

In the Eriksson case\*,

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\* Note by the Registrar. The case is numbered 11/1988/144/209. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

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The European Court of Human Rights, sitting in plenary session pursuant to Rule 50 of the Rules of Court and composed of the following judges:

Mr R. Ryssdal, President,  
Mr J. Cremona,  
Mr Thór Vilhjálmsson,  
Mrs D. Bindschedler-Robert,  
Mr F. Gölcüklü,  
Mr F. Matscher,  
Mr J. Pinheiro Farinha,  
Mr L.-E. Pettiti,  
Mr B. Walsh,  
Sir Vincent Evans,  
Mr R. Macdonald,  
Mr C. Russo,  
Mr R. Bernhardt,  
Mr A. Spielmann,  
Mr J. De Meyer,  
Mr J. A. Carrillo Salcedo,  
Mr N. Valticos,  
Mr S. K. Martens,  
Mrs E. Palm,  
Mr I. Foighel,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 22-23 February and on 22-23 May 1989,

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 13 September 1988 and by the Government of the Kingdom of Sweden ("the Government") on 8 November 1988, within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 11373/85) against the Kingdom of Sweden lodged with the Commission under Article 25 (art. 25) by a Swedish national, Mrs Cecilia Eriksson, acting on behalf of herself and of her daughter Lisa Eriksson, on 7 December 1984.

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

and under Article 2 of Protocol No. 1 (P1-2).

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

3. The Chamber of seven judges to be constituted included ex officio Mrs E. Palm, the elected judge of Swedish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 29 September 1988, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mrs D. Bindschedler-Robert, Sir Vincent Evans, Mr C. Russo, Mr R. Bernhardt and Mr N. Valticos (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5). On 15 December 1988, having consulted - through the Registrar - the Agent of the Government, the Delegate of the Commission and the lawyer for the applicants, he decided that there was no need at that stage for memorials to be filed (Rule 37 para. 1) and directed that the oral proceedings should commence on 20 February 1989 (Rule 38).

On 16 January 1989 the Registrar received the applicants' claims under Article 50 (art. 50) of the Convention and certain documents relating to the domestic proceedings.

5. On 26 January 1989 the Chamber decided to relinquish jurisdiction forthwith in favour of the plenary Court (Rule 50).

6. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

(a) for the Government

Mr H. Corell, Ambassador,  
Under-Secretary for Legal and Consular  
Affairs, Ministry for Foreign Affairs, Agent;

Mr L. Lindgren, Legal Adviser,  
Ministry of Health and Social Affairs,

Mr C.-H. Ehrencrona, Legal Adviser,  
Ministry for Foreign Affairs,

Mrs I. Wetter, Legal Counsel for Lidingö  
Municipality, Advisers;

(b) for the Commission

Mrs G. H. Thune, Delegate;

(c) for the applicants

Mrs S. Westerberg, lawyer, Counsel.

The Court heard addresses by Mr Corell for the Government, by Mrs Thune for the Commission and by Mrs Westerberg for the applicants, as well as their replies to its questions.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. Mrs Cecilia Eriksson and her daughter Lisa Eriksson were born, respectively, in 1942 and on 24 February 1978 and are both Swedish citizens. In January 1979 Cecilia Eriksson married Lisa's father and in January 1981 they also had a son, Jonas. They divorced in February 1986 and Cecilia was granted the custody of both children. Since March 1978, Lisa has been living in a foster home at Oskarström. Her mother resided first in Köttkulla, near Ulriceham, but in 1987 she moved to Köping.

A. The taking of Lisa Eriksson into public care and her mother's efforts to have care terminated

8. On 23 March 1978 the Southern Social District Council (södra sociala distriktsnämnden) of Lidingö ("the Social Council") decided that Lisa should be taken into care pursuant to sections 25(a) and 29 of the Child Welfare Act 1960 (barnvårdslagen 1960:97 - "the 1960 Act"; see paragraph 36 below) on the ground that the conditions in the home were unsatisfactory. She was placed in the foster home at Oskarström.

At that time the mother, Cecilia Eriksson, had personal difficulties. She had been convicted for dealing in stolen goods and for possession of narcotics and sentenced to 14 months' imprisonment. Later, while in prison, Cecilia Eriksson went through a religious conversion and she is now a member of the Philadelphia congregation (Pentecostal movement).

9. In May 1980 the Social Council rejected an application by Cecilia Eriksson for the termination of the care of her daughter. Her appeal to the County Administrative Court (länsrätten) of Stockholm was dismissed on 22 October 1981 as was, on 11 March 1982, her further appeal to the Administrative Court of Appeal (kammarrätten) of Stockholm.

10. On 1 January 1982 the public care of Lisa under the 1960 Act was transformed into care pursuant to section 1(1) of the 1980 Act containing Special Provisions on the Care of Young Persons (lagen 1980:621 med särskilda bestämmelser om vård av unga - "the 1980 Act"; see paragraph 36 below).

11. In March 1982 Cecilia Eriksson again applied to the Social Council requesting that care be terminated. She also requested permission to meet Lisa in her home in Köttkulla. Both requests were rejected and Cecilia Eriksson appealed to the County Administrative Court.

On 3 November 1982 the court dismissed the appeal concerning the question of care since there had not been sufficient preparatory contacts between Lisa and her natural parents; it referred the access question back to the Social Council for reconsideration. Cecilia Eriksson appealed to the Administrative Court of Appeal.

B. The termination of the public care - the prohibition on removal and the regulation of access

12. However, on 21 January 1983 the Social Council found that there were no longer any reasons for care under the 1980 Act and decided:

(a) that, with effect from 15 February 1983, the care of Lisa should terminate in accordance with section 5(1)(a) of the 1980 Act;

(b) to prohibit until further notice, pursuant to section 28 of the Social Services Act 1980 (socialtjänstlagen 1980:620; see paragraph 42 below), the natural parents from removing Lisa from the foster home (flytningsförbud);

(c) to request recommendations from the Children's and Juveniles' Psychiatric Clinic (barn- och ungdomspsykiatriska kliniken - "the Psychiatric Clinic") of Halmstad as to the contacts between Lisa and the natural parents, against the background that the long-term aim of the Social Council was that Lisa should return to the latter's home;

(d) that the said recommendations should also contain the Psychiatric Clinic's view on a proposal that Lisa should stay with her natural parents during the summer holiday period;

(e) that the contacts between the natural parents and Lisa should consist of one meeting before 1 March 1983, at which at least one of the foster parents and also one other person should be present.

The prohibition on removal was based on, inter alia, five medical certificates from the Psychiatric Clinic, signed by Mrs Essving-Levay, registered physician, and Mrs Gulli Tärn, curator. According to these certificates, Lisa was deeply rooted in the foster home and her transfer to her natural parents' home would jeopardise her mental health and development.

13. In these circumstances the Administrative Court of Appeal found no reason to examine the case further (see paragraph 11 above).

14. On 24 February 1983 the Psychiatric Clinic, in a new medical certificate signed by the same persons, recommended access once every second month. The certificate also stated that it was too early for Lisa to stay with her natural parents during the summer. The recommendations were based on the assessment that the child ought to stay with the foster parents and not be moved to her natural parents in the near future.

On 31 March 1983 the Social Council decided that Cecilia Eriksson should have a right of access to Lisa in the foster home every second month.

