CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF K.T. v. NORWAY

(Application no. 26664/03)

JUDGMENT

STRASBOURG

25 September 2008

FINAL

25/12/2008

This judgment may be subject to editorial revision.

In the case of K.T. v. Norway,

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 26664/03) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Norwegian national, Mr K.T. ("the applicant"), on 18 August 2003. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr P.J. Maloney, a lawyer practising in Stavanger. The Norwegian Government ("the Government") were represented by their Agent, Mrs F. Platou Amble, Attorney, Attorney General's Office (Civil Matters).

3. The applicant complained that an investigation carried out by the child welfare services, despite a first such investigation showing that his former wife's allegations were groundless, constituted an unjustified interference with his right to respect for private and family life under Article 8 of the Convention. He moreover complained that, because of dismissal of his case by the Norwegian courts, and hence their refusal to review the merits of his case, he was denied access to a court and an effective remedy, in breach of Articles 6 and 13 of the Convention, respectively.

4. By a decision of 5 January 2006 the Court declared the application admissible.

5. The Government filed observations on the merits (Rule 59 § 1) and asked the Court to hold an oral hearing (Rule 59 § 3 *in fine*). On 22 November 2007 the Chamber decided that no hearing on the merits was required and invited the parties to reply extensively in writing to a number

of questions, which the applicant and the Government did on 7 and 11 February 2008.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1971 and lives in Stavanger.

A. Factual background

7. The applicant was married to Mrs J.V. Together they had two boys born in 1994 and 1996. He receives a disability pension on account of Attention Deficit Hyperactivity Disorder (ADHD). He is active as an instructor in ice hockey and football.

8. In July 2001, the applicant's wife moved out of their home and went to live in Finland. The children have since lived with the applicant. Shortly after her departure, Mrs J.V. sought to obtain an interlocutory injunction granting her the sole responsibility for the daily care of the children, arguing that the applicant had physically abused her and had an abusive consumption of medication.

9. The applicant has been taking medication for ADHD and for an earlier back injury.

10. Both the Stavanger City Court (*byrett*) and Gulating High Court (*lagmannsrett*) rejected her request. Subsequently the applicant and Mrs J.V. concluded a judicial settlement agreement according to which he was to assume the daily care.

11. Concurrently with the above, Mrs J.V. reported the applicant to the police alleging that he had assaulted and threatened her. The police granted a request for an injunction prohibiting the applicant from visiting her or calling her by telephone but, after having heard the applicant, they dismissed all her complaints and lifted the prohibition.

1. First investigation and additional home visit carried out by the child welfare services

12. In addition, Mrs J.V. reported her concerns (*bekymringsmelding*) to the local child care authorities, alleging that the applicant was abusing intoxicating substances and that the children were at risk of violence. The child welfare services (*Barneverntjenesten*) at the Hillevåg District Office (*helse- og sosialdistrikt*) opened an investigation (hereinafter referred to as "the first investigation") under section 4-3 of the Child Welfare Services

Act 1992 (hereinafter referred to as "the 1992 Act"), in order to verify whether there was any ground for taking child care measures under the 1992 Act (notably under section 4-12 which sets out the grounds for compulsory taking into care of a child, such as serious deficiencies in the child's daily care, ill-treatment or other serious abuse occurring in the home, likelihood of parents' inability to provide care causing serious damage to the child's health or development). As a result, from 22 August 2001 until the end of October 2001, the authorities carried out 10 unannounced visits to the applicant's home.

13. The applicant felt that the Hillevåg District Office held preconceived views against him, due to the number of visits over a period of two months, *inter alia* in order to reveal high consumption of medicines, and that confidential information had been imparted to Mrs J.V. in this way. After exchanges between his lawyer and the Hillevåg District Office, the matter was transferred to the child welfare services at the Hinna District Office, which had their first conversation with the applicant on 7 November 2001. He was reticent to talk to begin with but, after being told that his ability to shield the children against the parental conflict was of great relevance, at a meeting on 12 December 2001 he provided such information and also produced written statements by his doctor on his consumption of medicines and the possibility of reducing it.

14. The first investigation was discontinued on 17 December 2001.

15. On 25 December 2001 followed a renewed call of concern to the child welfare services (*Barnevernvakten*) in Stavanger. The boyfriend of J.V.'s sister had called to inform that J.V. had perceived the applicant as being drugged when speaking to him on the phone that day. Immediately, on the same day, the child welfare services carried out an unannounced visit to the applicant's home and left after 10 minutes, having found no evidence of intoxication.

