 1991 requiring the grandparents to comply with the District Court's provisional order of 14 November 1990 regarding access (see paragraph 25 above). The Court of Appeal had regard to the lower court's decision of 8 May 1991 (see paragraph 27 above), which in effect revoked its decision of 14 November 1990.

31. On 21 January 1992 the Supreme Court refused the applicant leave to appeal.

E. Further proceedings regarding access

1. Request for enforcement to the local Social Welfare Board

32. On 25 June 1992 the Social Welfare Board of Järvenpää replied to an enforcement request by the applicant. It observed that the Child and Family Guidance Centre of Järvenpää had offered the grandparents "an opportunity to obtain assistance and to discuss the matter concerning visiting rights" but they had refused to contact the Centre. The latter had, in a letter to the Board of 16 June 1992, stated that in those circumstances "nothing else could be done by the Centre".

2. Request for enforcement to the County Administrative Board and the ensuing court proceedings

33. In the meantime, on 22 June 1992 the applicant asked the County Administrative Board to take steps to execute the Court of Appeal's judgment of 25 September 1991 (see paragraph 29 above). He referred to the fact that in 1991 all three meetings planned between him and Sini had

failed to take place, as the grandparents had refused to bring her. They had moreover declined to respond to attempts to arrange further meetings.

34. On 23 June 1992 the County Administrative Board gave an interim decision ordering the applicant to communicate the documents in the case to the grandparents in order to enable them to comment on his request to the Board. This they did on 21 July. The decision further indicated that the case would be struck off the list if the applicant did not renew his enforcement request within a year.

On 10 November 1992 the applicant renewed his request of 22 June to the County Administrative Board. Following this, the Board, as required by the relevant legislation, referred the matter to the conciliator for mediation (see paragraph 45 below). The latter submitted a report to the Board on 2 December and the applicant filed his comments on 7 December.

35. On 31 December 1992 the County Administrative Board ordered the grandparents to comply with the Court of Appeal's decision of 25 September 1991, on pain of having to pay an administrative fine of 5,000 marks.

On the other hand, the Board dismissed a request by the applicant for Sini to be transferred to him; such a measure could only be taken in enforcement of a custody order. However, it noted that the grandparents had totally refused to co-operate in attempts to arrange for the applicant to meet his daughter. Bearing in mind her age and the grandparents' strong influence over her, she could not be considered sufficiently mature for her views to be taken into account.

The County Administrative Board had regard also to the conciliator's above-mentioned report (see paragraph 34 above), submitted by the Social Welfare Board of Järvenpää. According to that report the grandparents had agreed to allow the applicant to see Sini in their own home, whilst the applicant had categorically refused to have anything to do with them. The conciliator in question had met Sini only in the grandparents' presence in their home on 27 November 1992. On being questioned about her father she had been very reserved but had said that she objected to seeing him. The conciliator was of the view that Sini's wishes in this regard should be taken into consideration.

36. The grandparents refused to bring Sini to a meeting with the applicant which the Social Welfare Board of Järvenpää had arranged to take place on 3 April 1993.

37. By judgment of 21 October 1993 the Court of Appeal, referring to section 6 of the 1975 Act (see paragraph 47 below), upheld an appeal lodged by the grandparents against the County Administrative Board's decision of 31 December 1992 (see paragraph 35 above). The Court of Appeal noted that, according to a medical report of 8 September 1992 by Dr Arajärvi, Sini was physically and mentally healthy and a psychological test had shown that she was clearly of above average intelligence for a twelve-

year-old; she should not therefore be forced to meet the applicant but be allowed to decide for herself. Moreover, the conciliator's report (see paragraphs 34 and 35 above) stated that she had clearly and consistently refused to meet the applicant and was sufficiently mature for her wishes to be taken into account. The judgment concluded that in view of the child's maturity, access could not be enforced against her wishes and lifted the fines imposed on the grandparents.

On 4 February 1994 the Supreme Court refused the applicant leave to appeal.

F. Contacts between the applicant and Sini

38. The applicant visited Sini in the grandparents' home on a few occasions until 1986. The last time he met her was on 14 January 1987.

