CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF HAASE v. GERMANY

(Application no. 11057/02)

JUDGMENT

STRASBOURG

8 April 2004

FINAL

08/07/2004

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

In the case of Haase v. Germany,

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

Mr I. CABRAL BARRETO, *President*,
Mr G. RESS,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr B. ZUPANČIČ,
Mrs M. TSATSA-NIKOLOVSKA,
Mr K. TRAJA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 23 January 2003 and 6 April 2004,

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

PROCEDURE

1. The case originated in an application (no. 11057/02) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two German nationals, Mrs Cornelia Haase and Mr Josef Haase ("the applicants"), on 6 March 2002.

2. The applicants, who had been granted legal aid, were represented by Mr P. Koeppel, a lawyer practising in Munich. The German Government ("the Government") were represented by their Agent, Mr K. Stoltenberg, *Ministerialdirigent*.

3. The applicants alleged, that the suspension of their parental responsibility for their four children and three of the children of Mrs Haase's first marriage and the prohibition of access to all the children amounted to a breach of Article 8 of the Convention They also complained about the unfairness of the related court proceedings under Article 6 § 1 of the Convention.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 23 January 2003, the Court declared the application admissible.

6. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Factual background

7. The applicants were born in 1968 and 1967 respectively and live in Altenberge (Germany).

8. Mrs Haase is the mother of twelve children. While she was married to M. she gave birth to seven children, Matthias, born in 1985, Sascha, born in 1986, Ramona, born in 1987, Alexander, born in 1988, Timo, born in 1990, and the twins Lisa-Marie and Nico, born in 1992. With her second husband, Mr Haase, she had five children. Anna-Karina was born in 1995, Sandra-Kristin in 1998, Maurice-Pascal in 2000 and Laura-Michelle on 11 December 2001. In December 2003 Mrs Haase gave birth to her last child.

9. In 1993 the relations between Mrs Haase and M. deteriorated. In April 1993 M. instituted divorce proceedings and requested to be afforded parental rights over the children. By a decision of 29 October 1993 the Münster District Court (*Amtsgericht*) granted parental rights over the three younger children, Timo, Lisa-Marie and Nico, to Mrs Haase and over the four older children to her first husband. The Münster Youth Office appealed against the decision, but withdrew the appeal in September 1994. In December 1993 Mrs Haase moved with the three children to live withher present husband. On 18 November 1994 the Münster District Court pronounced Mrs Haase's divorce from her first husband. The applicants have been married since December 1994.

B. The proceedings resulting in withdrawal of the applicants' parental responsibility

10. In February 2001 Mrs Haase applied to the Münster Youth Office (*Amt für Kinder, Jugendliche und Familien - KSD*) for family aid. In order to be granted the aid, the applicants agreed to have their family situation assessed by a psychological expert. In May 2001 the Municipal Social Service instructed G. to draw up an expert report. The expert met Mrs Haase and three of her children on 26 September and 11, 15 17 and 22 October 2001 at the applicants' home.

11. Being of the opinion that the questions put to the children by the expert were irrelevant for the purposes of family aid and having regard to the expert's objection to Mrs Haase attending the meetings with the children's teachers, the applicants refused to co–operate with the expert any longer.

12. On 17 December 2001 the expert submitted his report to the Münster Youth Office. According to this report, the deficiencies in the children's care and home conditions risked jeopardising their development seriously. There was a damaging cycle of events in which the applicants were unreasonably harsh with their children on repeated occasions and had beaten them. The children needed to be in a secure long-term placement and any further contact between them and the applicants would have to be avoided.

13. On the same day the Youth Office applied to the Münster District Court for an interim injunction (*einstweilige Anordnung*) withdrawing the applicants' parental rights over the seven children, namely their four children, Anna-Karina, Sandra-Christine, Maurice-Pascal and Laura-Michelle, and three of the children born during Mrs Haase's first marriage, namely Timo, Nico and Lisa-Marie.

14. On that very day, *i. e.* on 17 December 2001, the Münster District Court, without hearing the parents or their children, issued the requested interim injunction. The applicants were ordered to hand over the children forthwith to the Münster Youth Office. The officer in charge of enforcing the decision was authorised to use force if necessary to collect the children. Relying notably on the findings of the expert report, the District Court found that the parents' inability to give the children satisfactory care and education and an abusive exercise of parental authority jeopardised the physical, mental and psychological well-being of all of the children to the extent that their separation from the applicants appeared to be the only possible solution to protect them. The District Court referred to the relevant provisions of the Civil Code (Articles 1666 and 1666a - see paragraphs 53 and 54 below).

15. By a decision of 18 December 2001 the Münster District Court supplemented its decision of 17 December 2001, prohibiting all access between the applicants and their children and the three children of the first marriage, Timo, Nico and Lisa-Marie. The whereabouts of the children were not to be communicated to the applicants. The District Court further prohibited all access between the four other children of the first marriage and Mrs Haase. She was also forbidden to come nearer than 500 metres to the four other children's residence or their schools. The District Court considered that the expert opinion was sufficient evidence to show that the separation of the parents from their children was necessary for the protection of the children. It had further been shown that the parents would object and try by all means to exert pressure upon the children. In order to avoid stress to the children, these measures were necessary in their best

interests. The parents were urged to recognise their own deficiencies in respect of the care and the physical and psychological well-being of the children and take into account the clearly expressed need of the children for a change in their situation. The parents were invited to accept - at least for the time being - the measures taken and to contribute as far as possible to a calming of the general situation. This was only possible if the parents accepted the existing circumstances. The approach of the Youth Office met in part the expressly stated wishes of the children. The District Court concluded that the momentarily inevitable measures were proportionate to the urgent needs and the objective interests of all of the children.

16. The children were taken on the same day about noon from three different schools, a nursery and from home and were placed in three foster homes. The seven-day-old youngest daughter, Laura-Michelle, was taken from the hospital and since that time has lived with a foster family.

17. In a letter of 18 December 2001 Dr W., a gynaecologist and head physician at the *Johannesstift* hospital in Münster, complained to the Münster District Court about the conduct of the authorities. He stated that, according to a telephone call of 17 December 2001, the six children of Mrs Haase as well as the newborn child in the hospital were to be removed from their mother without her knowledge. His patient was to be informed of the measure after her child had been taken from the nursery. Staff members were asked to take the child downstairs to the hospital's entrance and place it in a taxi.

He, as the head physician, and the medical hospital staff were surprised and shocked by the lack of warning and considered this conduct an affront to both Mrs Haase and the medical staff. Since 1992 Mrs Haase had been taken care of by the medical staff of the hospital. She had always given the impression of a being highly responsible person. She had come regularly to the preventive medical check-ups during her pregnancy. When she was accompanied by her children, the children behaved well, were friendly and well brought-up. There were no signs that they were in any way neglected or ill-treated.

18. On 19 December 2001 the Youth Office informed the applicants that the children had been granted financial assistance in the sum of EUR 4,000 per month and that the parents had to contribute to these fees according to their financial means.