16. In a report of 10 January 2002 by the Hinna District Office concerning the first investigation, it was noted *inter alia* that the applicant's doctor considered his consumption of medication too high and that it was desirable to reduce it, while the applicant, following his lawyer's advice, was unwilling to come forward with information on the subject. No instances of intoxication had been found. The report concluded that the children did not live in a situation that was covered by any of the grounds for compulsory taking into public care under section 4-12 of the 1992 Act, although the boys' care situation had been made insecure and unpredictable by the parents' conflict. The report also contained an assessment of the conduct of the mother, who appeared very assertive and was using *inter alia* the child welfare services in her "warfare" against the applicant, to the boys' detriment.

2. Second investigation by the child welfare services

17. On 28 February 2002, after a new report of concern, this time by a named third party, Mr R, who was a police officer, the child welfare services at Hillevåg opened a new investigation (hereinafter referred to as "the second investigation"). The source referred to an incident which he had observed while off duty near an ice hockey arena on 16 February 2002, when the applicant allegedly had difficulty standing on his feet, due to intoxication. A trainer had held him under his arm and had led him out. As the applicant wished to drive home his car keys had been taken from him. The applicant's mother had then come to collect him. Mr R worked at the local police station and as he had returned to work he had found a message stating that somebody had called to report that the applicant had driven his children by car while in a state of intoxication. Mr R had the impression that the applicant often had turned up at the sports hall in a visibly intoxicated state.

18. Three other sources, two of which were anonymous, had reported respectively on 4, 14 and 25 March 2002 incidents of intoxication and, one of them, that the applicant was violent and threatening and mentioned rumours about drugs abuse.

19. The anonymous report of 25 March 2002 recounted an incident when the applicant had been so intoxicated that he did not manage to pass the sliding door in the sports hall and that, when his oldest son assisted him through the door, the applicant hit after him. Some adults in the hall had commented that this was not the first time. The managers of the sports club had called the applicant's mother who came to collect the children. The source was worried about the children's situation.

20. The report of 4 March 2002 had been submitted by another named third party, Mr O, recounting that some time before Christmas his son and the latter's mother had gone to the applicant's home to fetch some money. When they arrived the applicant had fallen over due to intoxication. They had then brought the applicant's eldest son with them to the cinema. Since the applicant was not capable of fetching the youngest son in the kindergarten, they had called the applicant's mother and informed her. When Mr O. heard about this incident he was worried for the applicant's children.

21. On 21 March 2002 the child welfare authorities communicated to the applicant through his lawyer two of the above reports of concern, namely those of 28 February and 14 March 2002, with an invitation to the applicant for a meeting to discuss the allegations. In response to the above, the applicant's lawyer pointed out that the reports of concern were of the same type as those that had prompted the investigation which had been opened in August 2001 and had been concluded. He explained to the authorities that the applicant had not been under the influence of drugs but had fainted in a

state of malaise; he had not had breakfast that day and had been under duress because of the proceedings against him.

22. According to the applicant, who refused his cooperation in the investigation, the allegations against him must have originated from persons within his ex-wife's entourage and were part of her attempt to obtain the daily care of the children.

23. On 11 April 2002 the Hillevåg District Office, with reference to an investigation conducted under section 4-3 of the 1992 Act, addressed requests for information to several instances, stating that the Office had reason to fear that the applicant's children lived in a situation such as described in section 4-12 of the Act. The requests, which set out specific questions capable of shedding light on the children's situation, were addressed to the applicant's doctor, who was also the doctor of his two sons, the school of the eldest son, the kindergarten of the youngest son, and the police, who were reminded of their obligation under section 6-4(3) to disclose such information to the child welfare services. In addition, the applicant's mother was invited to the Office for an interview.

24. By a letter also dated 11 April 2002 (but posted on 16 April 2002) to the applicant's lawyer, the Hillevåg District Office, enclosing copies of the above mentioned requests, informed him of the commencement of the second investigation. It referred to the Hinna District Office's report of 10 January 2002 stating that the extent of the applicant's use of tablets was unclear and that he, on the advice of his lawyer, had refused to comment. It had been the Office's intention to inform about these requests at a meeting on 4 April 2002, but since the applicant and his lawyer had objected to meet, they had been informed in writing. The Office added that a meeting with the applicant was scheduled for 14 May 2002, by which date they expected to have received the information requested from the above instances.