II. RELEVANT DOMESTIC LAW

A. Custody and access

39. Custody of children is governed by the 1983 Act on Custody and Access Rights with regard to Children (laki 361/83 lapsen huollosta ja tapaamisoikeudesta, lag 361/83 ang. vårdnad om barn och umgängesrätt - "the 1983 Act"). Section 1 provides that the aim of such custody is to ensure the child's balanced development and well-being, regard being had to the latter's special needs and wishes, as well as to encourage a close relationship between the child and the parents. The custodian represents the child in his or her personal matters, unless the law provides otherwise (section 4).

40. The parents, or any other person to whom care of the child has been entrusted, are his or her custodians (section 3). Parents who are married to each other at the time of the child's birth are the latter's custodians (section 6).

41. The District Court may order that custody of a child be entrusted to one or more persons together with, or instead of, the parents (section 9 para. 1). It may transfer custody from the parents to other persons only if, from the child's point of view, there are particularly strong reasons for doing so (section 9 para. 2).

The District Court is moreover empowered to decide on access (section 9). The aim of access is to secure a child's right to maintain contacts with a parent with whom he or she is not living (section 2).

In deciding on matters of custody and access the competent court must take into account the wishes and interests of the child in accordance with the following considerations: primary emphasis must be placed on the interests

of the child and particular regard should be had to the most effective means of implementing custody and access rights in the future (section 9 para. 4 and section 10 para. 1); the child's views and wishes must, if possible and depending on its age and maturity, be obtained if the parents are unable to agree on the matter or if the child is being cared for by a person other than its custodian or if it is otherwise deemed necessary in the latter's interests; the consultation must be carried out in a tactful manner, taking into account the child's maturity and without causing harm to its relations with the parents (section 11).

42. Pending court decisions on matters of custody and access, the competent court may issue an interim order as to where the child should live, access arrangements and, in special circumstances, custody (section 17 paras. 1 and 2).

43. A decision on custody, access or a child's place of residence is, unless it states otherwise, immediately enforceable (section 19).

B. Enforcement of custody and access rights

44. According to section 1 of the 1975 Act (for references, see paragraph 9 above), the Act applies to the enforcement of a court decision, including an interim order, regarding custody and access. It may also apply to the enforcement of an order that a child should live with a particular person or that it should be handed over to its custodian.

A request for enforcement may be submitted to the Chief Bailiff in the area where the child lives (section 2), which authority is vested in the County Administrative Board (section 1 of the 1895 Act on Enforcement - ulosotto laki 1895/37, utsökningslagen 1895/37).

45. Pursuant to section 4, as amended by Act no. 366/83, before ordering enforcement the Chief Bailiff must assign as a conciliator a person appointed by the Social Welfare Board or another suitable person to mediate between the parties with a view to enforcing the decision. Such mediation is aimed at persuading the person taking care of the child to comply voluntarily with his obligations under the relevant decision.

Conciliation may not be ordered if it is evident from previous attempts that it would be unsuccessful or, in the case of a custody decision, if immediate enforcement is in the child's interests and dictated by strong reasons.

46. The Chief Bailiff may impose an administrative fine in connection with an enforcement decision or, when the matter relates to the custody of a child or the handing over of a child to its custodian, he may order the Bailiff to transfer the child (section 5).

A fine as mentioned above must be fixed on the basis of the means of the person concerned (chapter 2, section 4 (b) para. 2, of the 1889 Penal Code).

If the fine cannot be collected, it must be converted into a prison sentence (section 5 para. 1, as amended by Act no. 650/86).

47. Enforcement must not take place against a child's own wishes if he or she is twelve years of age or is sufficiently mature for her wishes to be taken into account (section 6 of the 1975 Act, as amended by Act no. 366/83).

48. A decision by the Chief Bailiff under the 1975 Act may, unless otherwise stated therein, be enforced immediately (section 13 para. 1).