C. First set of proceedings challenging the prohibition on removal

15. Cecilia Eriksson, represented by legal counsel, appealed to the County Administrative Court of Stockholm against the Social Council's decision to issue a prohibition on removal, claiming that it should be quashed or, in the alternative, limited in time. The court held a hearing on 13 September 1983, when evidence was given by Mrs Essving-Levay, by Lisa's natural father and by an expert from the County Administrative Board (länsstyrelsen - "the Board"). The Board had also submitted a written opinion, which contained the following passage:

"The [Board] considers that Lisa should remain in the foster home. This proposal is, in the Board's opinion, in line with the intentions of section 28 of the Social Services Act concerning prohibition on removal. Lisa has at present enough difficulty in living with the knowledge that she is not the foster parents' own child and with the threat that she may be forced at any time to leave the only security she knows. Experience shows that, when Lisa grows older, she will become more curious concerning her natural parents and her own origin. Only then will she be mature enough to take the first steps towards reunification. The [Board] considers that, until then, a removal to the natural parents would be in conflict with the child's best interest."

16. The Social Council submitted to the County Administrative Court a further medical certificate from the Psychiatric Clinic. This certificate, dated 7 September 1983 and signed by the same persons as the previous ones, stated, inter alia, that it was self-evident that Lisa must stay in the foster home and that her removal would involve a

risk for her mental health which was not of a minor nature.

17. On 10 October 1983 the County Administrative Court allowed the appeal in part, in that it set a time-limit of 31 March 1984 on the prohibition on removal. The court's reasons read, inter alia, as follows:

"The natural parents' contacts with Lisa have become more regular only during the last two years, with the assistance of, among others, Mrs Essving-Levay. Thus, in 1982 there were meetings between Lisa and the parents in June and in August at Halmstad, in September at Köttkulla and in November at Oskarström. Lisa met her mother on some occasions during 1983, the latest being on 25 August, when the brother, Jonas, also accompanied the mother to Oskarström. What has been established about the circumstances surrounding the meetings suggests that Cecilia Eriksson's behaviour is probably not the only reason for their not having been more frequent. The foster parents and also the attitudes of other persons involved in the question of Lisa's removal have probably had an important influence. In several written opinions and at the court's oral hearing, Mrs Essving-Levay has expressed the opinion that the child-psychiatric treatment of Lisa has had, as its main objective, not the promotion of Lisa's immediate removal but instead an improvement of the contacts between her and the natural parents. At the same time it has been made clear that the psychiatric treatment of Lisa takes as its starting point Mrs Essving-Levay's opinion that Lisa should remain in the foster home. Finally, it should be mentioned that the [Social Council], in connection with the decision under appeal, stated that Lisa's removal should be the long-term aim for its work in the matter.

Lisa has lived in the foster home since shortly after her birth. Obviously she has now, at the age of five years, strong roots in this home. She has met her natural parents but rarely. A removal of Lisa to the natural parents must therefore be presumed to involve considerable risks for her health. However, it has been established, inter alia through Mrs Essving-Levay's testimony, that Lisa is a normally developed five-year-old girl who intellectually is rather over than under the average level. This and the other circumstances make it sufficiently probable that a removal of Lisa - in any case after certain further preparatory contacts with the natural parents - will entail no more than a passing disturbance in her development. The County Administrative Court has therefore finally concluded in the case that the decision appealed against should be limited in accordance with Cecilia Eriksson's second motion. As a result the prohibition on removal may, during a clearly limited period, be used in order to build up further the relations between Lisa and her parents."

18. The Social Council appealed to the Administrative Court of Appeal of Stockholm, requesting that the prohibition be unlimited in time. Cecilia Eriksson, represented by legal counsel, submitted that the prohibition should be quashed or, in the alternative, that the judgment of the County Administrative Court should be confirmed.

19. The Administrative Court of Appeal held a hearing at which Mrs Essving-Levay and Lisa's foster mother gave evidence. At the court's request, the National Board of Health and Welfare (socialstyrelsen) submitted, on 13 February 1984, its opinion on the risks that would be involved if Lisa were removed from the foster home. The opinion stated, inter alia:

"As regards the assessment from a child-psychiatric point of view, it is noted that the [Psychiatric Clinic] has clearly expressed the view that Lisa should not be removed from the foster home. This view is, in the opinion of the National Board of Health and Welfare, well-founded, as it is based on knowledge of the development and needs of children applied to Lisa's special situation.

It is the opinion of the National Board of Health and Welfare that a change of the persons responsible for the upbringing of a child always constitutes a serious interference and should not take place unless there are strong reasons, for instance that the child is badly cared for where it is living. Child psychological research and clinical experience demonstrate that separations can imply a risk of serious mental harm to the child. In this case Lisa, who is now six years old, has lived since a very young age in the present foster home, where she has developed well together with the adults to whom she is attached. She is in an important phase of development and has not yet attained the age and maturity where she can decide for herself. She ought not to be placed in a situation of choice of this kind. There are no established contacts with the natural parents, despite the efforts which have been made. The documents reveal that the father has not participated in the meetings with the foster parents which were arranged during 1983. He has not seen Lisa since 1982.

In this case new facts have come to light which change the picture of the parents' home. [The documents received from the court] showed only that the rehabilitation of the parents has developed well. A telephone conversation with the social director of Ulriceham on 17 January 1984 disclosed that the father had lost his temporary job and had started to drink alcohol again. He has been convicted of drunken driving and lost his driving licence. The mother's post as a child-minder is temporary, while the usual employee is on maternity leave. However, no criticism is levelled against the mother as regards her work.

The assessment of the National Board of Health and Welfare, against the background of the facts of this case, is that Lisa will, if moved from the foster family, be subjected to a risk, which is not of a minor nature, of harm to her psychological health and development. It is therefore important that she can remain in the foster home. The Board finds that section 28 of the Social Services Act is applicable. However, it considers that Lisa's security from a legal point of view should be regulated for the future. The [Social Council] should therefore, in view of the changed conditions in the natural parents' home, investigate whether the [1980 Act] has become applicable again. The [Social Council] could also consider the possibility of requesting a transfer of custody to the foster parents under Chapter 6, section 8, of the Parental Code [föräldrabalken; see paragraph 50 below]."

20. On 6 March 1984 the Administrative Court of Appeal amended the judgment of the County Administrative Court by setting the time-limit for the prohibition on removal at 30 June 1984. Its reasons included the following:

"The investigation in the case has revealed nothing which gives reason to doubt that Cecilia Eriksson is well suited to take care of children. Lisa's younger brother Jonas lives in Cecilia's home where, as a municipal child-minder, she also takes care of a further child.

In its decision of 31 March 1983 the [Social Council] decided that Cecilia Eriksson should have a right of access to Lisa in the foster home every second month. At the hearing before the Administrative Court of Appeal, it appeared that one or more representatives of the [Social Council] had been present on these sporadic occasions of contact decided by the Council, that Cecilia Eriksson had never been given the opportunity on these occasions to be alone with Lisa and that the foster mother had not considered that the time was yet ripe to inform Lisa that it was her mother who was visiting the foster home. Cecilia Eriksson has not so far been allowed to meet Lisa in her own home.

The Administrative Court of Appeal makes the following assessment.