25. The Hillevåg District Office received information from the doctor, the school, the kindergarten and the police. The applicant's mother declined to meet for an interview. His ex-wife gave an interview by telephone from Finland.

26. The investigation was concluded by a report from the child welfare services at the Hillevåg District, dated 18 July 2002, which stated that they were worried that the applicant might abuse intoxicating substances ("*rusmisbruk*"), were unsure as to how much his ADHD diagnosis affected his ability to assume care and were uncertain as to his capability to provide the children with a sufficiently good up-bringing and about his potential for development. It recommended support measures under section 4-4 of the 1992 Act, to be evaluated by the end of a six month period. The measures included assistance such as designating a support home which the children could visit, providing the applicant with guidance on how to master his

ADHD illness and problems related to drug taking, while at the same time assuming responsibility as a carer.

27. The applicant disputes this assessment, which had not been based on any further unannounced visits to his home, nor on information provided by his doctor, but on circumstantial evidence collected outside the home.

3. Judicial proceedings brought by the applicant in relation to the second investigation

28. In the meantime, on 23 April 2002, the applicant had instituted proceedings before the Stavanger City Court to obtain a declaratory judgment (*fastsettelsesdom*), maintaining that there was no legal basis for conducting an investigation against him. He also requested an interlocutory injunction suspending the investigation pending judgment in the case. The City Court found that it was not possible to bring the matter before the courts and on 14 May 2002 dismissed (*avviste*) the case. It observed that the matter could not be viewed as a "decision" taken in the exercise of official duties in the sense of Article 435(1)(1) of the Code of Civil Procedure. As interpreted in light of the requirement of "legal interest" in Article 54, this term clearly referred to "individual decisions" ("*enkeltvedtak*").

29. On an appeal by the applicant, the Gulating High Court, by 2 votes to 1, upheld the City Court's decision, by a judgment of 25 June 2002.

30. The majority considered that a decision taken by the child welfare services to carry out an investigation was not decisive for the applicant's rights and obligations and thus was not a "decision" in the sense of section 2 of the Public Administration Act. The applicant did not have a legal interest in the case under Article 54 of the Code of Civil Procedure. A decision to implement an investigation was only a step in the child welfare services' preparation of the case and thus was not decisive for his rights and obligations. Nor was there any conflict with Articles 6, 8 and 13 of the Convention.

31. The minority found that the appeal should be admitted for review (*fremmet*), considering that the applicant had a legal interest in having it judicially established whether the authorities had unjustifiably interfered with his right to respect for private life.

32. The applicant sought to appeal against the High Court's decision by challenging its application of the law. He maintained that from Articles 54 and 435 of the Code of Civil Procedure and Articles 6, 8 and 13 of the Convention, it followed that he should have a right to have the lawfulness of the investigation carried out by Stavanger Municipality reviewed by the City Court. He requested the Supreme Court to quash the High Court's decision of 25 June 2002 which upheld the City Court's dismissal of his case and to refer the case back to the City Court for examination.

33. On 21 August 2002 the Appeals Selection Committee of the Supreme Court decided that the case as a whole should be determined by

the Supreme Court, under section 6 (2) of the Supreme Court Act 1926 (*Høyesterettsloven - lov om forandring i lovgivningen om Høyesterett*, 25 June 1926 no. 2). On the same date the President of the Supreme Court decided that it should hear the parties according to the rules applicable to ordinary appeals (ibid.).

34. In his letter to the applicant's lawyer of 3 September 2002, notifying the applicant of the above decisions, the Registrar of the Supreme Court pointed out that, having regard to the fact that the case concerned the application of the law, it was assumed not to be necessary (to commission a first instance court) to collect evidence for use by the Supreme Court. Should the parties nonetheless be of the view that this was necessary, their representatives should by 16 September 2002 give an account of what evidence should be collected and how. Within the same time limit the representatives of the parties were requested to confer about possible dates for oral hearing and shortly thereafter the Supreme Court would contact them to fix the hearing date. The rapporteur judge had estimated that the hearing would last for one day and the representatives of the parties were invited to express a view on the presumed duration of the hearing.

35. The child welfare services of Hillevåg submitted their concluding report of 18 July 2002. Otherwise the state of the evidence was the same as before the lower courts. Neither of the parties had responded to the above-mentioned communication of 3 September 2002 by asking that additional evidence to be collected for use by the Supreme Court.