PROCEEDINGS BEFORE THE COMMISSION

49. In his application (no. 19823/92) of 10 April 1992 to the Commission, Mr Teuvo Hokkanen, on his own and Sini's behalf, complained that, in breach of Article 8 (art. 8) of the Convention, the public authorities had failed to take appropriate measures to facilitate their speedy reunion. In this regard he also relied on Article 5 of Protocol No. 7 (P7-5) (right to equality of spouses in their relations with their children). He further complained that, contrary to Article 6 para. 1 (art. 6-1) of the Convention, he had not been given a fair and oral hearing before the Court of Appeal and the Supreme Court in 1991 to 1992. In addition he alleged a breach of this provision in that the custody proceedings had not been concluded within a reasonable time and that the Supreme Court had failed to give reasons for its refusal of 21 January 1992 to grant leave to appeal. Finally, he complained that he had not been afforded an effective remedy as required under Article 13 (art. 13), in respect of the failure to take measures to facilitate reunion, the excessive length of the proceedings and the ineffectiveness of the administrative fines imposed upon the grandparents in view of their financial circumstances.

50. By decision of 9 February 1993, the Commission declared admissible the complaints made by Mr Hokkanen on his own behalf under Article 8 (art. 8) of the Convention, Article 5 of Protocol No. 7 (P7-5) and, in so far as they concerned the length of the second set of custody proceedings, those relating to Article 6 para. 1 and Article 13 (art. 6-1, art. 13) of the Convention. It declared inadmissible the complaints lodged on Sini's behalf on the ground that Mr Hokkanen could not file an application for her as he was no longer her custodian at that time.

In its report of 22 October 1993 (Article 31) (art. 31), the Commission expressed the following opinion:

(a) by nineteen votes to two that there had been a violation of Article 8 (art. 8);

(b) unanimously that no separate issue arose under Article 5 of Protocol No. 7 (P7-5);

(c) by sixteen votes to five that there had been no violation of Article 6 para. 1 (art. 6-1);

(d) by twenty votes to one that it was not necessary to examine the complaints under Article 13 (art. 13).

The full text of the Commission's opinion and of the concurring and dissenting opinions contained in the report is reproduced as an annex to this judgment*.

FINAL SUBMISSIONS MADE BY THE GOVERNMENT TO THE COURT

51. At the hearing on 21 March 1994 the Government confirmed the final submission in their memorial inviting "the Court to hold that there have been no violations of the Convention in the present case".

AS TO THE LAW

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

52. The applicant submitted that the Finnish authorities had failed to promote his speedy reunion with his daughter. They had allowed the grandparents to keep Sini in their care and prevent his access to her in defiance of court decisions and had transferred custody to them. He alleged a violation of Article 8 (art. 8) of the Convention, which reads:

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

The Government disputed this contention. The Commission upheld it in so far as it concerned the alleged non-enforcement of parental rights but did not state any opinion on the transfer of custody.

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* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 299-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

53. The Court notes from the outset that since the Convention entered into force with respect to Finland on 10 May 1990, it will, like the Commission, limit its examination to whether the facts occurring after that date disclosed a breach of the Convention (see, for instance, the Moreira de Azevedo v. Portugal judgment of 23 October 1990, Series A no. 189, pp. 17-18, para. 70; the Stamoulakatos v. Greece judgment of 26 October 1993, Series A no. 271, pp. 13-14, paras. 32-33). Events prior to 10 May 1990 will be taken into account merely as a background to the issues before the Court, in particular the large number of administrative and judicial actions taken by the applicant, the fact that all the decisions in his favour had been effectively resisted by the grandparents and that the embittered relationship between them and the applicant did not favour a co-operative approach to resolving the dispute.

A. Applicability of Article 8 (art. 8)

54. Sini was the child of a marriage and was thus ipso jure part of that "family" unit from the moment of birth and by the very fact of it. She lived with the applicant and her mother from her birth in September 1983, until she was handed over to her maternal grandparents after her mother's death in April 1985. After that the applicant met her on some occasions until January 1987. He was her custodian until September 1991 and remains her legal guardian. Since 1985 he has continuously sought to have access to her and to have her returned to him.