19. On 19 December 2001 the applicants appealed against the District Court's decision of 17 December 2001. They submitted that it was difficult to understand that in the context of family aid an expert opinion on the parents' ability to bring up their children had been drawn up and that they had not been informed about this opinion. The contested decision was unexpected and had been given at a moment when Mrs Haase was in a critical state of health, having given birth to her daughter a week before.

They proposed witnesses who would confirm that the children had not been ill-treated, but were being brought up with love and understanding.

20. On 7 January 2002 the District Court held a hearing in the presence of the applicants assisted by a lawyer, Mrs Haase's first husband, representatives of the Münster Youth Office, a representative of a nursery and the expert G. The four witnesses of the applicants' own choosing were not heard and had to leave the courtroom.

The District Court instructed G. to proceed with the assessment of the remaining children and to finalise his report. It further appointed a new expert, H., to assess the applicants' capacity to bring up their children.

21. In the following interviews to prepare the assessment, the applicants asked the expert make a tape-recording of the interviews. Upon the expert's refusal to do so, the applicants were unwilling to continue to co-operate with him.

22. On 1 March 2002 the Hamm Court of Appeal (*Oberlandesgericht*) dismissed the applicants' appeal against the decision of 17 December 2001. It noted that the District Court had had regard to the report submitted by the Youth Office in connection with its request of 17 December 2001 to revoke the applicants' parental rights and to the expert opinion submitted by G. and that the District Court had considered that the impugned measure was justified. The expert had concluded that the basic needs of the children were not satisfied and that patterns of violence and permanent shortcomings of all kinds determined the children's day-to-day life. It was thus necessary to put an end to the risk to which the well-being of the children appeared to be exposed. A new expert opinion was to be expected by the middle of April 2002. The Court of Appeal found that the applicants' appeal could therefore be dismissed without holding a hearing. It was against the best interests of the children to take them out of the new environment in which they were building up new contacts, and to restore them to their former family, there being the risk that they would be taken to a new environment again shortly afterwards.

23. On 8 March 2002 the applicants challenged the judge at the Münster District Court for bias.

24. On 4 April 2002 the Federal Constitutional Court (*Bundesverfassungsgericht*), sitting as a bench of three judges, dismissed the applicants' request for an interim injunction.

The Federal Constitutional Court found that the applicants' constitutional complaint was neither inadmissible nor manifestly ill-founded. There were doubts in particular whether the courts had breached the applicants' right to a fair hearing and their right to respect for their family life. However, if the requested interim injunction was issued and if later the constitutional complaint had to be dismissed, the children would have to be taken from the applicants again and placed somewhere else. Having regard to the fact that the expert opinion was to be drawn up by mid-April 2002, the applicants

should await the outcome of the main proceedings rather than have the children run the risk of being separated from their parents again later. It had to be assumed that the competent courts would conduct the main proceedings speedily having regard to the time element in these matters.

25. On 10 April 2002 the Münster District Court dismissed the challenge to the judge and on 11 April 2002 another to the expert G.

26. On 19 April 2002 the Münster District Court appointed a lawyer of the Münster Bar as curator *ad litem* (*Verfahrenspfleger*) to represent the children in the proceedings. It instructed the already appointed experts to submit the results of their investigations obtained so far and discharged them from any further expert activity. It appointed a new expert, Professor K., with a view to determining whether separating the children from the family was the only way of eliminating all danger for them.

27. On 11 June 2002 Professor K. interviewed the applicants at their home. The interview lasted for six hours.

28. On 21 June 2002 the Federal Constitutional Court, sitting as a bench of three judges, set aside the decisions of the Hamm Court of Appeal of 1 March 2002 and the Münster District Court of 17 December 2001 and referred the case back to the Münster District Court.

29. In so far as the applicants complained about the decisions of the Münster District Court of 18 December 2001 and 7 January 2002, the Federal Constitutional Court declared the constitutional complaint inadmissible, since the applicants had failed to appeal against these decisions in accordance with section 19 of the Act on Non-Contentious Proceedings (*Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit - FGG*).

30. In so far as the constitutional complaint was admissible, the Federal Constitutional Court considered that, in accordance with the principles established in its case-law, the decisions of the Münster District Court and the Court of Appeal violated the applicants' family rights as guaranteed by Article 6 § 2, first sentence, of the basic Law, taken together with Article 6 § 3 (see “Relevant Domestic Law” below)**.**

There were serious doubts whether the courts had respected the importance of parental rights when giving their decisions and whether they had sufficiently taken into account the principle of proportionality. The question whether the evidence established that there was a risk of harm to the children had not been adequately considered. The District Court and the Court of Appeal had merely referred to the report of the Youth Office and the expert opinion. It did not appear from their decisions whether the expert's conclusions were based on reliable facts. An assessment of the applicants' submissions and considerations as to the possibility of ordering alternative measures, that would not have required the total revocation of parental rights, had not been made. Both the Court of Appeal and the

District Court had failed to question the children or give the persons taking part in the proceedings the opportunity to be heard.

The measures which had been ordered had led to a drastic change in the lives of all the persons concerned and constituted a particularly serious interference with parental rights. However, no inquiries had been made, even by telephone, before the decision was taken. No reasons were given justifying the urgency of the matter.

The Family Court had no information on the possible effects of its decision, since the Youth Office and the expert had not commented on this issue. When examining the advantages and disadvantages of a family measure it was, however, relevant to consider that a separation of the children from their parents could jeopardise the development of the children, in particular in their first years of life.

The courts had also failed to clarify the contradiction between the findings in the expert opinion according to which the applicants were not ready to co-operate and the fact that Mrs Haase herself had asked to be granted child-rearing guidance. Furthermore there was no indication whether and to what extent the applicants had refused any contact or help offered by the Youth Office and it was not clear which "specific measures granting assistance" (*einzelne Jugendhilfemaßnahmen*) had been carried out in the past and why they were not successful.

The District Court should have first clarified the questions which arose and in the meantime could have taken alternative provisional measures if there was serious reason to believe that the welfare of the children was at risk.

31. According to the Federal Constitutional Court, it could not be excluded that, prior to the termination of the proceedings on the merits, which had to be dealt with as a priority, the District Court would issue another emergency decision. If so, the District Court was directed to examine carefully whether, in the light of the evidence obtained in the meantime, the continued separation of the children from the applicants was still justified and whether a repeated change of the children's place of residence would be in their best interests. If the District Court found that the present situation were to be maintained, it would have to consider whether the applicants should be granted a right of access, restricted or subject to conditions if necessary, and whether, in strict accordance with the principle of proportionality, the effects of such a decision should be limited in time.

32. On 13 and 14 June 2002 four of the children, Timo, Nico, Anna-Karina and Lisa, were interviewed by the judge at the Münster District Court at the respective institutions where they were placed.

33. According to the minutes of the District Court of 14 June 2002, Timo declared that he wished to return to his parents. He knew that there were certain reasons for placing him and his siblings in a different

environment and confirmed that he had had too much work and strain at home. He sent his greetings to his brothers and sisters.