More than one year has elapsed since the [Social Council] decided that the care under the [1980 Act] should terminate and that it should promote the reunification of Lisa and her natural parents. The investigation of the case does not suggest that Cecilia Eriksson has not accepted the [Social Council's] directives regarding her access to Lisa during this period. The Administrative Court of Appeal finds that what the [Social Council] has done so far, by way of preparatory measures for the removal of Lisa, has obviously not been calculated to promote to any measurable extent the conditions for such a reunification. The situation today as regards the child's removal to the parents can be regarded as no different from what it was one year ago. Lisa still does not even know that it is her mother who visits her in the foster home. According to the information supplied to the Administrative Court of Appeal at the hearing, the antagonism which the County Administrative Court found to exist between the foster mother and Cecilia Eriksson still prevails. This antagonism is however, in the opinion of the [court], not necessarily an absolute obstacle to active preparatory measures for the child's transfer.

It is undisputed that a transfer of Lisa to the parents' home without preparatory measures must be presumed to carry considerable risks for her health. Cecilia Eriksson has declared that she is well aware of these risks and that she does not wish to take the child home for good until this can be done without any risk of harming her. Making an overall assessment of what has been established in the case, the Administrative Court of Appeal nevertheless finds that there are reasons for a temporary prohibition on removal. In view of what has been established, it is reasonable to limit the prohibition on removal in time. The preparatory measures which have been taken until now have, as far as it appears, not been such that the child can be removed within the time-limit prescribed by the County Administrative Court. The Administrative Court of Appeal - which assumes that the [Social Council], in pursuing its aim of reuniting the child and the natural parents, will as soon as possible try new possibilities and intensify its work in this respect - finds that some more time for preparatory measures is necessary before the prohibition on removal can be lifted."

21. Both Cecilia Eriksson, with the assistance of legal counsel, and the Social Council appealed to the Supreme Administrative Court (regeringsrätten). The mother later withdrew her appeal.

22. In its judgment of 11 October 1984 the Supreme Administrative Court allowed the appeal by the Council by confirming the latter's decision of 21 January 1983 that the prohibition should be valid until further notice.

The court gave the following reasons:

"Under section 28 of the Social Services Act, the Social District Council may, where the interests of the child so require, prohibit the guardian from removing a child from a foster home, provided that there is a risk, which is not of a minor nature, of harming the child's physical or mental health if it is moved from the home. When a child is placed in a foster home, the aim should normally be to reunite the child and his parents. A prohibition under section 28 of the Social Services Act ought to be regarded as a temporary measure pending the arrival of an appropriate moment for moving the child from the foster home without the risk of such detrimental effects as are indicated in the said section.

The circumstances to be considered when deciding on a prohibition on removal include the child's age, stage of development, character and emotional relations; the time he has been taken care of by someone other than his natural parents; his present and prospective living conditions; and the contacts between the parents and the child whilst they were separated.

Since Cecilia Eriksson has withdrawn her appeal against the judgment of the Administrative Court of Appeal, the Supreme Administrative Court must determine whether the prohibition on removal should remain in force until further notice, as claimed by the [Social Council], or should be limited in time, in accordance with the position adopted by the [mother].

The question of the duration of a prohibition on removal must be examined in the light of the existing risk to the child's physical or mental health if separated from his home. If, at the time the prohibition is issued, it is already considered, with sufficient certainty, that such a risk will not obtain after a certain date - by when certain steps may have been taken or produced their effects -, the prohibition ought to be limited until that date. However, if it is uncertain when the child could be transferred to the parents without this involving a risk which is not of a minor nature, the prohibition ought to be in force until further notice and the question of a transfer ought to be raised again at a later stage when the risk of harming the child's health can be better assessed. Irrespective of the duration of the prohibition, the [Social Council] is obliged to see to it that appropriate measures aimed at reuniting parents and child are taken without delay. Such measures are required in particular when the Council, in accordance with what has just been said, has found reasons for issuing a prohibition until further notice. Otherwise there is a great risk that the child will, in the meantime, become more closely linked to the family he is about to leave.

The efforts to establish contacts between Lisa and her natural parents, which already began some three years ago, have, as far as can be seen from the documents, not progressed beyond the point that Lisa has occasionally seen them together with her present family and generally - as a result of the [Social Council's] directives - also in the presence of an adult outsider. The meetings have been coloured by the antagonism between the adults of the two families, and both before and afterwards, Lisa, who appears to have realised only at a late stage who her natural parents are, has shown signs of anxiety and a psychological state of strain. The evidence concerning the intensity of Lisa's reactions clearly shows that a period of time longer than that decided by the lower courts is required before a transfer can be made. Since appropriate measures aimed at reunification have not yet been taken there is, at the moment, no basis for setting a date on which the transfer could be made without jeopardising Lisa's mental health. The prohibition on removal shall therefore remain in force until further notice."

D. Second set of proceedings challenging the prohibition on removal

23. On 28 November 1984 Cecilia Eriksson requested the Social Council that her child be returned to her custody. This request was dismissed on 18 January 1985 on the ground that the risk for the child's mental health resulting from a removal from the foster home would be the same as when the Supreme Administrative Court delivered its judgment of 11 October 1984 (see paragraph 22 above).

24. The mother appealed to the County Administrative Court. She requested that the prohibition on removal be quashed and that the child be returned to her in accordance with the rules laid down in Chapter 21 of the Parental Code (see paragraphs 46-49 below). On 8 October 1985 she withdrew her appeal and, as a result, the court struck the case off its list on 23 October.

25. According to Cecilia Eriksson, her reason for withdrawing was the following. The Social Council had informed her through a private team of psychologists, to which the Council had turned in January 1985 to solve the question of her contacts with Lisa, that as long as she



continued to bring proceedings in the matter she would not be able to meet her daughter alone, but that this would be possible - at certain weekends - if she withdrew her action. As she knew that one condition for her being reunited with her child was that they got to know one another, she abandoned the appeal.

The Government dispute these affirmations. According to them, Cecilia Eriksson herself, in a telephone conversation with a social welfare officer on 7 November 1985, denied that she was given any such information and stated that her counsel had "exaggerated a lot" when describing the situation as something similar to blackmail. The Government concede, however, that the psychologists had explained to Cecilia Eriksson that meetings would be facilitated if Lisa was not faced with the threat of being forced to move to her mother as a result of the proceedings pending before the courts.

E. The Social Council's refusal to decide the question of access

26. On 6 August 1985, prior to withdrawing her appeal, Cecilia Eriksson lodged with the Social Council a request for access to the child every second weekend. On 16 August the Council decided "not to decide at present on the access and the frequency of access". It noted that it could not indicate any avenues of appeal since there was no legal provision on which a decision on access could be based.

F. Third set of proceedings challenging the prohibition on removal

27. On 15 January 1987 Cecilia Eriksson made a fresh request to the Social Council that the prohibition on removal be lifted. On 13 March 1987 the Council decided to investigate the consequences for Lisa of such a course.

28. On 21 May 1987 the Psychiatric Clinic sent to the Social Council a report signed by Mrs Essving-Levay and by a registered psychologist, Mrs Anne Christiansson. It contained the following passage:

"How will Lisa react to a possible removal to Cecilia, in our opinion? She will regress. There is a great risk that the regression will go so far that she loses contact with reality, i.e. becomes psychotic, a state which is extremely difficult to treat and is very likely to become permanent. Inter alia, she will withdraw within herself and will not adapt herself to the world around her. She will not be able to go to school since she will be preoccupied by her inner anxieties and chaos. She will perceive her removal from her foster parents as very treacherous on their part. In making this pessimistic assessment, we base ourselves on material and reactions which came to light during Lisa's therapy. Lisa is weak, lacking in confidence and does not have adequate mental resources to cope with separation. The conversations that we have had with her this year have been of a horrifying nature. She says that she does not want to live if she has to move to Cecilia. For many years she has lived in fear of being taken away from her home by Cecilia.