These links are undoubtedly sufficient to establish "family life" within the meaning of Article 8 (art. 8), which is thus applicable. Indeed applicability was not disputed before the Court.

B. Compliance with Article 8 (art. 8)

55. The essential object of Article 8 (art. 8) is to protect the individual against arbitrary interference by the public authorities. There may in addition be positive obligations inherent in an effective "respect" for family life. Whilst the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition, the applicable principles are similar. In particular, in both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole, and in both contexts the State is recognised as enjoying a certain margin of appreciation (see the Keegan v. Ireland judgment of 26 May 1994, Series A no. 290, p. 19, para. 49).

The Court's role is not to substitute itself for the competent Finnish authorities in regulating custody and access issues in Finland, but rather to review under the Convention the decisions that those authorities have taken

in the exercise of their power of appreciation (see, mutatis mutandis, the Handyside v, the United Kingdom judgment of 7 December 1976, Series A no. 24, p. 23, para. 50). In so doing, it must determine whether the reasons purporting to justify the actual measures adopted with regard to the applicant's enjoyment of his right to respect for family life are relevant and sufficient under Article 8 (art. 8).

In previous cases dealing with issues relating to the compulsory taking of children into public care and the implementation of care measures, the Court has consistently held that Article 8 (art. 8) includes a right for the parent to have measures taken with a view to his or her being reunited with the child and an obligation for the national authorities to take such action (see, for instance, the Eriksson v. Sweden judgment of 22 June 1989, Series A no. 156, p. 26, para. 71; the Margareta and Roger Andersson v. Sweden judgment of 25 February 1992, Series A no. 226-A, p. 30, para. 91; and the Olsson v. Sweden (no. 2) judgment of 27 November 1992, Series A no. 250, pp. 35-36, para. 90). In the opinion of the Court, this principle must be taken as also applying to cases such as the present where the origin of the provisional transfer of care is a private agreement.

56. The applicant and the Commission reasoned that a positive obligation for the Contracting State to take coercive measures was more called for where a child is in de facto care in defiance of the law and of court orders than after the termination of de jure care. The non-enforcement of the applicant's custody rights, as from 10 May 1990 until the transfer of the custody of Sini on 25 September 1991, as well as the non-enforcement of his visiting rights constituted a lack of "respect" for his "family life" in violation of Article 8 (art. 8). Notwithstanding the reasonable steps he had taken to have his parental rights enforced there was a striking lack of effective response. This fact, together with the length of the enforcement proceedings, had created a situation where his reunification with Sini had become difficult.

In addition, as regards the transfer of custody, the applicant contended that the Court of Appeal's judgment of 25 September 1991 conferred legitimacy on the illegal de facto care assumed by the grandparents. Although the grandparents had retained the child unlawfully, the length of time they had kept her was perceived by that court as an important justification for transferring custody. The measure further weakened the protection of his parental rights, notably as regards access to his daughter.

57. In the Government's submission a distinction should be drawn between, on the one hand, a parent's custody and visiting rights in respect of a child and, on the other hand, the enforcement of such rights. Although there may be plausible reasons for a parent to have custody and access rights, it does not necessarily follow that these should be enforced, especially if it would be incompatible with the interests and welfare of the child. That was the position under Finnish law, which viewed a parent's

custody of a child as a right first and foremost in the interest of the well-being and balanced development of the child and not primarily for the benefit of the parent. They referred also to Article 3 of the 1989 United Nations Convention on the Rights of the Child, Article 19 para. 1 (b) of the 1980 European Convention on the Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children (European Treaty Series no. 105) and Articles 1 and 12 para. 3 of the 1980 Convention on the Civil Aspects of International Child Abduction (done at the Hague on 25 October 1980). The Government therefore disagreed with the contention of the applicant and the Commission that forcible measures should be more readily resorted to in the situation facing the applicant. At any rate, it would not have been appropriate to use coercion to implement his parental rights.

Whilst conceding that the applicant had not been able to exercise his access rights in the way specified in the relevant court decisions, the Government emphasised that this was due to the non-compliance by the grandparents with those decisions. The latter being private persons, the State was not directly responsible under international law for their acts or omissions.