34. Nico, Anna-Karina and Lisa were interviewed in another foster home. Nico stated that he wished to know whether his parents and his "favourite" father (*Lieblingsvater*) were all right. He asked why he could not join his "favourite" father and whether somebody, his parents, his father or Maurice, could not come to see him. Lisa and Anna were with him and, according to them, were all right. Lisa had let him know that she too wished to return home. He stated that he was fine. Asked about his dreams, he said that he wished to go to his "favourite" father who was very nice, better than his stepfather. In reply to the question whether the judge should leave a message, he dictated the following letter on a dictaphone: "Dear Sascha (his favourite brother), (his favourite sisters Lisa and Ramona), dear Alex, what a pity that we don't see each other ... Sascha, Matthias, Ramona, Alex, his favourite father and his parents should come and visit him." (*Lieber Sascha (sein Lieblingsbruder), (Lieblingsschwestern Lisa und Ramona) lieber Alex, schade, dass wir uns nicht sehen ... Sascha, Matthias, Ramona, Alex, sein Lieblingsvater und seine Eltern sollten ihn besuchen kommen.*)

The following letter to his mother was recorded on a dictaphone: "Dear Mama, it is a pity that you do not come and best regards from Maurice and Sandra and Timo and Lisa. Lisa and Anna are all right. Yes and perhaps could you come to see us? Or is that not possible? " (*Liebe Mama! Schade, dass Du nicht kommst und liebe Grüsse von Maurice und Sandra und von Timo und von Anna und dass es Lisa und Anna gut geht. Ja und, vielleicht: könntet Ihr ja mal herkommen. Oder geht das nicht?*)

35. Anna-Karina stated that she felt fine. She was in the company of Lisa and Nico. Everybody said that she should tell her parents that everything was all right. She then added that she did not like it there.

36. Lisa-Marie regretted that "poor Sandra" was all on her own without any member of the family. She would never bear this. She had to protect Nico and Anna. That was her duty as the elder sister. Nico was beaten very often in that place. She did not know the reason. In reply to a question, she stated that she was doing her homework thoroughly and that she was doing well in school. At home she had almost fallen asleep when doing her homework. When asked what message the judge could pass on, she said that she did not like the place and that she wished to return home. However, the staff did not believe her. She did not really like them. She did not want to go to another institution. She wished to go home. If she were not allowed to go home, she should at least be authorised to see everybody, her brothers and sisters, parents and stepfather. She missed taking Maurice to bed sometimes. Having been told that Nico wished to return to his "favourite" father, Lisa-Maria replied that, unlike Nico, she loved both her father and her stepfather.

37. On 24 June 2002, as a consequence of the decision of the Federal Constitutional Court, the Münster District Court set down for hearing on

1 July 2002 the request of the Münster Youth Office of 17 December 2001 to provisionally revoke the parental rights of the applicants over the children. It transferred to the Youth Office the right to decide where the children should live (*Aufenthaltsbestimmungsrecht*). The District Court found that the best interests of the children did not require a modification of the present situation before a decision on the merits was given. The District Court considered that its decision of 18 December 2001 prohibiting the applicants all access to the children was still relevant, since it had not been set aside by the Federal Constitutional Court.

38. On 1 July 2002 the Münster District Court held a hearing attended *inter alia* by the applicants assisted by a lawyer, Mrs Haase's first husband, the curator *ad litem*, a lawyer and representatives of the Münster Youth Office, the experts G. and Professor K. and the children's paediatrician Dr J. Professor K. gave details of her visit to the applicants' home on 11 January 2002 and resumed the content of the interview. Having studied the extensive files concerning the applicants and G.'s report, Professor K. could not confirm that the findings in the report were erroneous. She expressed the view that the children should not be returned to the applicants.

The children's paediatrician, Dr J., stated that all the children had been his patients since their birth except the daughter born in December 2001. Although he knew about the children's problems, in particular the difficulties with Nico, the applicants made a quite positive impression on him. It was a big family with many children. However, the applicants were loving parents who took great care of their children. There was no indication that the children had been beaten or otherwise abused.

The curator *ad litem* was opposed to contacts between the applicants and the children.

39. By an interim injunction of the same day, namely 1 July 2002, the Münster District Court provisionally transferred the custody (*Personensorge*) over the children to the Münster Youth Office and confirmed its decision of 18 December 2001. The expert was instructed to add to her report. She was requested to comment in particular on whether, in the best interest of the children, it was necessary to maintain the access prohibition, whether the children should be granted access to the older children of the first marriage, Matthias, Sascha, Ramona and Alexander, and if appropriate, in what way such contact could be arranged while keeping the children's place of residence secret.

40. The District Court relied in particular on the findings of the expert G. that the separation of the applicants from their children had to be maintained. The applicants were incapable of bringing up their children because of their own basic and irreparable educational deficiencies and their abuse of parental authority. The children were emotionally disturbed and presented unusual patterns of behaviour. They had been beaten and locked up. Furthermore the four older children of the first marriage had approved

the separation of the younger children from their mother and had refused any contact with her. The sole reason why Mrs Haase was intent on giving a positive impression of herself was to obtain support from others. However, any such support was foredoomed.

The District Court noted that Professor K. had not yet submitted her report. However, she had confirmed the findings of the expert G. and had stated at the hearing of 1 July 2002 that there was no alternative to separating the children from the applicants. According to her, Mrs Haase had never been willing to call her own behaviour into question. She satisfied her own needs only and refused to accept child-rearing guidance with a view to reducing her own deficiencies. In fact, she had admitted not having undergone therapy in 1994. Professor K. had found that G.'s expert opinion could not be objected to.

The District Court considered that the numerous written statements of witnesses submitted by the applicants confirming that the children had not been beaten or ill-treated did not constitute sufficient evidence in their favour. Harm, such as verbal cruelty, could be of a psychological nature. The statement made by Lisa-Marie that she wished to return to the applicants did not reflect her real intention, but resulted from a conflict of loyalty.

The District Court further compared the situation described in an expert report drawn up in 1993 with the present situation: Mrs Haase was always well-dressed while her husband looked tired and worn out. It concluded that Mrs Haase was not aware of her problems. She aggravated with each new pregnancy the emotional deficiencies of the children. This had been confirmed by Professor K. after a discussion with the applicants on 11 June 2002.

The District Court affirmed that its decision of 17 December 2001 was based on its experience in cases where coercive measures had to be taken. Had the parents been warned of the requested measure, they would have offered resistance, as was shown by their own reaction and the excessive reaction of the media in the case. An enforcement of the court decisions with the intervention of the authorities and the police would have been contrary to the best interests of the children.