36. After holding an oral hearing, at which both parties were legally represented, the Supreme Court in a decision of 4 March 2003 upheld, by four votes to one, the High Court's dismissal of the case.

On behalf of the majority, Mr Justice Mitsem gave the following reasons:

> "(23) By way of introduction, I would point out that this case concerns a further interlocutory appeal, in which the jurisdiction of this court in principle is limited pursuant to Article 404 of the Code of Civil Procedure. In this instance, however, the Appeals Committee, and now the Supreme Court, has full jurisdiction, since the lawsuit filed by [the applicant] was summarily dismissed 'because the case is not a matter for the courts of law', see Article 404 (1)(1).
>
> (24) I will first consider the suit in relation to the conditions for filing a lawsuit under traditional Norwegian procedural law, set out in Article 54 of the Code of Civil Procedure. Under this provision, it is a procedural condition that the suit shall concern 'a legal relationship or a right'. Furthermore, there must be a 'legal interest' in having the case decided, which *inter alia* means that the plaintiff must have an actual need for a judicial clarification.
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> (25) The investigation was opened on 28 February 2002 and had to be carried out as soon as possible and within three, alternatively six, months at the latest, see section 6-9 (1) of the [1992] Act. The final report is dated 18 July 2002 and was sent to [the applicant's] lawyer on the same day, with notification that the investigation was closed.

(26) [The applicant] has contested the fact that the final report represented the end of the investigation. Reference is made to the fact that the report culminated in a recommendation that family assistance be provided in the home, subject to evaluation within six months, so that there was still a 'case' in progress.

(27) To this I would comment that the purpose of an investigation, as expressed in section 4-3 of the [1992] Act, is to ascertain whether there is a basis for taking measures pursuant to the Act, and section 6-9 (2), first sentence, states that 'an investigation [pursuant to section 4-3] is regarded as completed when the child welfare services have made an administrative decision to implement measures or it has been decided to drop the case.' Thus such measures do not represent a continuation of the investigation, but its conclusion.

(28) Since the investigation has been closed, it is difficult to see how a judicial decision could have any legal significance for [the applicant]. It will not affect the implementation of the voluntary assistance measures recommended in the final report. Nor will it make any difference as regards the right to initiate a possible investigation in the future, based on new circumstances, or to decide to implement other measures pursuant to the Child Welfare Act, if warranted by circumstances.

(29) According to precedent it is undoubtedly the case that the requisite legal interest may cease to exist after legal proceedings have been instituted, with the consequence that the case must then be summarily dismissed. This may even occur - as in the present case – after judicial remedies have been pursued against a decision made in a court of second instance.

(30) I would add that a decision to carry out an investigation pursuant to section 4-3 of the [1992] Act is not an individual decision in the sense of the Public Administration Act. The same applies to the measures initiated in the course of the investigation, in this instance the obtaining of information pursuant to section 6-4 of the Child Welfare Act. As a general rule, it is not possible to make the lawfulness of such procedural steps the object of a separate lawsuit pursuant to Article 54 of the Code of Civil Procedure. However, any errors made at this stage could be significant in a lawsuit brought against any administrative decision that might be taken, and could possibly also form the basis for a claim for damages.

(31) [The applicant] has undoubtedly experienced the investigation as a strain, also because it was started shortly after the end of a prior investigation, and any judgment in his favour might seem like redress. However, this is not sufficient either to justify a legal interest, see *Norsk Retstidende* (Supreme Court Legal Reports - "*Rt*")-2001-1123.

(32) Accordingly, I conclude that under traditional Norwegian procedural law [the applicant 's] suit had to be summarily dismissed.

(33) [The applicant] has claimed that a summary dismissal of the case will constitute a breach of the right of access to a court under Article 6 § 1 of the Convention in cases relating to 'civil rights'.

(34) I find it unnecessary to express a view on whether a demand that the child welfare services shall not make an investigation concerns a 'civil right' at all. In any event, the Convention accepts that national law must have some latitude to impose limitations on the right of access to a court. However, this is conditional on the

limitations having a legitimate purpose, and a proportionality criterion also applies, which means that there must be a reasonable relationship between the purpose of the limitations and the effects they have. Finally, the limitations must not have such far-reaching consequences that the very essence of the right to a court is impaired, see the judgment of the European Court in the case of *O v. the United Kingdom* (1987), Series A No. 120, which states that the right to a court cannot be precluded in more substantial disputes.