In any event, the applicant's own conduct was open to criticism: he had not availed himself of the possibility of visiting Sini in the grandparents' home; he had failed to finalise the enforcement proceedings relating to the District Court's decision on access of 14 November 1990, by not requesting imposition of the fines indicated by the County Administrative Board on 28 March 1991; and for several months he had omitted to renew his request for enforcement of the access rights granted to him by the Court of Appeal on 25 September 1991 (see paragraphs 26 and 34 above).

The Government concluded that, in view of the difficult circumstances of the case, the national authorities had done everything that could reasonably be expected of them to facilitate reunion.

58. The Court recalls that the obligation of the national authorities to take measures to facilitate reunion is not absolute, since the reunion of a parent with a child who has lived for some time with other persons may not be able to take place immediately and may require preparatory measures being taken to this effect. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and co-operation of all concerned will always be an important ingredient. Whilst national authorities must do their utmost to facilitate such co-operation, any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 (art. 8) of the Convention. Where contacts with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them (see the above-mentioned Olsson (no. 2) judgment, pp. 35-36, para. 90).

What is decisive is whether the national authorities have taken all necessary steps to facilitate reunion as can reasonably be demanded in the special circumstances of each case (ibid.). The Court does not deem it necessary to deal with the applicant's and the Commission's general argument on an obligation under Article 8 (art. 8) to take forcible measures (see paragraph 56 above).

59. Turning to the particular facts the Court will deal first with the alleged non-enforcement of the applicant's access rights and then with the alleged non-enforcement of his custody rights and the transfer of custody to the grandparents.

1. Non-enforcement of access

60. As regards the alleged non-enforcement of access the Court notes that during the period under consideration the prevailing view of the Finnish authorities was, until the Court of Appeal's judgment of 21 October 1993, that it was in the child's best interest to develop contacts with the applicant, even if she might not wish to meet him. What is more, at least from the Supreme Court's judgments of 17 May 1988 until the Court of Appeal's judgment of 25 September 1991, the Finnish courts considered not only that the applicant was best suited as custodian but also that the child should return to live with him (see paragraphs 14, 16, 18 and 27 above). Arrangements for his access to the child were specified in the District Court's interim decision of 14 November 1990 and in the Court of Appeal's judgment of 25 September 1991 (see paragraphs 25 and 29 above). Since the grandparents failed to comply with the access arrangements set out in these decisions, the County Administrative Board, at the applicant's requests, ordered their enforcement subject to administrative fines being imposed upon them (see paragraphs 26 and 35 above); but these measures proved to be of no avail in face of the grandparents' persistent refusal to comply.

Against a background of ineffective court decisions and enforcement orders, the actions of the social welfare authorities consisted mainly of planning three meetings in 1991, taking steps to conciliate the applicant and the grandparents in late 1992; and arranging for one further meeting in the spring of 1993; none of which materialised (see paragraphs 33-36 above).

The difficulties in arranging access were admittedly in large measure due to the animosity between the grandparents and the applicant. Nonetheless the Court does not accept that responsibility for the failure of the relevant decisions or measures in actually bringing about contacts can be attributed to the applicant. Both the District Court's and the Court of Appeal's decisions regarding access had recognised the need to arrange meetings at a neutral place outside the grandparents' home (see paragraphs 23, 25 and 29 above). Whilst the grandparents consistently refused to comply with these decisions, the applicant actively sought their enforcement. The suggestion

by the Government that the situation would have been any different had he requested the imposition of the administrative fines or not omitted for some time to renew his enforcement request is highly improbable (see paragraphs 26 and 34 above).

61. From the foregoing it cannot be said that, bearing in mind the interests involved, the competent authorities, prior to the Court of Appeal's judgment of 21 October 1993, made reasonable efforts to facilitate reunion. On the contrary, the inaction of the authorities placed the burden on the applicant to have constant recourse to a succession of time-consuming and ultimately ineffectual remedies to enforce his rights.