41. On 16 July 2002 the applicants appealed against this decision to the Hamm Court of Appeal.

42. On 20 August 2002 the applicants challenged Professor K. for bias. They complained that she had intentionally delayed the preparation of her expert report in order to separate the children from their parents for a longer period. She could not be relied upon to act in the best interests of the children. Without having seen them, she had recommended at the hearing before the District Court of 1 July 2002 that they be separated from the applicants. Her unfriendly conduct vis-à-vis the applicants, when interviewing them at their home on 11 June 2002, and the reference to files

dating from Mrs Haase's divorce problems in 1993 confirmed the view that she was not impartial.

43. On 18 September 2002 the applicants challenged the judge at the Münster District Court for bias. They referred to previous decisions given by that judge in favour of the Youth Office, allegedly in contrast to expert recommendations.

On 23 September 2002 the judge declined to stand down.

On 30 September 2002 the applicants' lawyer again challenged the judge at the District Court and Professor K. for bias.

On 7 October 2002 the Münster District Court dismissed the challenge to the judge on the ground that the applicants' allegations were unsubstantiated.

C. Subsequent developments

44. On 10 December 2002 the Hamm Court of Appeal dismissed the applicants' appeal against the Münster District Court's decision of 7 October 2002.

On 19 December 2002 the Münster District Court rejected the challenge for bias in respect of Professor K.

45. On 13 January 2003 Professor K. submitted her report. She confirmed her previous findings.

46. On 19 February 2003 the Federal Constitutional Court, sitting as a bench of three judges, refused to entertain the applicants' constitutional appeal against the decisions of 10 December 2002 and 7 October 2002.

47. On 18 February 2003 the Münster District Court held a hearing. The applicants, the Youth Office, the curator *ad litem* and the experts G. and K. were present. The curator *ad litem* declared that the children had adapted to the changed living conditions and appeared to be comfortable with the new situation.

48. On 4 March 2003 three of the children living with their father, Matthias, Sascha and Alexander, were heard separately by the Münster District Court. They were opposed to seeing their mother.

49. By a decision on the merits of 6 March 2003, the Münster District Court withdrew the applicants' parental rights over their four children and the three children of the first marriage previously living with them and prohibited access to them until June 2004. It relied on Articles 1666, 1666a and 1684 § 4 of the Civil Code (see paragraphs 53-55 below)**.** The authorities were compelled to take the contested measures, which were justified under Article 6 § 3 of the Basic Law, and necessary in a democratic society for the protection of the health and the rights of the children within the meaning of Article 8 § 2 of the Convention. It found that the domestic situation was difficult and that the children were in danger. The applicants, in particular Mrs Haase, were inflexible and incapable of understanding the

children's needs and with her it would be impossible to implement any educative measures. The conditions in which the children had been brought up were highly unsatisfactory. The children had made positive progress in the foster homes in which they had been placed, had gained in confidence and were less affected by behavioural disorders.

50. By a separate decision of the same day the Münster District Court prohibited contact between Mrs Haase and her four eldest children, Matthias, Sascha, Ramona and Alexander before the end of 2004, or in the case of Mrs Haase's eldest son Matthias, before he attained his majority.

51. The applicants appealed against the above decisions.

II. RELEVANT DOMESTIC LAW

52. Article 6 of the Basic Law (*Grundgesetz*) reads as follows:

> "...
>
> (2) Care and upbringing of children are the natural right of the parents and a duty primarily incumbent on them. The state watches over the performance of this duty.
>
> (3) Separation of children from the family against the will of the persons entitled to bring them up may take place only pursuant to a law, if those so entitled fail in their duty or if the children are otherwise threatened with neglect.

53. Article 1666 of the Civil Code (*Bürgerliches Gesetzbuch*) provides that the family courts are under an obligation to order necessary measures if a child's welfare is jeopardised (*Gefährdung des Kindeswohls*).

54. The first sub-paragraph of Article 1666a provides that measures intended to separate a child from its family are permissible only if it is not possible for the authorities to take any other measure to avoid jeopardising the child's welfare.

The second sub-paragraph of Article 1666a provides:

> "Full [parental] responsibility may only be withdrawn if other measures have proved ineffective or have to be regarded as insufficient to remove the danger [*Die gesamte Personensorge darf nur entzogen werden, wenn andere Maßnahmen erfolglos geblieben sind oder wenn anzunehmen ist, dass sie zur Abwendung der Gefahr nicht ausreichen*]."

55. According to Article 1684 § 4 of the Civil Code, the family court can restrict or suspend the right of access if such a measure is necessary for the child's welfare. A decision restricting or suspending that right for a lengthy period or permanently may only be taken if the child's well-being would otherwise be endangered. The family courts may order that the right of access be exercised in the presence of a third party, such as a Youth Office authority or an association.

THE LAW

I. PRELIMINARY ISSUES

A. New material submitted by the parties

56. The Government contended that in its decision on the admissibility of the application the Court had considered a number of decisions submitted subsequent to the decision of the Federal Constitutional Court of 21 June 2002 without, however, having invited them to submit additional observations in this respect.

57. As the Court has already had reason to observe (see *Sahin v. Germany* [GC], no. 30643/96, § 43, 8 July 2003; and *K. and T. v. Finland*, no. 25702/94 , § 147, ECHR 2001-VII), it is not prevented from taking into account any additional information and fresh arguments in determining the merits of a complaint, if it considers them relevant (see, for instance, *mutatis mutandis*, *Olsson v. Sweden* (no. 1), judgment of 24 March 1988, Series A no. 130, pp. 28-29, § 56; *McMichael v. the United Kingdom*, judgment of 24 February 1995, Series A no. 307-B, p. 51, § 73). Accordingly, the Court is not precluded from taking cognisance of this material in so far as it is judged to be pertinent.

58. On the other hand, the Court emphasises that the present judgment is not concerned with the decision on the merits rendered by the Münster District Court on 6 March 2003. This issue did not form part of the application which it declared admissible.

B. The Government's preliminary objections

1. Non-exhaustion of domestic remedies

59. The Government raised a preliminary objection of failure to exhaust domestic remedies, as required by Article 35 of the Convention, both in respect of the decision of the Münster District Court of 18 December 2001 concerning the denial of access to the children and the decision on the merits of the same court of 6 March 2003 against which appeal proceedings were still pending. They referred to the decision of the Federal Constitutional Court of 21 June 2002 by which the applicants' constitutional complaint, in so far as it was directed against the decision of 18 December 2001, was declared inadmissible, since the applicants had failed to appeal against it, in accordance with Section 19 of the Act on Non-Contentious Proceedings (see paragraph 28 above).

60. The applicants admitted that they had not appealed against the decision of the Münster District Court of 18 December 2001. In their view, this omission was irrelevant since they had appealed against the decision by which their parental rights had been revoked. Parental rights included the right of access to the children. Furthermore, they could not be expected to await the outcome of lengthy court proceedings, including a complaint to the Federal Constitutional Court, having regard to the danger that any procedural delay would result in the *de facto* determination of the issue submitted to the court. An irreversible alienation and separation from the children, in particular, the younger ones, would be the consequence.

They applicants also pleaded their financial difficulties.