(35) In the *Rt*-2001-1123, the first voting judge points out that 'sparing society – both courts of law and involved parties – lawsuits which, even if they were to succeed, would have no significance for the plaintiff's legal position', constitutes a legitimate aim, and that the proportionality requirement does not militate against maintaining the requirement of a 'legal interest' either. I concur with this. Nor can I see either that the limitation on the right to bring special lawsuits regarding the type of procedural decisions at issue in this case affects the essence of Article 6 § 1.

(36) In my opinion, therefore, the summary dismissal of [the applicant 's] suit does not represent a breach of Article 6 § 1.

(37) Accordingly, I shall move on to the question of whether the suit must be allowed in pursuance of Article 13 of the Convention ... . [The applicant] has asserted that the investigation was a breach of Article 8 of the Convention regarding the 'right to respect for his private and family life'. The parties are in agreement that in this case there existed no right to lodge an appeal to a superior administrative body, in connection with either the opening of the investigation or the specific steps that were subsequently taken. Thus any review provided for in Article 13 must be carried out by a court of law.

(38) The Convention was incorporated into Norwegian law by the Human Rights Act of 21 May 1999 No. 30 and, in the event of a conflict, takes precedence over provisions in other legislation, see section 3. This means, as stated on page 54, first column, of Proposition No. 3 to the *Odelsting* [the larger division of Parliaemnt] (1998-1999), that 'should a situation arise, after incorporation, where ... Article 13 ... requires the right to a judicial hearing whereas no corresponding right is provided by Article 54 of the Code of Civil Procedure, a judicial hearing must be allowed'.

(39) It is my understanding that the Municipality acknowledges that the grounds that would lead to a summary dismissal of [the applicant's] lawsuit pursuant to Article 54 of the Code of Civil Procedure are not tenable pursuant to Article 13 of the Convention. I concur. Pursuant to Article 13, the question of whether Article 8 has been breached must be regarded as a legal issue and be made the object of a declaratory suit [*fastsettelssøksmål*], even if the breach has ceased to exist. The doubt as regards the right to demand a judgment for non-compliance with a convention that existed in Rt-1994-1244, the so-called 'Women's Prison' case, must be regarded as having been dispelled by the adoption of the Human Rights Act and the rule of precedence set out in section 3 of the said Act.

(40) Nevertheless, under the case-law of the European Court, Article 13 only requires the availability of a remedy before a national authority if there is a reasonable ground for claiming that the Convention has been breached; there must be an arguable claim. This criterion is interpreted in accordance with Article 35 § 3 of the Convention, pursuant to which a complaint to the Strasbourg Court shall be

summarily dismissed if it is 'manifestly ill-founded'; see *inter alia* paragraph 33 of the judgment in *Powell and Rayner v. the United Kingdom* (1990), Series A No. 172.

(41) Since the right to take legal action pursuant to Article 54 of the Code of Civil Procedure has been extended as a result of the incorporation of the European Convention on Human Rights, there is reason to consider whether the limitations developed in the Convention case-law should also apply in Norwegian law. The question will then be whether the courts shall summarily dismiss a suit which, after a preliminary substantive assessment, is considered to be clearly unfounded. In that event, it is not a question of limiting rights that are already protected under Norwegian law, but of the degree to which they are to be extended. Thus no conflict with Article 53 of the Convention can arise either, as [the applicant] has argued.

(42) In the continuation of the passage I cited above from Proposition No. 3 (1998-1999) to the *Odelsting*, it is stated that '[the Ministry] will however obtain an assessment ... of whether the Code of Civil Procedure should be amended so that it is clearly evident from the statute when lawsuits concerning alleged breaches of human rights conventions are to be allowed and when they are to be summarily dismissed', and that the question was to be considered by the committee that was to be appointed to examine the Code of Civil Procedure with a view to its revision. The report of the Code of Civil Procedure Committee recommends that no substantive 'screening system' should be introduced for lawsuits concerning possible breaches of the Convention; see *Norges Offentlige Utredninger* (Official Norwegian Report – "*NOU"* 2001:32 page 201. On the other hand, the Committee points out that lawsuits that clearly cannot succeed could be decided by means of a proposed simplified court hearing. No such possibility exists in our current procedural system, but it will, if it is introduced as proposed by the Committee, largely satisfy the considerations regarding the saving of time and costs in legal proceedings that have been advanced as the main arguments in favour of a screening system.