In our opinion Lisa must be able to stay in her foster home for good. If Lisa is to be separated from her home and moved to Cecilia, there is a risk, which is not of a minor nature, that Lisa's mental health will be irrevocably harmed; in addition there is a risk for her life."

29. On 5 June 1987 the Social Council decided not to lift the prohibition on removal. Cecilia Eriksson appealed to the County Administrative Court of Stockholm. Her appeal was accompanied by an application for an immediate transfer of Lisa to her pursuant to Chapter 21, section 7, of the Parental Code (see paragraph 49 below).

30. The County Administrative Court held a hearing on 26 August 1987 after which it decided to appoint as its expert

(sakkunnig) a psychologist who had not taken part in the earlier investigations. The decision of the court contained the following observations:

"The court's problem is that the law in force does not quite reflect the latest fundamental principles which are generally recognised within medical and behavioural sciences, namely that a child in Lisa's situation should never be transferred to his or her parent even if that parent is the child's guardian. The true meaning of the law, especially as interpreted in certain decisions of higher courts, is that there is a very high level of tolerance regarding the suffering and the risks to which a child can be exposed when being transferred to its parent in order to let the parent have access to the child or in order for the child to be definitely transferred to the parent. These levels can be lowered if the risks for the child's future health and development after reunification are considered serious and/or likely to subsist for a considerable time. This legal assessment also has to take into account the child's state of health before the reunification. The court feels that it would be correct to say that the parents' right to bring up and take care of their children themselves is still recognised by the law in force to a larger extent than by modern medical and behavioural sciences, which have concern for the child's well-being as sole guideline. When examining the case the court therefore has to strike a balance between Cecilia Eriksson's right to be with Lisa and to bring her up and the risks involved regarding Lisa's future health and development if Cecilia Eriksson's legitimate demands are met."

31. Both the appeal concerning the prohibition on removal and the application under the Parental Code were dismissed by the County Administrative Court on 15 June 1988.

In its judgment the court stated, inter alia:

"In the opinion of the court, it is evident that high demands must be placed on the Social District Council when it comes to taking measures to facilitate meetings between Cecilia and Lisa in order to prepare the ground for a reunification. It is therefore no excuse that the contacts between the persons involved, the authorities and the personnel giving treatment, have been strained. Passivity is, by way of example, shown by the fact that the Council has taken no measure in view of the deteriorating relations between Cecilia Eriksson and Söderling-Gard [a family consultant engaged by the Social Council]. Söderling-Gard has expressed the opinion that Cecilia Eriksson should never get Lisa back and she has been engaged to convince Cecilia Eriksson of that ...

It is remarkable that the Council did not in these circumstances, which must have been obvious to it for a long time, take any measures to ensure that Söderling-Gard would either act herself in accordance with the judgment of the Supreme Administrative Court or otherwise engage someone else in order to ensure that this was effectively done.

The Council has not taken active measures, as intended, to promote access and reunification effectively. By not doing so the Council has, on the contrary, contributed to reducing the possibilities of lifting the prohibition on removal. The Council has rather, by its relative passivity, achieved the result that the prohibition on removal has become self-fulfilling."

32. An appeal by Cecilia Eriksson against the judgment of the County Administrative Court to the Administrative Court of Appeal was dismissed in a judgment of 31 October 1988. On 9 December 1988 the Supreme Administrative Court rejected her application for leave to appeal against the latter judgment.

G. The request for a transfer of custody to the foster parents

33. The Social Council introduced an action before the District Court (tingsrätten) of Sjuhäradsbygden requesting that the custody of Lisa be transferred to the foster parents pursuant to Chapter 6, section 8, of the Parental Code (see paragraph 50 below). The court held a hearing on 10 October 1987, after which it ordered that the competent Social Council should submit an opinion. The court also rejected the Social Council's request for an interim order, pending the final judgment, that the custody of the child be transferred to the foster parents.

H. Particulars concerning the contacts between the applicants

34. A total of eight meetings took place between Cecilia Eriksson and Lisa between 1978, when Lisa was taken into public care, and 1983, when the care was terminated.

35. Thereafter and up to September 1987, mother and daughter have met on 29 (according to the Government) or 25 (according to Cecilia Eriksson) different occasions, as follows: six in 1983, five in 1984, five in 1985, nine in 1986 and at least four in 1987 (according to the Government). Cecilia Eriksson has alleged that of these meetings only four, lasting two hours each, have not been supervised by the foster parents and/or social welfare officers.

## II. RELEVANT DOMESTIC LAW

A. The Social Services Act 1980 and the 1980 Act containing Special Provisions on the Care of Young Persons

36. From 1 January 1982 the basic rules on public responsibility for young persons are laid down in the Social Services Act. This Act contains provisions regarding supportive and preventive measures taken with the approval of the individuals concerned. Decisions which had been taken under the previous legislation, the 1960 Act, and which were still in force on 31 December 1981, were considered to be decisions taken under the new legislation, whether it be the Social Services Act or the 1980 Act.

### 1. Compulsory care

37. Where the parents do not give their consent to the necessary measures, compulsory care may be ordered under the 1980 Act.

Section 1, paragraphs 1 and 2, of this Act read:

"Care is to be provided pursuant to this Act for persons under eighteen years of age if it may be presumed that the necessary care cannot be given to the young person with the consent of the person or persons having custody of him and, in the case of a young person aged fifteen or more, with the consent of the young person.

Care is to be provided for a young person if

1. lack of care for him or any other condition in the home entails a danger to his health or development, or
2. the young person is seriously endangering his health or development by abuse of habit-forming agents, criminal activity or any other comparable behaviour."

38. It is primarily the responsibility of the municipalities to promote a positive development for the young. For this purpose each municipality has a Social District Council, composed of lay members assisted by a staff of professional social workers.

39. If the Social Council deems it necessary to take a child into

care, the 1980 Act specifies that the Council has to apply to the County Administrative Court for a decision to this effect. Decisions by the County Administrative Court may be appealed to the Administrative Court of Appeal. A further appeal lies to the Supreme Administrative Court if it grants leave.

40. Once a decision on public care has been taken, the Social Council has to execute the decision, take care of the practical details of where to place the child, what education and other treatment to give him, etc. The law requires the care of the child to be carried out in such a way as to enable him to have close contact with his relatives and to be able to visit his home. This requirement may mean that the child returns to his home, after a period, to live there, although he is still formally under public care.

The Social Council may, under section 16 of the 1980 Act, regulate visits to and by parents and also decide not to disclose the whereabouts of the child to them. Such decisions may be appealed to the administrative courts by both the parents and the child.

41. According to section 5 of the 1980 Act, the Social Council is obliged to monitor carefully the care of young persons who are in care under the Act and "shall decide to terminate care under the Act when such care is no longer necessary".

## 2. Prohibition on removal

42. The Social Council may issue a prohibition on removal under section 28 of the Social Services Act, which reads as follows:

"The Social Council may for a certain period of time or until further notice prohibit the guardian of a minor from taking the minor from a home referred to in section 25 [i.e. a foster home], if there is a risk, which is not of a minor nature, of harming the child's physical or mental health if separated from that home.