61. The Court recalls that in its decision on the admissibility of the application it has joined the question of non-exhaustion of domestic remedies to the merits. This does not mean, however, that the Court may not examine again issues relating to the admissibility (see Article 35 § 4 of the Convention which empowers the Court to "reject any application which it considers inadmissible ... at any stage of the proceedings").

The Court notes that the Government raised the objection as to the non-exhaustion of domestic remedies at the stage of the initial examination of admissibility. They are therefore not estopped from pleading it again.

62. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law (see *Cardot v. France*, judgment of 19 March 1991, Series A no. 200, p. 18, § 34, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 65-67, *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2275-76, §§ 51-52, *Şarli v. Turkey*, judgment of 22 May 2001, no. 24490/94, § 59).

63. The Court notes that in the instant case the Federal Constitutional Court declared the applicants' constitutional complaint inadmissible as far as it was directed against the decision of the Münster District Court of 18 December 2001 on the ground that the applicants had failed to appeal previously to the Hamm Court of Appeal. Thus, the applicants did not comply with the formal requirements laid down in German law and did not provide the Federal Constitutional Court with the opportunity which is in principle intended to be afforded to Contracting States by Article 35, of preventing or putting right the violations alleged against them (see, among other authorities, *Remli v. France*, judgment of 23 April 1996, *Reports* 1996-II, p. 571, § 33). Furthermore, an examination of the case does not

disclose any special circumstances which might have absolved the applicants, according to the generally recognised rules of international law, from exhausting the domestic remedies at their disposal.

64. It follows that the applicants have not complied with the condition as to the exhaustion of domestic remedies in respect of the decision of the Münster District Court of 18 December 2001 on the prohibition of access between the applicants and their children and the three children of the first marriage, Timo, Nico and Lisa-Marie (see paragraph 15 above).

65. In so far as the decision of the Münster District Court of 6 March 2003 is concerned, the Court recalls that this decision does not form part of the present application (see paragraph 57 above).

66. On the other hand, the applicants have exhausted domestic remedies in relation to the decision of the Münster District Court of 17 December 2001 and the decision of the Federal Constitutional Court of 21 June 2002.

2. Loss of "victim" status

67. The Government argued that the Federal Constitutional Court set aside the decisions of the Münster District Court of 17 December 2001 and the Hamm Court of Appeal of 1 March 2002 and that for that reason the interference with the applicants' rights ceased to exist. They furthermore maintained that the applicants were not any longer affected by the interim injunction of the Münster District Court of 17 December 2001, since it had been replaced by the District Court's decision on the merits of 6 March 2003. According to the Government, the same reasoning had to apply to the decision of the Münster District Court of 1 July 2002 by which provisional measures had been ordered.

68. The applicants submitted that although the decision of the Münster District Court of 17 December 2001, by which their parental rights were revoked, had been set aside by the Federal Constitutional Court, they were still being separated from their children.

69. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Dalban v. Romania*, [GC], no. 28114/95, § 44, ECHR 1999-VI).

70. Even assuming that the decision of the Federal Constitutional Court of 21 June 2002 could be seen as an acknowledgment, whether explicit or in substance, of an alleged breach of Article 8 of the Convention, the Court considers that that decision did not have any *de facto* suspensive or remedial effect in respect of the measures taken by virtue of the District Court's decision of 17 December 2001.

71. As to the decision on the merits rendered on 6 March 2003, the Court notes that the reasons relied on are basically the same as those given in the interim injunction. However, the additional reason invoked for the

interim injunction was the urgency of the situation resulting in the sudden removal of the children from the applicants and its drastic consequences for the applicants' family life.

72. In conclusion, the Court considers that the applicants can claim to be "victims" within the meaning of Article 34 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

73. The applicants complained that their parental rights had been withdrawn, and the children taken into public care. They also complained of the way the contested decision was implemented. They alleged a violation of Article 8 of the Convention, the relevant part of which provides:

> "1. Everyone has the right to respect for his ... family life ...
>
> 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 ... for the protection of health ... or for the protection of the rights and freedoms of others."

A. Arguments before the Court

1. The applicants

74. The applicants pointed out that, as soon as the expert G. had submitted his report to the Youth Office on 17 December 2001, the latter applied for an interim measure to the Münster District Court, which on the same day withdrew the applicants' parental authority and ordered the removal of the children as requested by the Youth Office. They questioned whether such close cooperation between the Youth Office and the District Court was in conformity with the rule of law and the principle of effective judicial review.

75. The applicants argued that the taking of the children into public care and their removal from their home were extremely drastic measures. It was not appropriate to refer to investigations done in 1992 and 1993 and to order the contested measures without hearing them or any witnesses as to the arguments put forward by the Youth Office. In particular the removal and taking into care of the child Laura-Michelle shortly after her birth, constituted a serious breach of Article 8 of the Convention and had to be considered inhuman treatment in respect of both mother and child. Further, the removal of the new-born baby deprived Mrs Haase of the possibility of breastfeeding, which had recognised health benefits. This child was neither mentioned in the expert report nor included in the Youth Office's request to the District Court. The removal of Laura-Michelle from the hospital was

therefore unlawful. In of the Federal Constitutional Court's decision of 22 June 2002, they were still affected by the decision of the Münster District Court of 17 December 2001, since they were still separated from the children and some of the children from each other.

76. The applicants further submitted that the declarations of the children's paediatrician, Dr J., who had known the children, except Laura-Michelle, since their birth, had not been sufficiently taken into account by the District Court. Contesting the findings of the experts G. and Professor K., the applicants submitted that there was no convincing evidence showing that they were incapable of bringing up their children. Professor K. had based her findings on the written statements of a social worker on 17 May 1993, made at a critical time when Mrs Haase was 25 years old and about to be divorced from her first husband. There was no indication in what context these statements had been made approximately ten years before. However, the Münster District Court had based its decision of March 2003 to a large extent on this statement. Furthermore Professor K. had referred in her report to the files put at her disposal by the Youth Office and to the report of G. rather than relying on her own observations. The abuse of drugs by one child, as mentioned in Professor K.'s report, concerned only a single event, when the four-year-old daughter accidentally came into possession of a medicinal drug. For years they had consulted the same doctors, the paediatrician Dr J. and the gynaecologist Dr W. No deficiencies had been identified in the care and upbringing of the children. It had never been reported that their children were victims of violence or neglect necessitating educational or social consultation. The difficulties with one son had been brought to the attention of a psychiatric institution in Münster by Mrs Haase herself. The Youth Office had taken this as an instance of the applicants' shortcomings as parents. In support of their submissions, the applicants relied on two reports established by private experts whom they had consulted as from June and July 2002.

2. The Government

77. The Government maintained that there had been no violation of Article 8 as a result of the withdrawal of the applicants' parental rights and the taking into care of the children. The interference with their right to respect for their family life had been in accordance with the law and the related decisions had been intended to protect the best interests of the children and thus "necessary in a democratic society".