(43) How the issue should be resolved in the current dispute seems uncertain. I find it natural to take as the point of departure the fact that Article 54 of the Code of Civil Procedure establishes by statute – while at the same time limits – the right to bring any declaratory suit before a court. In the absence of statutory regulation of the issue, it is my view that the relaxation of the statutory conditions for bringing a lawsuit that follows from the Convention cannot in principle go beyond what would be a direct consequence of the Convention and its incorporation into Norwegian law. Admittedly, some might object that it is foreign to Norwegian law to assess the merits of the claim in order to decide whether the case shall be heard. But the question concerns a right to take legal action that until now has not had a clear basis in Norwegian law.

(44) I would add that filing a suit such as the one at hand, which has aimed at halting the investigations of the child welfare services, could entail considerable disadvantages. It will draw resources away from the real functions of the child welfare services, and might make its work more difficult in situations where it is necessary to react without undue delay. This reinforces the need for a simple, rapid assessment of whether there is any substance at all in the plaintiff's claim. This concern will be met by applying the Convention's own rule of summary dismissal if the claim is not arguable.

(45) The consequence of my view is that the question of summary dismissal will depend on whether the suit, based on Article 8 of the Convention, must be considered manifestly ill-founded.

(46) I would add, however, that I have not thereby concluded whether the threshold for summary dismissal should be as low as that applied by the European Court of Human Rights. As emphasized by Jørgen Aall in *Tidsskrift for Rettsvitenskap* (Journal of Jurisprudence) 1988, page 90, there are good reasons why national courts should follow a less stringent practice as regards summary dismissal. However, as will be shown below, the present case is in no way on the borderline in that respect.

(47) ...

(48) I find that the investigation constituted an interference with [the applicant's] right to respect for his private and family life under Article 8 § 1 of the Convention. On the other hand, however, I find it clear that it was an interference that was justified under the exception clause in Article 8 § 2.

(49) The decision to make an investigation is subject to a statutory condition - there must be 'reasonable cause to assume that circumstances prevail which may provide a basis for measures'; see section 4-3 of the [1992] Act. However, as stressed by the Municipality, this criterion is linked to a professional assessment by the child welfare services, and the threshold for initiating an investigation is meant to be low. In Proposition No. 44 (1991-1992) to the *Odelsting*, it is also emphasized that interests of privacy will often have to yield to the child's best interests; see pages 29 and 107.

(50) The investigation in dispute was opened on 28 February 2002. One and a half months earlier, a first investigation had been completed, in which it had been concluded that the children 'are living in an insecure and unpredictable care situation'. When a new child concern report was received on 28 February 2002, under section 4-2 of the [1992] Act the child welfare services had to consider whether it should be followed up by investigations pursuant to section 4-3.

(51) [The applicant] has maintained with vigour that this child concern report – which had given cause to suspect that he was intoxicated when he was with the children and misused pills, which was also the basis for the previous investigation – was unwarranted. I offer no opinion on this question, but cannot see it otherwise than that the child welfare services had to carry out an investigation pursuant to section 4-3, with a view to obtaining confirmation or disproving that there was cause for concern in regard to the children's care situation. The fact that there was an objective basis for initiating investigations was otherwise corroborated by new child concern reports and information from the school and day care centre indicating that the children had special care needs which it was doubtful that [the applicant] could fulfil. Finally, this was also confirmed by the assistance measures recommended by the child welfare services in their final report.

(52) In relation to Article 8 of the Convention it is particularly important to consider the specific steps that were taken during the investigation. In this case, it was a question of obtaining information pursuant to section 6-4 (2) and (3) and section 4-12 of the [1992] Act.

(53) I find it clear that it cannot be claimed that any breach of the [the 1992] Act or the Convention had occurred. Admittedly, in its final report, the child welfare services found no basis for making an administrative decision under section 4-12. However, in order to collect information it was sufficient that there was a substantiated suspicion that the children were in a situation such as described in the said provision. I would add that [the applicant's] unwillingness to cooperate with the child welfare services

was also unlikely to calm their basically justified uneasiness about the children's situation.