On the other hand, in the judgment of 21 October 1993 the Court of Appeal came to the conclusion that the child had become sufficiently mature for her views to be taken into account and that access should therefore not be accorded against her own wishes (see paragraph 37 above). The Court sees no reason to call this finding into question.

62. Accordingly, the Court concludes that, notwithstanding the margin of appreciation enjoyed by the competent authorities, the non-enforcement of the applicant's right of access from 10 May 1990 until 21 October 1993 constituted a breach of his right to respect for his family life under Article 8 (art. 8). However, there has been no such violation in respect of the period thereafter.

2. Non-enforcement of custody rights and transfer of custody

63. It remains to be determined whether there was also a violation with respect to the non-enforcement of the applicant's custody rights and the subsequent transfer of the custody to the grandparents.

The Court observes that as of 10 May 1990, the child, who had been placed with her grandparents when she was one and a half years old, had been living with them for approximately five years. During this period she had very few contacts with her father, the applicant, and had not met him since early 1987 (see paragraph 38 above). On 30 May 1990, steps to have the custody transferred to the grandparents were recommended by the National Social Welfare Board (see paragraph 22 above) and, on 13 August 1990, the local Social Welfare Board instituted proceedings to this effect before the District Court. The Board's request was dismissed by it on 8 May 1991 but upheld by the Court of Appeal on 25 September 1991; leave to appeal was refused by the Supreme Court on 21 January 1992 (see paragraphs 23, 27, 29 and 31 above).

The Court is of the view that in such circumstances there were sufficient grounds to justify non-enforcement of the applicant's custody right pending the outcome of the custody proceedings.

64. Furthermore, as to the outcome of these proceedings, it is undisputed that the transfer of custody constituted an interference with the applicant's right to respect for family life under paragraph 1 of Article 8

(art. 8-1), that this interference was "in accordance with the law" and pursued the legitimate aim of protecting "the rights" of the child within the meaning of paragraph 2 (art. 8-2). The Court sees no reason to doubt that the transfer of custody was "necessary in a democratic society". The Court of Appeal's judgment, which was based on expert opinion, had regard to the length of the girl's stay with the grandparents, her strong attachment to them and her feeling that their home was her own (see paragraphs 29 and 31 above). These reasons were not only relevant but also sufficient for the purposes of paragraph 2 of Article 8 (art. 8-2). The competent national authorities, which were in principle better placed than the international judge in evaluating the evidence before them (see, amongst many authorities, the above-mentioned Olsson v. Sweden (no. 2) judgment, pp. 35-36, para. 90), did not overstep their margin of appreciation in arriving at the decisions they did. Even taking into account the failure of the authorities to secure the applicant access to his child, the measure cannot be regarded as disproportionate to the legitimate aim of protecting her interests.

65. These aspects of the applicant's complaint do not therefore give rise to a separate breach of Article 8 (art. 8).

II. ALLEGED VIOLATION OF ARTICLE 5 OF PROTOCOL No. 7 (P7-5)

66. Before the Commission the applicant maintained that the same facts as constituted the alleged violation of Article 8 (art. 8) of the Convention also gave rise to a breach of Article 5 of Protocol No. 7 (P7-5) (right to equality of spouses in their relations with their children). The Commission concluded that no separate issue arose under the latter provision.

The applicant did not pursue this complaint before the Court, which does not find it necessary to deal with the matter of its own motion.

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

A. Scope of the issues before the Court

67. The applicant complained under Article 6 para. 1 (art. 6-1) of the Convention that the second set of custody proceedings, in the first place, and, secondly, the ensuing enforcement proceedings exceeded a reasonable time. Thirdly, in the latter proceedings, he did not have a fair and impartial hearing before the Court of Appeal.

However, only the facts of the first complaint were declared admissible by the Commission. The Court will, in accordance with its established case-law, limit its examination to that complaint (see, for instance, the Helmers

v. Sweden judgment of 29 October 1991, Series A no. 212-A, p. 13, para. 25; and the above-mentioned Olsson (no. 2) judgment, pp. 29-30, para. 75).