78. The decision to withdraw the applicants' parental rights over their children and the children of Mrs Haase's first marriage living with them had been based on Articles 1666 and 1666a of the Civil Code. The children's physical and psychological well-being would be seriously endangered if they were to be returned to the applicants owing to the abusive exercise of parental authority and the neglect of the children and the failure of both

parents, irrespective of whether that was through of any fault of their own. Any other less radical measure would have been inadequate. The District Court had relied on all available information at its disposal at the time: it had considered the reports of the expert G. of 17 and 18 December 2001, took note of the submissions of Professor K. at the hearing of 1 July 2002, heard the applicants and the children Anna-Karina, Lisa-Marie, Nico and Timo, appointed a curator *ad litem* and asked for his assessment of the situation.

79. The findings of the first expert G. that separating the children from the applicants was the only way of eliminating all dangers for the children had been confirmed in the main by the second expert, Professor K.

80. As to the decision denying the applicants access to the children, the Government pointed out that the children had been placed in unidentified foster homes. Had the applicants been granted a right of access, the children could no longer have stayed in these institutions, having regard to the conduct of certain media which had to be described as excessive. According to Professor K., the children's well-being would be jeopardised if access were allowed for the very reason that the mother absolutely failed to understand the need for separation. In the expert's view, the mother was not prepared and, being deeply affected by the measures taken, apparently not in a position to observe any rules in connection with such contact, and also uncontrollable. The same would have to be assumed of Mr Haase. The children should at least get some peace, and they would clearly be incapable of coping with seeing their parents, who were unable to understand the situation, did not accept it, and would not be able to conceal this from the children.

81. As to the decisions of the Münster District Court of 6 March 2003, the Government submitted that the contested measures were intended to protect the interests of the children, were proportionate to that aim and thus necessary in a democratic society as required by Article 8 § 2.

B. The Court's assessment

1. Whether there was an interference with the applicants' right to respect for their family life

82. As is well established in the Court's case-law, the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (see, amongst others, *Johansen v. Norway*, judgment of 7 August 1996, *Reports* 1996-III, § 52). The impugned measures, as was not disputed, evidently amounted to an interference with the applicants' right to respect for their family life as guaranteed by paragraph 1 of Article 8.

2. Whether the interference was justified

83. An interference with the right to respect for family life entails a violation of Article 8 unless it is "in accordance with the law", has an aim or aims that is or are legitimate under Article 8 § 2 and is "necessary in a democratic society" for the aforesaid aim or aims.

84. Although the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities, there may in addition be positive obligations inherent in an effective "respect" for family life. Thus, where the existence of a family tie has been established, the State must in principle act in a manner calculated to enable that tie to be developed and take measures that will enable parent and child to be reunited (see, among other authorities, *Eriksson v. Sweden*, judgment of 22 June 1989, Series A no. 156, pp. 26-27, § 71, and *Gnahoré v. France*, no. 40031/98, § 51, ECHR 2000-IX).

85. The boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see, among other authorities, *W.*, *B.* and *R. v. the United Kingdom*, judgments of 8 July 1987, Series A no. 121, respectively, p. 27, § 60, p. 72, § 61, and p. 117, § 65; and *Gnahoré*, cited above, § 52).

a. "In accordance with the law"

86. It was common ground that the impugned interference was in accordance with the law for the purposes of Article 8, the relevant provisions being Articles 1666 and 1666a of the Civil Code.

b. Legitimate aim

87. In the Court's view, the court decisions of which the applicant complained were aimed at protecting the "health or morals" and the "rights and freedoms" of the children. Accordingly they pursued legitimate aims within the meaning of paragraph 2 of Article 8.

c. "Necessary in a democratic society"

(i) General principles

88. In determining whether an impugned measure was "necessary in a democratic society", the Court has to consider whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant

and sufficient for the purposes of paragraph 2 of Article 8 of the Convention. The notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued (see, among other authorities, *Gnahoré*, cited above, § 50 *in fine*).

89. Undoubtedly, consideration of what lies in the best interests of the child is of crucial importance in every case of this kind. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned, often at the very stage when care measures are being envisaged or immediately after their implementation (see *Johansen*, cited above, pp. 1003, § 64, *K. and T. v. Finland*, cited above, §§ 151, 154 and 173). It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for the regulation of the public care of children and the rights of parents whose children have been taken into care, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55; *Kutzner v. Germany*, no. 46544/99, § 66, ECHR 2002-I; *Sahin*, cited above, § 64, and *Sommerfeld v. Germany* [GC], no. 25735/94, § 62, ECHR 2003-VIII).

90. The margin of appreciation so to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake. While the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care, in particular where an emergency situation arises, the Court must still be satisfied in the particular case that there existed circumstances justifying the removal of the child, and it is for the respondent State to establish that a careful assessment of the impact of the proposed care measure on the parents and the child, as well as of the possible alternatives to taking the child into public care, was carried out prior to implementation of such a measure (see *K. and T. v. Finland*, cited above, § 166, *Kutzner*, cited above, § 67, and *P., C.* and *S. v. the United Kingdom*, no. 5647/00, § 116, ECHR 2002-VI).

91. Furthermore, the taking of a new-born baby into public care at the moment of its birth is an extremely harsh measure. There must be extraordinarily compelling reasons before a baby can be physically removed from its mother, against her will, immediately after birth as a consequence of a procedure in which neither she nor her partner has been involved (see *K. and T. v. Finland*, cited above, § 168).

92. Following any removal into care, a stricter scrutiny is called for in respect of any further limitations by the authorities, for example on restrictions on parental rights and access, and on any legal safeguards designed to secure the effective protection of the right of parents and

children to respect for their family life. Such further limitations entail the danger that the family relations between the parents and a young child might be effectively curtailed (see *Elsholz v. Germany* [GC], no. 25735/94, § 49, ECHR 2000-VIII; *Kutzner*, cited above, § 67; and *Sahin*, cited above, § 65).

93. The taking into care of a child should normally be regarded as a temporary measure to be discontinued as soon as circumstances permit, and any measures of implementation of temporary care should be consistent with the ultimate aim of reuniting the natural parent and child (see *Johansen*, cited above, pp. 1008-09, § 78, and *E.P. v. Italy*, no. 31127/96, § 69, 16 November 1999). In this regard a fair balance has to be struck between the interests of the child remaining in care and those of the parent in being reunited with the child (see *Hokkanen*, cited above, p. 20, § 55). In carrying out this balancing exercise, the Court will attach particular importance to the best interests of the child which, depending on their nature and seriousness, may override those of the parent (see *Johansen*, cited above, pp. 1008-09, § 78). In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see *Elsholz*, cited above, § 50; and *Sahin*, cited above § 66).

94. Whilst Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to ensure due respect for the interests safeguarded by Article 8. The Court must therefore determine whether, having regard to the circumstances of the case and notably the importance of the decisions to be taken, the applicants have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests (see *W. v. the United Kingdom* judgment of 8 July 1987, Series A no. 121, p. 29, § 64; *Elsholz* cited above, § 52; and *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 72, ECHR 2001-V).