If there are reasonable grounds to assume that there is such a risk, although the necessary investigations have not been completed, a temporary prohibition may be issued for a maximum period of 4 weeks, pending the final decision in the matter.

A prohibition issued under this section does not prevent a removal of the child from the home on the basis of a decision under Chapter 21 of the Parental Code."

The Government Bill mentioned that a purely passing disturbance or other occasional disadvantage to the child was not sufficient ground for issuing a prohibition on removal (1979/80:1, page 541). It stated that the factors to be considered when deciding whether or not to issue such a prohibition included the child's age, degree of development, character, emotional ties and present and prospective living conditions, as well as the time he had been cared for away from the parents and his contacts with them while separated. If the child had reached the age of 15, his own preference should not be opposed without good reasons; if he was younger, it was still an important factor to be taken into account.

The Standing Social Committee of the Parliament stated in its report (SOU 1979/80:44, p. 78), inter alia, that a prohibition might be issued if removal could involve a risk of harm to the child's physical or mental health, thus even where no serious objections existed in regard to the guardian. The Committee also stressed that the provision was aimed at safeguarding the best interests of the child and that those interests must prevail whenever they conflicted with the guardian's interest in deciding the domicile of the child. It also took as its point of departure the assumption that a separation generally involved a risk of harm to the child. Repeated transfers

and transfers which took place after a long time, when the child had developed strong links with the foster home, should thus not be accepted without good reasons: the child's need for secure relations and living conditions should be decisive.

43. Section 28 does not apply to children who are being cared for in foster homes under section 1 of the 1980 Act. As long as such care continues, the right of the guardian to determine the domicile of the child is suspended. Whilst that right in principle revives on the termination of such care, it may be further suspended by an application of section 28 by the social authorities.

44. Under section 73 of the Social Services Act, a decision taken under section 28 may be appealed to the administrative courts. In practice, besides the natural parents both the child concerned and the foster parents have been allowed to lodge such appeals. In the proceedings before the administrative courts, a special guardian may be appointed to protect the interests of the child, should these come into conflict with those of the child's legal guardian.

45. In a recent decision (no. 2377 of 18 July 1988), the Supreme Administrative Court held that a decision by the Social Council to restrict the access rights of the appellants, Mr and Mrs Olsson, while a prohibition on removal under section 28 of the Social Services Act was in force had no legal effect and that no appeal to the administrative courts would lie against such a decision. The court stated:

"Under section 16 of the [1980 Act] ..., a Social Council may restrict the right of access in respect of children taken into public care under this Act. As regards the right of access to children while a prohibition on removal is in force, no similar power has been vested in the Social Council in the relevant legislation. As there is no legal provision giving the Social Council power to restrict the right of access during the validity of the prohibition on removal ..., the instructions given by the President of the Social Council in order to limit the right of access have no legal effect. Nor can any right of appeal be inferred from general principles of administrative law or from the European Convention on Human Rights."

## B. The Parental Code

46. Chapter 21 of the Parental Code deals with the enforcement of judgments or decisions regarding custody and other related matters.

47. Section 1 specifies that actions for the enforcement of judgments or decisions by the ordinary courts concerning the custody or surrender of children or access to them are to be instituted before the County Administrative Court.

48. According to section 5, enforcement may not take place against the will of a child who has reached the age of 12 unless the County Administrative Court finds enforcement to be necessary in the child's best interests.

49. Under section 7, if the child is staying with someone other than the holder of custody, the child's custodian may, even when no judgment or decision as described in section 1 exists, seek from the County Administrative Court an order for the transfer of the child to him. Such an order may be refused if the best interests of the child require that the question of custody be examined by the ordinary courts.

When taking decisions under this section, the County Administrative Court shall also observe the requirements laid down in section 5 (see paragraph 48 above).

50. Under Chapter 6 of the Parental Code, the Social Council may, in certain cases, request the ordinary courts to transfer custody from the child's parents to the persons who are in fact taking care of the child. Section 8 of this Chapter reads:

"If a child has been permanently cared for and brought up in a private home other than its parental home and if it is obviously in the best interest of the child that the prevailing relationship may continue and that custody be transferred to the person or persons who have received the child or to one of them, the court shall appoint the said person or persons to exercise custody of the child as specially appointed guardians."

Such a transfer of custody is, apart from adoption, the most severe measure available against the natural parents. Although they retain certain rights and obligations, such as the right of access and the obligation to pay maintenance, their legal position as guardians is definitively transferred to the foster parents.

51. A report (SOU 1986:20) from the Social Commission (socialberedningen), appointed by the Government, has proposed that there be a co-ordination between compulsory care and prohibition on removal in order to avoid a duplication of procedures. A similar proposal has been made in a report (Ds S 1987:3) submitted in April 1987 by a special investigator appointed by the Government.

#### PROCEEDINGS BEFORE THE COMMISSION

52. In their application of 7 December 1984 to the Commission (no. 11373/85), Mrs Cecilia Eriksson and her daughter Lisa alleged violations of Articles 6 para. 1, 8 and 13 (art. 6-1, art. 8, art. 13) of the Convention and of Article 2 of Protocol No. 1 (P1-2). They also complained that, contrary to Article 25 (art. 25) of the Convention, the exercise of their right to petition the Commission had been hindered as a result of the domestic authorities' decision not to grant legal aid for the purpose of bringing the application before the Commission.

53. On 11 May 1987 the Commission declared the application admissible although it decided to take no action with respect to the complaint under Article 25 (art. 25).

In its report of 14 July 1988 (Article 31) (art. 31), the Commission expressed the opinion:

(a) by eight votes to two, that there had been a breach of Article 6 para. 1 (art. 6-1) of the Convention in respect of the claim for access to Lisa (see paragraph 26 above);

(b) by nine votes to one, that the rights of both applicants under Article 8 (art. 8) of the Convention had been violated;

(c) unanimously, that there had not been a violation of the Convention or Protocol No. 1 as regards the remaining complaints.

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

#### AS TO THE LAW

##### I. SCOPE OF THE ISSUES BEFORE THE COURT

54. In the course of their submissions, the applicants made a number of general complaints concerning the alleged incompatibility with the Convention of, firstly, Swedish child-care law, in particular the 1980 Act in combination with section 28 of the Social Services Act, and, secondly, the practice of the Swedish courts.

The Court recalls that in proceedings originating in an application lodged under Article 25 (art. 25) of the Convention it has to confine itself, as far as possible, to an examination of the concrete case before it. Its task is accordingly not to review the aforesaid legal provisions and practice in abstracto, but to determine whether the manner in which they were applied to or affected Mrs Eriksson and her daughter Lisa gave rise to a violation of the Convention.

55. The Court notes that no complaint was raised before it as regards the initial decision to take Lisa into public care or its implementation.

## II. THE MOTHER'S COMPLAINTS

### A. ALLEGED VIOLATION OF ARTICLE 8 (art. 8) OF THE CONVENTION

56. Mrs Eriksson alleged that the decision to prohibit her for an indefinite period from removing her daughter from the foster home, the maintenance in force of this prohibition for more than six years, the restrictions imposed on her access to the child and the Social Council's failure to reunite the applicants violated Article 8 (art. 8) of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

The Government contested this allegation whereas the Commission accepted it.