B. Reasonableness of the length of the second set of custody proceedings

68. The applicant alleged a violation of Article 6 para. 1 (art. 6-1) of the Convention, according to which:

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

Both the Government and the Commission disagreed with this contention.

69. The reasonableness of the length of proceedings is to be considered in the light of the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and that of the relevant authorities. On the latter point, the importance of what is at stake for the applicant in the litigation has to be taken into account (see the Vallée v. France judgment of 26 April 1994, Series A no. 289-A, p.17, para. 34).

70. The applicant maintained that the proceedings had been unduly delayed by the fact that the District Court had twice suspended them for no pressing reasons, the second time for a period of six months. The extensive investigations requested by the District Court were unnecessary as they were based exclusively on material already available to it (see paragraphs 14 and 24 above). The authorities thus did not satisfy the requirement of exceptional diligence to be observed in such cases.

71. The Court finds that the relevant period to be taken into consideration started on 13 August 1990, when the Social Welfare Board made a request to the District Court for transfer of custody, and ended on 21 January 1992, when the Supreme Court refused leave to appeal (see paragraphs 23 and 31 above).

72. Although it is essential that custody cases be dealt with speedily, the Court sees no reason to criticise the District Court for having suspended the proceedings twice in order to obtain expert opinions on the issue before it.

As regards the six months' delay the difficulties which the social welfare authorities encountered as a result of the grandparents' refusal to allow Sini to be subjected to investigation and to take part in related interviews must not be overlooked (see paragraph 24 above). Irrespective of whether there were sufficient reasons for suspending the hearing for as long as six months, it has to be noted that the overall length of the proceedings was approximately eighteen months. In itself this is not excessive for proceedings comprising three judicial levels.

Having regard to the particular circumstances of the case, the Court, like the Commission, finds that the length of the second custody proceedings did

not exceed a "reasonable time" and that there was thus no violation of Article 6 para. 1 (art. 6-1) of the Convention.

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

73. The applicant complained that the non-enforcement of his custody and access rights and the length of the proceedings violated Article 13 (art. 13), which provides:

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

74. This complaint amounts in substance to the same as those made under Articles 6 and 8 (art. 6, art. 8). The Court, having regard to its findings above, shares the Commission's view that it is not necessary to examine this grievance.

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

75. Article 50 (art. 50) of the Convention reads:

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

A. Non-pecuniary damage

76. The applicant sought 200,000 Finnish marks in compensation for non-pecuniary damage, attributable to the anxiety and distress he had felt as a result of the lack of enforcement of his parental rights and the transfer of custody.

The Government considered the amount excessive, whereas the Commission's Delegate did not comment.

77. The Court sees no reason to doubt that the applicant suffered distress as a result of the non-enforcement of his access rights and that sufficient just satisfaction would not be provided solely by the finding of a violation. Deciding on an equitable basis, as is required by Article 50 (art. 50), it awards him 100,000 marks for non-pecuniary damage. This figure is to be increased by any value-added tax that may be chargeable (see, for instance, the Observer and Guardian v. the United Kingdom judgment of 26 November 1991, Series A no. 216, p. 38, para. 84).

B. Costs and expenses

78. The applicant further claimed reimbursement of costs and expenses, totalling 229,906.47 marks and 2,770 French francs, in respect of the following items:

(a) 37,751.47 marks for legal fees and expenses in the domestic proceedings, of which 31,692.20 marks related to the period after the entry into force of the Convention in respect of Finland; in addition at least 15,000 marks which he would normally have been billed if invoices had not been reduced to meet his modest resources after the cessation of an insurance policy;

(b) 161,600 marks for 202 hours' work (at 800 marks per hour) by his lawyers in connection with the Strasbourg proceedings;

(c) 15,555 marks and 2,770 francs to cover expenses incurred by the appearance of three lawyers at the Court's hearing on 21 March 1994.

The applicant further asked the Court to add to any award made with regard to the above "all possible value-added taxes".

79. The Government maintained that only costs and expenses which had been necessarily incurred after 10 May 1990 (date of ratification of the Convention by Finland) should be taken into consideration and they objected to 15,000 marks being added to the domestic costs, the amount being based merely on hypothetical calculations. In their view the number of working hours and the hourly rate were excessive and representation of the applicant by one lawyer alone would have been sufficient. They also disagreed with the applicant's approach to including value-added taxes.