95. The Court accepts that when action has to be taken to protect a child in an emergency, it may not always be possible, because of the urgency of the situation, to associate in the decision-making process those having custody of the child. Nor may it even be desirable, even if possible, to do so if those having custody of the child are seen as the source of an immediate threat to the child, since giving them prior warning would be liable to deprive the measure of its effectiveness. The Court must however be satisfied that the national authorities were entitled to consider that there existed circumstances justifying the abrupt removal of the child from the care of its parents without any prior contact or consultation. In particular, it is for the respondent State to establish that a careful assessment of the impact of the proposed care measure on the parents and the child, as well as of the possible alternatives to the removal of the child from its family, was carried out prior to the implementation of a care measure (see *K. and T. v.*

Finland, cited above, § 166). The fact that a child could be placed in a more beneficial environment for his or her upbringing will not on its own justify a compulsory measure of removal from the care of the biological parents; there must exist other circumstances pointing to the "necessity" for such an interference with the parents' right under Article 8 to enjoy a family life with their child (see *K.A. v. Finland*, no.27751/95, § 92 ECHR 2003-I).

(ii) Application of these principles in the present case

96. Turning to the facts of the instant case, the Court notes that the expert G. met Mrs Haase and three of the children in September and October 2001 at the applicants' home. On 17 December 2001 he submitted his report to the Youth Office. On 17 December 2001 the Youth Office applied for an interim injunction and on that very day the Münster District Court, without hearing the parents, issued the requested interim injunction. The following day the children were separated from their family and partly from each other and placed in unidentified foster homes. The new-born baby was taken from the hospital. On 1 March 2001, without holding a hearing, the Hamm Court of Appeal dismissed the applicants' appeal.

97. On 21 June 2002 the Federal Constitutional Court set these decisions aside, finding that the applicants' parental rights had been violated. According to the Federal Constitutional Court, the question of whether the evidence established that there was a risk of harm to the children had not adequately been considered. It noted in particular that there had been no assessment of the applicants' submissions or consideration of the possibility of ordering alternative measures, that would not have required the total revocation of parental rights. Both the Court of Appeal and the District Court failed to hear the children or to provide the persons taking part in the proceedings the opportunity to be heard. No reasons were given justifying the urgency of the matter. The Family Court had no information on the possible effects of its decision, since the Youth Office and the expert had not commented on this issue. When examining the advantages and disadvantages of a family measure, it was, however, relevant to consider that a separation of the children from their parents could jeopardise the development of the children, in particular in their first years of life (see paragraph 30 above).

98. In the Court's opinion, the findings of the Federal Constitutional Court show that the provisional withdrawal of the applicants' parental rights and the removal of the children were not supported by relevant and sufficient reasons and that the applicants were not involved in the decision-making process to a degree sufficient to provide them with the requisite protection of their interests.

99. The Court observes moreover that, before public authorities have recourse to emergency measures in connection with such delicate matters as care orders, the imminent danger should be actually established. It is true

that in obvious cases of danger no involvement of the parents is called for. However, if it is still possible to hear the parents of the children and to discuss with them the necessity of the measure, there should be no room for an emergency action, in particular when, as in the present case, the danger had already existed for a long period. There was therefore no urgency capable of justifying the District Court's interim injunction.

100. The Court has also given consideration to the method used in implementing the District Court's decision of 17 December 2001. Taking suddenly six children from their respective schools, kindergarten and from home and placing them in unidentified foster homes, and forbidding all contact with the applicants, went beyond the exigencies of the situation and cannot be accepted as proportionate.

101. In particular, the removal of the new-born baby from the hospital was an extremely harsh measure. It was a step which was traumatic for the mother and placed her own physical and mental health under a strain, and it deprived the new-born baby of close contact with its natural mother and, as pointed out by the applicants, of the advantages of breast-feeding. The removal also deprived the father of being close to his daughter after the birth. It is not for the Court to take the place of the German authorities and to speculate as to the best child-care measures in the particular case. The Court is aware of the problems facing the authorities in situations where emergency steps must be taken. If no action is taken, there exists a real risk that harm will occur to the child and that the authorities will be held to account for their failure to intervene. At the same time, if protective steps are taken, the authorities tend to be blamed for unacceptable interference with the right to respect for family life. However, when such a drastic measure for the mother, depriving her totally of her new-born child immediately after birth, was contemplated, it was incumbent on the competent national authorities to examine whether some less intrusive interference into family life, at such a critical point in the lives of the parents and child, was not possible.

102. As stated above (see paragraph 89), there must be extraordinarily compelling reasons before a baby can be physically removed from the care of its mother, against her will, immediately after birth as a consequence of a procedure in which neither she nor the father has been involved.

103. The Court is not satisfied that such reasons have been shown to exist in relation to the daughter born in hospital. Although the contested decision of the Münster District Court of 17 December 2001 was set aside by the Federal Constitutional Court, it still formed the basis of the continuing separation of the applicants and the children since 18 December 2001. Experience shows that when children remain in the care of youth authorities for a protracted period, a process is set in motion which drives them towards an irreversible separation from their family. When a considerable period of time has passed since the children were first placed

in care, the children's interest in not undergoing further *de facto* changes to their family situation may prevail over the parents' interest in seeing the family reunited. The possibilities of reunification will be progressively diminished and eventually destroyed if the biological parents and the children are not allowed to meet each other at all. Time takes on therefore a particular significance as there is always a danger that any procedural delay will result in the *de facto* determination of the issue before the court (*H. v. the United Kingdom*, judgment of 8 July 1987, Series A no. 120, pp. 63-64, §§ 89-90). Moreover, the draconian step of removing the applicants' daughter from her mother shortly after her birth could in the Court's opinion only lead to the child's alienation from her parents and siblings and entail the danger that the family relations between the parents and the young child might be effectively curtailed. The measures taken, because of their immediate impact and their consequences, are therefore difficult to redress.

104. In the light of the foregoing, the Court concludes that the Münster District Court's decision of 17 December 2001, the unjustified failure to allow the applicants to participate in the decision-making process leading to that decision, the methods used in implementing that decision, in particular the draconian step of removing the new-born daughter from her mother shortly after birth, and the particular quality of irreversibility of these measures were not supported by relevant and sufficient reasons and cannot be regarded as having been "necessary" in a democratic society.

105. Consequently, there has been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

106. The applicants also complained that they had not had a fair hearing within the meaning of Article 6 § 1 of the Convention, the relevant part of 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. ..."

107. The applicants submitted in particular that they were not heard by Münster District Court before giving the order separating the children from them.