(54) Nor is there any ground to claim that the investigation did not pursue legitimate purposes or was unnecessary. In this respect it suffices to refer to the European Commission of Human Right's decision of inadmissiblity of 22 May 1995 in the case of *Andersson v. Sweden*, in which precisely the children's best interest were emphasised. The Commission stressed that the obtaining of information, as in the present case, was proportionate to the legitimate purpose and an interference of limited extent, since the public administration was also subject to a duty of confidentiality. Finally, it was also emphasized as a factor that the person whom the interference concerned was kept informed as to the information that was disclosed, as was done in [the applicant's] case.

(55) Accordingly, it is my view that point 1 of the operative part of the High Court's decision must be upheld.

(56) The interlocutory appeal has not succeeded. However, the case has raised hitherto unsettled questions concerning the relationship between traditional Norwegian law and the European Convention on Human Rights. In my view, the circumstances must be said to be so special that [the applicant] should not be ordered to pay costs either before the High Court or the Supreme Court. The Supreme Court hearing has also been conducted in accordance with the rules for appeals, with the consequences that this has for the amount of the costs. Otherwise as regards the Supreme Court, the legal representatives were appointed at public expense ....

37. The dissenting member, Mr Justice Tjomsland, stated:

"(58) It is my opinion that the lawsuit must be admitted to the City Court.

(59) I agree with the first voting judge that the suit would have had to be summarily dismissed in accordance with 'traditional Norwegian procedural law'. I also agree that such a dismissal would not constitute a breach of the right of access to a court guaranteed by Article 6 § 1of the Convention.

(60) The first voting judge expresses the opinion that, as a consequence of incorporation of the Convention into Norwegian law by the Human Rights Act of 21 May 1999 No. 30, a claim may be made for a declaratory judgment asserting that there has been a breach of the Convention. I concur in this opinion. The view taken by the majority as regards this question in Rt-1994-1244, the 'Women's Prison' case, cannot be maintained following the adoption of the Human Rights Act. Given the relatively limited requirements that can now be made in this respect for this type of suit, I also find that [the applicant] has a sufficient actual interest in the suit; see *NOU* 2001:32 *Rett på sak* (Straight to the Point), pp. 201-202.

(61) On the other hand, I do not agree with the first voting judge that a suit regarded as manifestly unfounded must be summarily dismissed. Once it has been accepted that a suit may be brought with a claim for a declaratory judgment asserting a breach of the Convention, the way in which such a claim should be dealt with depends, in my view, on Norwegian rules of procedure. It is therefore not decisive that the screening system, which according to the first voting judge should be applied, will not be contrary to the Convention. Under Norwegian procedural law, the assessment of whether the conditions for filing suit have been satisfied is based on the plaintiff's

submissions with regard to the claim he or she is putting forward. If the claim – in the event manifestly ill-founded – cannot succeed, judgment must be given for the respondent after a hearing on the merits of the claim. In my view, it would be contrary to this principle to procedurally dismiss on a non-statutory basis manifestly unfounded lawsuits regarding breaches of the Convention after a summary examination on the merits, cf. the majority vote in Rt-1994-1244, *NOU 2001:32 Rett på sak*, p. 201, and Schei: *Tvistemålsloven med kommentarer* (The Code of Civil Procedure, with commentary), 2nd edition, p. 270.

(62) I cannot see that the provision in Article 35 § 3 of the Convention prescribing that a complaint to the European Court of Human Rights shall be summarily dismissed after a summary examination [...] if it is manifestly ill-founded can be transposed, on a non-statutory basis, as a procedural condition to lawsuits concerning breaches of the Convention that are brought before Norwegian courts. I would also note that the considerations that serve as grounds for the various dismissal provisions in Article 35 of the Convention may appear in a different light as regards lawsuits brought before national courts. A rule on summary dismissal of the kind at issue in this instance will, in my view, give rise to several procedural problems, concerning notably the legal force of the orders. My objections to such an arrangement also hold good if a rule of summary dismissal departing from Article 35 § 3 were to apply on a non-statutory basis, for instance if one were to apply a less stringent practice of summary dismissal than that of the European Court or if the scope of the summary dismissal rule were to be limited in another discretionary manner.

(63) I agree with the first voting judge that filing a suit like the one at hand could give rise to significant disadvantages for the work of the child welfare services. However, such suits are – in my view – a consequence of the fact that it has now been made permissible to file suit complaining of a Convention breach irrespective of whether a judgment of this nature would entail specific legal effects for the plaintiff. In my view, an attempt must be made to reduce the problems that arise in this connection by adopting rules regarding simplified judicial hearings as has been proposed by the Civil Procedure Committee. In this connection, I wish to comment that the purpose of the screening system in question here will in actual fact be to introduce, on a non-statutory basis, a simplified hearing on the merits of the claims covered by the arrangement."