The Delegate of the Commission did not comment.

80. As to item (a), the Court recalls that an award may be made only in so far as the costs were actually and necessarily incurred in order to avoid or obtain redress for the non-enforcement of his right of access from 10 May 1990 until 21 October 1993. This does not include costs in connection with the proceedings before the Court of Appeal leading to its decision of the latter date. It does not appear that the applicant had a legal obligation to pay the additional 15,000 marks claimed. As these costs were not actually incurred, this part of the claim must also be rejected. In the light of the above, the Court awards him 15,000 marks for domestic costs together with any relevant value-added tax.

As regards item (b), the Court, deciding on an equitable basis, awards the applicant 120,000 marks, also to be increased by any relevant value-added tax, from which must be deducted the 8,070 French francs already received for legal fees from the Council of Europe by way of legal aid.

The applicant has moreover received 13,654.43 French francs in respect of item (c) and the Court does not find it necessary to make any further award under this head.

FOR THESE REASONS, THE COURT

1. Holds unanimously that the non-enforcement of the applicant's right of access from 10 May 1990 until 21 October 1993 constituted a violation of Article 8 (art. 8) of the Convention;

2. Holds by six votes to three that there was no such violation thereafter;

3. Holds by six votes to three that the non-enforcement after 10 May 1990 of his right of custody and the subsequent transfer of the custody to the grandparents did not constitute a violation of Article 8 (art. 8) of the Convention;

4. Holds unanimously that it is not necessary to examine the applicant's complaint under Article 5 of Protocol No. 7 (P7-5);

5. Holds unanimously that the Court's examination under Article 6 para. 1 (art. 6-1) of the Convention is limited to the complaint concerning the length of the second set of custody proceedings and that there has been no violation of this provision;

6. Holds unanimously that it is not necessary to examine the applicant's allegations under Article 13 (art. 13) of the Convention;

7. Holds unanimously that Finland is to pay to the applicant, within three months and together with any value-added tax that may be chargeable, 100,000 (hundred thousand) Finnish marks for non-pecuniary damage, and, for legal fees and expenses, 135,000 (one hundred and thirty-five thousand) marks less 8,070 (eight thousand and seventy) French francs to be converted into Finnish marks at the rate applicable on the date of delivery of the present judgment;

8. Dismisses unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 September 1994.

Rolv RYSSDAL
President

Herbert PETZOLD
Acting Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the partly dissenting opinion of Mr De Meyer, joined by Mr Russo and Mr Jungwiert, is annexed to this judgment.

R.R.
H.P.

PARTLY DISSENTING OPINION OF JUDGE DE MEYER, JOINED BY JUDGES RUSSO AND JUNGWIERT

(Translation)

In our opinion, there has been a breach of the applicant's right to respect for his family life both as regards custody and as regards access, and in respect of the latter since 21 October 1993 as well as before then.

Over many years the Finnish authorities were faced with and tolerated the prolongation of a situation which they had on many occasions noted to be unlawful and which they were accordingly under a duty to bring to an end*. On each occasion they yielded in the face of the grandparents' persistent obstination and thus enabled them to create a fait accompli which the authorities eventually resigned themselves to endorsing as regards both custody and access.

Having thus brought upon themselves this capitulation on both fronts, they may well have thought that matters had got to such a point that it was no longer in the child's interests to go on trying to remedy the situation.

The fact remains nevertheless that ultimately the authorities deprived the applicant of the exercise of rights which naturally vested in him as father, although they had previously recognised on numerous occasions that he should not be denied them**.

Far from stopping the infringement of these rights, they thus permanently put a seal on it.

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* No distinction needs to be made between the various authorities which intervened in the case; they all engage the respondent State's responsibility.

** See, in particular, as regards access, paragraphs 10, 12, 25 and 29, and as regards custody, paragraphs 14, 16, 18, 22, 24 and 27 of this judgment.