#### 1. Existence of interferences

57. The Government accepted that the issuing and maintenance in force of the prohibition on removal constituted an interference with the mother's right to respect for her family life. Nevertheless, they pointed out that if a decision had been taken to reunite Lisa with her mother following the lifting of the care order in January 1983, this could have been regarded as an interference with Lisa's right to respect for her family life with the foster family.

The measures taken after the lifting of the care order, notably the restrictions imposed on the mother's access to her daughter, did not, in the Government's view, amount to a separate interference.

58. The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life; furthermore, the natural family relationship is not terminated by reason of the fact that the child has been taken into public care (see the Olsson judgment of 24 March 1988, Series A no. 130, p. 29, para. 59).

The prohibition on removal and its maintenance in force for an unlimited period certainly amounted to an interference with Mrs Eriksson's right to respect for family life in the above-mentioned sense. The existence of such an interference is not affected by the daughter's relationship with her foster parents.

As regards the other measures, there can be no doubt that at least the restrictions on access imposed by the social authorities also constituted an interference with this right (see further paragraph 81 below).

For an interference to be justified according to Article 8 para. 2 (art. 8-2), it has to be shown to be "in accordance with the law", to have an aim or aims that is or are legitimate under this paragraph and to be "necessary in a democratic society" for the aforesaid aim or aims.

2. "In accordance with the law"

(a) The prohibition on removal

59. The prohibition on removal was based on section 28 of the Social Services Act. To the extent that Cecilia Eriksson's allegation that Swedish legislation is not in conformity with the Convention (see paragraph 54 above) concerns the quality of this section as a "law" for Convention purposes, the Court recalls the following requirements which flow from the phrase "in accordance with the law": the law must be sufficiently precise; there must be a measure of protection against arbitrary interferences by the public authorities with, inter alia, the right to respect for family life; if the law confers a discretion, its scope and manner of exercise must be indicated with sufficient clarity to afford such protection (see the above-mentioned Olsson judgment, Series A no. 130, p. 30, para. 61).

60. Section 28 itself is admittedly worded in rather general terms and confers a wide measure of discretion. However, it is scarcely feasible to set out in advance all the circumstances in which the removal of a child from a foster home may cause a serious risk of harming his physical or mental health. If the authorities' entitlement to act were to be confined to cases where actual harm had already occurred, the effectiveness of the protection which the child requires would be unduly reduced. Moreover, in interpreting and applying this section, the relevant preparatory work (see paragraph 42 above) provides guidance as to the exercise of the discretion it confers and the administrative courts have competence to review at several levels the decisions made pursuant to this section.

Taking these safeguards against arbitrary interferences into consideration, the scope of the discretion conferred on the authorities by the section in question appears to the Court to be reasonable and acceptable for the purposes of Article 8 (art. 8).

61. Mrs Eriksson also submitted that the prohibition on removal had not been issued in accordance with Swedish law as there was no evidence of any risk to Lisa's health if she were to be moved. Moreover, she claimed that the domestic courts had in fact applied section 28 incorrectly, in that they had based their judgments, upholding the prohibition, on what they considered to be "the most suitable and happiest solution" for Lisa and not on the risks to her health.

62. The Court would first recall that its power to review compliance with domestic law is limited; it is in the first place for the national authorities, notably the courts, to interpret and apply that law (see, for example, the Chappell judgment of 30 March 1989, Series A no. 152, p. 23, para. 54).

Like the Commission, the Court observes that the prohibition on removal has been examined by the administrative courts (see paragraphs 15-22 and 27-32 above) and that nothing in their judgments suggests that it was contrary to Swedish law.

63. The interference resulting from the prohibition on removal was thus "in accordance with the law".

(b) The restrictions on access



64. Before the Court, Mrs Eriksson alleged that the restrictions imposed on her access to her daughter (see paragraphs 14, 26 and 34-35 above) lacked any basis in domestic law. This allegation was accepted by the Delegate of the Commission. The Government disagreed: they maintained that the restrictions had the aim of protecting the daughter's welfare and that this aim provided a standard which, as such, fulfilled the requirement of being "in accordance with the law" even if the standard was not laid down explicitly in a specific provision.

65. As was pointed out by the Delegate of the Commission, the imposition of restrictions on access while a prohibition on removal is in force has been found by the Supreme Administrative Court to lack all legal effect as there are no legal provisions on which any such restrictions could be based (see paragraph 45 above). Having regard to this authoritative interpretation of Swedish law, the Court concludes that the interference in question with Mrs Eriksson's right to respect for family life did not have the requisite basis in domestic law and was therefore not "in accordance with the law" for the purposes of Article 8 (art. 8).

### 3. Legitimate aim

66. The Commission accepted that the aims of the measures complained of were, as stated by the Government, "the protection of health" and "the protection of the rights and freedoms of others", that is, in the instant case, of Lisa. Before the Court, Mrs Eriksson disputed the legitimacy of the aims behind the interference. She maintained that the child's best interests had been completely disregarded from the very beginning and that no risk to her health had ever been established in connection with the prohibition on removal.

67. Section 28 is clearly designed to protect the legitimate interests of children when a care order is lifted. The Court has also found (see paragraph 62 above) that there is nothing to suggest that the prohibition on removal was not imposed in accordance with this section. It accordingly concludes that that measure did have the aims invoked by the Government.

Although the Court has found that the restrictions on access had no basis in domestic law (see paragraph 65 above), it does not doubt that they were imposed with the legitimate aims of protecting Lisa's health and rights.

### 4. "Necessary in a democratic society"

68. It has also to be considered whether the measures at issue could be regarded as "necessary in a democratic society". The Government maintained that this requirement was met, but the Commission came to the conclusion that this was not the case.

69. The notion of necessity implies that the interference must be proportionate to the legitimate aim pursued; in determining whether an interference is "necessary in a democratic society", the Court will take into account that a margin of appreciation is left to the Contracting States (see, amongst many authorities, the above-mentioned Olsson judgment, Series A no. 130, pp. 31-32, para. 67).

70. The original decision to prohibit Mrs Eriksson from removing her daughter from the foster home may well, in the circumstances of the case and having regard to the margin of appreciation accorded to the Contracting States in this area, be said to satisfy this requirement.

71. In cases like the present a mother's right to respect for family life under Article 8 (art. 8) includes a right to the taking of measures with a view to her being reunited with her child.

The care order had been lifted, and there was no doubt as to the suitability of Mrs Eriksson to take care of children or of the conditions in her home (see paragraph 20 above). The Social Council's decision of 21 January 1983 (see paragraph 12 (c) above) made it clear that once the care order was no longer in force, the aim was the reuniting of parent and child. Furthermore the Supreme Administrative Court stated, in its judgment of 11 October 1984 (see paragraph 22 above), that "[i]rrespective of the duration of the prohibition, the [Social Council] is obliged to see to it that appropriate measures aimed at reuniting parents and child are taken without delay".

However, it appears that under Swedish law Mrs Eriksson did not, after the lifting of the care order, have any enforceable visiting rights while the prohibition on removal was in force. Furthermore, and in particular on account of the restrictions on access, she was in fact denied the opportunity to meet with her daughter to an extent and in circumstances likely to promote the aim of reuniting them or even the positive development of their relationship. In this situation she has not been able to have the prohibition on removal lifted. The resulting stress on the relations between the applicants and the uncertainty with regard to Lisa's future have already continued for more than six years, causing great anguish to both applicants.