108. The Court observes that the applicants' complaints under Article 6 largely coincide with their complaints under Article 8. The Court does not find it necessary to examine the facts also under Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

109. Article 41 of the Convention provides:

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

A. Damage

1. Submissions of the parties

110. The applicants maintained that the withdrawal of their parental authority had caused them pecuniary damage, which they calculated as follows:

As from December 2001, they did no longer receive child benefits. The child benefits for six children amounted to 1,050 euros (EUR). For seven children the amount would have been EUR 1,250 as from December 2001. Because of the non-payment of child benefits they had been obliged to move out of their flat (monthly rent EUR 765) and to rent a smaller one (monthly rent 430 EUR). The removal costs amounted to EUR 400.

In June 2002 the Catholic Church put a house with a big garden at their disposal. They moved to that house in order to have enough space for the children in the event of their return and renovated it. The removal costs amounted to EUR 400. For the renovation they paid EUR 2,700. The monthly lease to be paid since June 2002 was EUR 872.

The applicants did not claim the retroactive payment of child benefits since December 2001. They requested, however, to be paid the difference of EUR 500 monthly between the rent for their first flat and the house as from June 2002.

The mail and telephone costs paid exclusively in connection with the removal of the children amounted in the period from December 2001 to April 2003 to at least EUR 1,200.

The interference with their family life had considerable negative effects on the applicants' and in particular Mrs Haase's health. On 11 April 2002 the applicants went to see a doctor in Würzburg. The costs of travel amounted to EUR 200.

Since June 2002 the applicants underwent psychological treatment. The costs of travelling to the doctor on 29 occasions amounted to EUR 725 by April 2003.

111. The Government expressed no view on that question.

2. Decision of the Court

112. The applicants also sought compensation for non-pecuniary damage, pointing to the distress and frustration they had felt as a result of the withdrawal of their parental rights and the sudden removal of the children. Referring to previous award made by the Court in other cases, they claimed EUR 25,000 for non-pecuniary damage suffered by Mrs Haase and EUR 10,000 by Mr Haase although their immense suffering, which had generated serious health problems necessitating psychological help, could not in any way be measured in terms of money.

113. In the event of a finding by the Court that the applicants were also acting on behalf of the children, as submitted in their letter of 19 December 2002, they claimed EUR 2,000 on behalf of each of the children for damage the children had sustained as a result of their separation from the applicants and to some extent from each other.

114. The Government did not comment on this claim.

115. The Court points out that by Article 46 of the Convention the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. Furthermore, subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (*Scozzari and Giunta v. Italy* [GC], no. 39221/98 and 41963/98, § 249, ECHR 2000-VIII).

Accordingly, under Article 41 of the Convention the purpose of awarding sums by way of just satisfaction is to provide reparation solely for damage suffered by those concerned to the extent that such events constitute a consequence of the violation that cannot otherwise be remedied (*Scozzari and Giunta*, cited above, § 250).

116. As regards the applicants' claims for pecuniary loss, the Court's case-law establishes that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention (see, among other authorities, *Barberà, Messegué and Jabardo v. Spain* (Article 50), judgment of 13 June 1994, Series A no. 285-C, pp. 57-58, §§ 16-20, and *Çakici v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV). In this case, the Court has found a violation of Article 8 in respect of the provisional withdrawal of the applicants' parental rights and the removal of the children.

117. In the absence of documentary substantiation of this part of the applicants' claim, and having regard to equitable considerations, the Court awards the applicants an amount of EUR 10,000 under this heading.

118. As to the non-pecuniary damage, the Court considers that the applicants undoubtedly sustained such damage on account of the violation of Article 8. The Court observes in particular that since being separated from the children in December 2001 the applicants have never seen them again. It is reasonable to presume that this must have caused the applicants very great and acute suffering which will have worsened as the proceedings continued and the hope of seeing the children again diminished.

119. The Court thus concludes that the applicants sustained some non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention (see, for example, *Elsholz v. Germany* [GC], no. 25735/94, §§ 70-71, ECHR 2000-VIII). Having regard to the circumstances of the case and ruling on an equitable basis, the Court awards the applicants jointly EUR 35,000.

120. As to the non-pecuniary damage claimed on behalf of the children, the Court points out that in principle a person who is not entitled under domestic law to represent another may nevertheless, in certain circumstances, act before the Court in the name of the other person (see, *mutatis mutandis*, *Nielsen v. Denmark*, judgment of 28 November 1988, Series A no. 144, pp. 21-22, §§ 56-57). In the event of a conflict over a minor's interests between a natural parent and the person appointed by the authorities to act as the child's guardian, there is a danger that some of those interests will never be brought to the Court's attention and that the minor will be deprived of effective protection of his rights under the Convention. Consequently, even though the parents have been deprived of parental rights – indeed that is one of the causes of the dispute which they have referred to the Court – their standing suffices to afford them the necessary power to apply to the Court on the children's behalf, too, in order to protect their interests (see, *mutatis mutandis*, *Scozzari and Giunta*, cited above, § 138).

121. However, in accordance with Rule 38 § 1 of the Rules of Court, no written observations filed outside the time-limit set by the President of the Chamber shall be included in the case file unless the President of the Chamber decides otherwise. In the present case, the applicants' request to present the application also on behalf of their children was submitted on 19 December 2002, that is after the close of the written procedure (Rule 38 § 1 of the Rules of Court) on the admissibility of the application. The Court therefore considers that it cannot take the damage claimed on behalf of the children into account.

B. Costs and expenses

122. The applicants claimed EUR 3,091.64 before the German courts and 5,000 EUR before the Court. They submitted a detailed list of the claims.

123. The Government did not comment.

124. According to the Court's consistent case-law, to be awarded costs and expenses the injured party must have incurred them in order to seek prevention or rectification of a violation of the Convention, to have the same established by the Court and to obtain redress therefor. It must also be shown that the costs were actually and necessarily incurred and that they are reasonable as to quantum (see, as a recent authority, *Meulendijks v. the Netherlands*, 34549/97, 14 May 2002, § 63).

125. The Court is satisfied that the claim for compensation of counsel's fees and expenses has been properly substantiated and notes that the applicants' complaints were declared admissible in their entirety. On the other hand, the Court has restricted its finding of a violation to the provisional taking into care of the children and the implementation of the care measures. Making its assessment on an equitable basis, the Court awards the applicants EUR 8,000, together with any relevant value-added tax. From this award must be deducted the EUR 700 and EUR 655 already received in legal fees from the Council of Europe by way of legal aid, totalling EUR 1,355.

C. Default interest

126. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that, by reason of the failure to exhaust domestic remedies, it is unable to take cognisance of the merits of the case in respect of the decisions of the Münster District Court of 18 December 2001;

2. *Holds* that the applicants may claim to be “victims” for the purposes of Article 34 of the Convention;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds* that there is no separate issue under Article 6 § 1 of the Convention;

5. *Holds*

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

(i) EUR 10,000 (ten thousand euros) in respect of pecuniary damage;

(ii) EUR 35,000 (thirty-five thousand euros) in respect of non-pecuniary damage;

(iii) EUR 8,000 (eight thousand euros), less EUR 1,355 (one thousand three hundred and fifty-five euros), in respect of costs and expenses;

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

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

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Ireneu CABRAL BARRETO
President