The Government admitted that the system as implemented had failed on this occasion, but argued that situations such as the present could not be prevented whatever system would have been applied, as all depended on the persons involved. The Court recognises that difficulties may arise in consequence of the termination of public care of young children, especially where the child has been taken into care at a very young age and has spent many years away from his natural parents' home. However, the unsatisfactory situation that has ensued in the present case seems to a large extent to stem from the failure to ensure any meaningful access between mother and daughter with a view to reuniting them.

Having regard to the foregoing and notwithstanding Sweden's margin of appreciation, the Court concludes that the severe and lasting restrictions on access combined with the long duration of the prohibition on removal are not proportionate to the legitimate aims pursued.

72. Accordingly, Article 8 (art. 8) of the Convention has been violated.

## B. ALLEGED VIOLATIONS OF ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION

73. Mrs Eriksson also complained of a number of violations of Article 6 para. 1 (art. 6-1) of the Convention, which reads:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

Before the Court, the Government maintained that there had been no such violations, although they withdrew their initial plea that this Article (art. 6-1) was not applicable.

### 1. Proceedings concerning the prohibition on removal

#### (a) Fairness of the proceedings

74. Mrs Eriksson submitted in essence that the administrative court proceedings following her first challenge of the prohibition on removal (see paragraphs 15-22 above) were unfair since she was at a disadvantage compared with the social authorities and the foster parents, who had Lisa under their control and were therefore able to influence her attitudes.

She also complained that the administrative courts took their decisions without having before them any opinion from an independent medical expert, and that she was herself unable to challenge the evaluations by the Social Council's experts as she was allegedly not allowed to have her daughter examined by an expert of her own choice.

75. The first of the above complaints relates not to the fairness of the proceedings, but to the factual situation in the case. As regards the second complaint, the Court is satisfied from the information before it that proper steps were taken to obtain sufficient expert medical opinion for the purposes of the proceedings.

Considering the proceedings as a whole, the Court concludes, like the Commission, that they were not incompatible with Article 6 para. 1 (art. 6-1).

(b) Length of the proceedings

76. Mrs Eriksson further claimed that the first set of proceedings (see paragraphs 15-22 above) had not been concluded within a reasonable time.

77. The period to be taken into consideration for this purpose is approximately 20 months. The Court agrees with the Commission that the duration of these proceedings, at three levels of jurisdiction, is not excessive for the purposes of Article 6 para. 1 (art. 6-1).

(c) Withdrawal of an appeal

78. Mrs Eriksson claimed that there was a further violation of her right to access to the courts in the second set of proceedings, in that she was allegedly forced by the Social Council to withdraw her appeal against its decision of 18 January 1985 (see paragraphs 23-25 above).

79. The material before the Court does not substantiate this allegation, which was contested by the Government. Besides, the applicant has not brought any complaint before any Swedish authority empowered to examine matters of this kind. No violation of Article 6 para. 1 (art. 6-1) on this point has therefore been established.

2. Judicial review of the restrictions on access

80. Mrs Eriksson asserted that she did not have any remedy before a court with regard to the restrictions imposed on her access to Lisa.

In its decision of 18 July 1988 in the Olsson case, the Supreme Administrative Court held that no administrative appeal lay against a decision by the Social Council to restrict access (see paragraph 45 above). The Government admitted that this was so, but submitted that Mrs Eriksson could have had a court review of the reasons underlying the restrictions by challenging the prohibition on removal or by requesting the return of her child under Chapter 21, section 7, of the Parental Code. In their opinion, the question of access was so closely connected to the question where the child should remain and for how long, that the two questions were really elements of the same problem.

81. Like the Commission, the Court is unable to accept this argument. Especially in cases of the present kind, the question of access is quite distinct from the question of whether or not to uphold the prohibition on removal (see, *mutatis mutandis*, the *W v. the United Kingdom* judgment of 8 July 1987, Series A no. 121-A, pp. 35-36, para. 81): only if sufficient access is first permitted will there be real possibilities of having the prohibition on removal lifted. The recourse available in the administrative courts in the form of a

challenge to the prohibition on removal is thus not sufficient for the purpose of the mother's claim for access rights. An application under section 7 of Chapter 21 of the Parental Code must also be considered irrelevant for this purpose, as such an application will in principle succeed only in the same circumstances as a challenge to a prohibition on removal (see paragraph 49 above).

82. There has accordingly been a violation of Article 6 (art. 6) on this point.

#### C. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 1 (P1-2)

83. Mrs Eriksson submitted that there was a violation of Article 2 of Protocol No. 1 (P1-2) to the Convention as the prohibition on removal and the restrictions on access prevented her from giving her daughter an education according to the beliefs of the Pentecostal movement. The relevant part of Article 2 (P1-2) reads:

"In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

This claim was contested by the Government and rejected by the Commission.

84. Lisa was taken into care and placed in the foster home, where she has lived ever since, before her mother's religious conversion and it does not appear from the material before the Court that the question of Lisa's religious upbringing was ever pursued before the domestic authorities.

In these circumstances, the Court concludes that the mother's complaint is unsubstantiated.

#### D. ALLEGED VIOLATIONS OF ARTICLE 13 (art. 13) OF THE CONVENTION

85. Mrs Eriksson contended that there were also violations of Article 13 (art. 13) of the Convention, which reads:

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

The Government contested this claim.

86. Mrs Eriksson complained in the first place of the lack of any remedies against the restrictions on access imposed on her.

Having regard to its conclusion under Article 6 para. 1 (art. 6-1) (see paragraph 82 above), the Court does not consider it necessary to examine this aspect of the case also under Article 13 (art. 13).

87. The applicant further claimed that no remedy was available to her in respect of the alleged breach of Article 2 of Protocol No. 1 (P2-1).

In the circumstances of the case (see paragraph 84 above), she cannot be said to have an arguable claim on this point for the purposes of Article 13 (art. 13), which provision has therefore not been violated.

#### III. THE DAUGHTER'S COMPLAINTS

88. Mrs Eriksson, acting as her daughter's legal guardian and natural parent, also alleged that Lisa had been the victim of the same violations as she claimed that she herself had suffered.

The Government questioned whether Mrs Eriksson could properly represent her daughter, in view of their conflicting interests. However, they have raised no formal objection and the Court does not consider that this point is one which prevents it from examining the complaints put forward on Lisa's behalf.

#### A. ALLEGED VIOLATION OF ARTICLE 8 (art. 8) OF THE CONVENTION

89. The factual and legal situation concerning the possibilities for the applicants to meet and develop their relationship with a view to being reunited constitutes an interference with Lisa's right to respect for family life as well as with the mother's and, for the reasons given in paragraphs 65 and 71 above, in particular the uncertainty regarding Lisa's future, there has been a violation of Article 8 (art. 8) also in respect of her.

#### B. ALLEGED VIOLATIONS OF ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION

90. In its report, the Commission found that the daughter could not be considered to be a victim of the alleged violations of Article 6 para. 1 (art. 6-1). Before the Court, neither the Government nor the Delegate of the Commission dealt with these issues.

91. In the proceedings relating to the prohibition on removal (see paragraphs 74-79 above), Lisa was never formally a party. The Court does not find it necessary to decide whether Article 6 para. 1 (art. 6-1) is applicable also to the complaints put forward on her behalf concerning these proceedings: it has found above (see paragraphs 75, 77 and 79) that their conduct did not violate this Article (art. 6-1) with regard to the mother and there is nothing before the Court that could warrant a different conclusion in respect of the daughter.

92. As regards the lack of any court remedy to challenge the decisions concerning access, Article 6 para. 1 (art. 6-1) applies in the present case to the daughter in the same way as it applies to the mother (see paragraph 73 above).

For the same reasons as set forth in paragraphs 80-81 above, there has accordingly been a violation of this Article (art. 6-1) on this point in the case of the daughter too.

#### C. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 1 (P1-2), TAKEN ALONE OR TOGETHER WITH ARTICLE 13 OF THE CONVENTION (art. 13+P1-2)

93. The complaint under Article 2 of Protocol No. 1 (P1-2) is based only on its second sentence, which guarantees a right of parents, and not on the first, which states that "no person shall be denied the right to education". Lisa therefore cannot claim to be the victim of the alleged violation of Article 2 (P1-2), taken alone or together with Article 13 (art. 13+P1-2) of the Convention.

#### D. ALLEGED VIOLATION OF ARTICLE 13 TAKEN IN CONJUNCTION WITH ARTICLE 6 PARA. 1 OF THE CONVENTION (art. 13+6-1)

94. Having regard to its conclusion regarding Article 6 para. 1 (art. 6-1) (see paragraph 92 above), the Court does not consider it necessary to examine under Article 13 (art. 13) the complaint regarding the lack of any court remedy in respect of the restrictions on access.

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

95. Under Article 50 (art. 50) of the Convention,

"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. Damage

96. The applicants sought under this provision 5,000,000 Swedish Crowns (SEK) each for non-pecuniary damage, which claim both the Government and the delegate of the Commission considered excessive.

97. There can be no doubt, in the Court's view, that both applicants have for a long time suffered substantial anxiety and distress as a result of the violations found in the present case. In addition, the mother has been exposed to much embarrassment and has had to devote much time and effort to trying to bring about such conditions regarding her contacts with her daughter as would be likely to promote the aim of reuniting them.

98. These various factors do not readily lend themselves to precise quantification. Making an assessment on an equitable basis, as is required by Article 50 (art. 50), the Court awards Mrs Eriksson 200,000 SEK and her daughter Lisa 100,000 SEK for non-pecuniary damage.

#### B. Legal fees and expenses

99. Mrs Eriksson also claimed 270,000 SEK for 300 hours' work performed by the lawyer, Mrs Westerberg, in the proceedings before the Commission and the Court.

The Government questioned whether all the 300 hours' work had really been necessary, especially since Mrs Westerberg was well acquainted with the case as a result of the domestic proceedings. With regard to the hourly rate charged, they accepted as reasonable only 700 SEK, as against 900 SEK claimed. The Delegate of the Commission made no comments.

100. Taking into account the relevant legal aid payments made by the Council of Europe and making an assessment on an equitable basis, the Court considers that Mrs Eriksson is entitled to be reimbursed, for legal fees and expenses, the sum of 100,000 SEK.

#### FOR THESE REASONS, THE COURT

1. Holds unanimously that there have been violations of Article 8 (art. 8) of the Convention as regards both applicants;
2. Holds unanimously that there has been a violation of Article 6 para. 1 (art. 6-1) as regards Cecilia Eriksson, in that no court remedy was available to challenge the restrictions on access;
3. Holds by fifteen votes to five that, on the last-mentioned point, there has been a violation of Article 6 para. 1 (art. 6-1) as regards Lisa Eriksson also;
4. Holds unanimously that, as regards both applicants, it is not necessary to examine this same point also under Article 13 (art. 13) of the Convention;
5. Holds unanimously that there have been no other violations of Article 6 para. 1 (art. 6-1);
6. Holds unanimously that there has been no violation of Cecilia Eriksson's rights under Article 2 of Protocol No. 1 (P1-2),

taken alone or together with Article 13 (art. 13+P1-2) of the Convention;

7. Holds unanimously that Lisa Eriksson cannot claim to be a victim of the alleged violation of Article 2 of Protocol No. 1 (P1-2), taken alone or together with Article 13 (art. 13+P1-2) of the Convention;

8. Holds unanimously that Sweden is to pay, for non-pecuniary damage, 200,000 (two hundred thousand) Swedish Crowns to Cecilia Eriksson and 100,000 (one hundred thousand) Swedish Crowns to her daughter Lisa and, for legal costs and expenses, 100,000 (one hundred thousand) Swedish Crowns to Cecilia Eriksson;

9. Rejects 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 22 June 1989.

Signed: Rolv RYSSDAL  
President

Signed: Marc-André EISSEN  
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 52 para. 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) partly dissenting opinion of Mr Thór Vilhjálmsson, Mrs Bindschedler-Robert, Mr Matscher, Mrs Palm and Mr Foighel;

(b) concurring opinion of Mrs Bindschedler-Robert, Mr Pinheiro Farinha, Mr Pettiti, Sir Vincent Evans, Mr Macdonald, Mr Carrillo Salcedo and Mr Valticos.

Initialled: R.R.

Initialled: M-A.E.

PARTLY DISSENTING OPINION OF JUDGES THÓR VILHJÁLMSOON, BINDSCHEDLER-ROBERT, MATSCHER, PALM AND FOIGHEL

Whilst we agree with the Court that there has been a violation of Article 6 (art. 6) as regards Mrs Eriksson, we cannot agree with the Court's conclusion on this point in respect of the daughter.

Lisa has not, herself, shown any interest whatsoever in reuniting with her mother. She has lived with her foster family almost since she was born and she wants to stay with them. Equally she has never sought to have a review of the restrictions on access imposed in the present case. Even if Lisa, because of her young age, has not been able to take any legal action herself, she would certainly have been able to put to the social authorities, with which she had close contacts, any requests she might have had. Indeed there is nothing in the material before the Court that shows anything else than that Lisa, however reluctantly, agreed to see her mother but did not wish to have closer contacts.

In these circumstances, it is not in our view established that Lisa has suffered any detriment as a result of the lack of any court remedy. As she was thus not actually affected by the impugned deficiency of the Swedish system, she cannot be considered a victim of the violation of Article 6 (art. 6) alleged on her behalf (see, *mutatis mutandis*, the Norris judgment of 26 October 1988, Series A no. 142, pp. 15-16, paras. 30 and 33).

The reasoning above can to a certain degree be applied to argue for a

non-violation of Article 8 (art. 8). But there is a clear distinction between the two situations. The opportunity for Lisa to be reunited with her mother was undoubtedly taken away from her. Thus there was an interference with the respect due to her family life and a violation of Article 8 (art. 8).

CONCURRING OPINION OF JUDGES BINDSCHEDLER-ROBERT, PINHEIRO FARINHA, PETTITI, SIR VINCENT EVANS, MACDONALD, CARRILLO SALCEDO AND VALTICOS

The Court has noted in paragraph 91 of its judgment that Lisa Eriksson was never formally a party to the proceedings relating to the prohibition on removal. Nevertheless her interests were directly affected by those proceedings and could not be assumed to be consistent with those of any of the other parties involved. This is a consideration relevant to the fairness of the proceedings on the part of Lisa. It appears that under Swedish law a special guardian could have been appointed to protect her separate interests (see paragraph 44 of the Court's judgment). There is no evidence that this procedure was followed in the present case. No complaint in this respect has been made on her behalf before the Court. In our opinion, however, the appointment of a special guardian would appear to have been an appropriate and desirable step in the circumstances of the case.