II. RELEVANT DOMESTIC LAW

38. The Child Welfare Services Act 1992 ("the 1992 Act") contained the following provisions which are relevant:

Section 4-2

"The child welfare services shall at the earliest opportunity, and within one week at the latest, examine reports it receives and assess whether the individual report shall give rise to investigations pursuant to section 4-3."

Section 4-3

"If there is reasonable cause to assume that circumstances prevail which may provide a basis for measures pursuant to this chapter, the child welfare services shall

investigate the matter at the earliest opportunity; see the time limits set out in section 6-9.

The investigation shall be carried out in such a way as to minimise the harm it causes anyone affected, and it shall not have a wider scope than justified by its purpose. Importance shall be attached to preventing the unnecessary spreading of information about the investigation.

The parents or the persons with whom the child is living may not object to an investigation as mentioned in the first sub-section involving visits in the home ..."

Section 6-4

"Information shall as far as possible be obtained in cooperation with the person whom the case concerns or in such a way that the person concerned is aware that the information is being obtained.

Notwithstanding the duty of secrecy, public authorities shall on their own initiative disclose information to the municipal child welfare services when there is reason to believe that a child is being mistreated at home or subjected to other serious deficiency of parental care (see sections 4-10, 4-11 and 4-12), or when a child has shown persistent, serious behavioural problems; see section 4-24. Organizations and private entities that perform tasks for the State, a county municipality or a municipality are considered on par with public authorities. Public authorities are also obligated to disclose such information when ordered to do so by agencies which are responsible for implementation of the Act.

Practitioners of professions pursuant to [various specified Acts] are also obligated to disclose information pursuant to the rules of the second paragraph."

Section 6-7

"Anyone who performs service or work for a public administrative agency or institution pursuant to this act is subject to a duty of secrecy pursuant to sections 13 to 13E of the Public Administration Act. Contraventions are punishable pursuant to Article 121 of the Penal Code.

[...]

Information may only be disclosed to other public administrative agencies, see section 13B, subsections 5 and 6, of the Public Administration Act, when necessary to facilitate the function of the child welfare services or the institution, or to prevent material danger to life or serious harm to a person's health. ..."

39. Articles 53 and 54 of the Code of Civil Procedure, as in force at the material time (it was replaced by a new Code which entered into force on 1 January 2008), provided:

Article 53

"Until a claim matures, it may not be brought before the courts with a request for an executory judgment (*fullbyrdelsesdom*), except in the following circumstances:

1. If there is particular reason to fear that the respondent will escape fulfilling his or her obligations on time;

2. If it concerns a claim which is supplementary to a principal claim, such as interests running until payment, or compensation, which emerges from the disputed legal relationship;

3. If it concerns periodic payments, of which one instalment has matured and when future instalments do not depend on any service in return;

4. If the claim is conditional upon the non-fulfilment of another claim, in respect of which the claimant requests a judgment in the same case.

If the claim has not matured by the time of judgment, the judgment shall stipulate what condition should occur or what time-limit should run, before it is to be executed."

Article 54

"If a plaintiff has a legal interest in it being established by a judgment that a legal relationship or a right exists or does not exist ... he can institute proceedings with a request for a declaratory judgment (*fastsettelsesdom*), even though an executory judgment may not yet be obtained."

40. Section 6 (2) of the Supreme Court Act 1926 read:

"When it is desirable for special reasons, the Appeals Leave Committee of the Supreme Court may, in cases being examined by it, refer a question of law to the Supreme Court or decide that the case as a whole [*saken i sin helhet*] shall be decided by the Supreme Court. The Supreme Court will rule on the legal issue or on the case in the form of a decision. The court may decide that oral proceedings may be held in accordance with the rules that apply to ordinary appeals [*ankesaker*]. A decision to this effect may also be taken by the presiding judge before the case is examined by the Supreme Court."

41. From Article 404 (1), item 1, of the former Code of Civil Procedure it followed that a decision by the High Court on an appeal against a dismissal of a case on grounds of lack of jurisdiction may form the subject of further appeal to the Supreme Court. The latter then has full jurisdiction to examine questions of law, fact and procedure (see Tore Schei, *Tvistemålsloven med kommentarer* (Code of Civil Procedure with Commentary), 1990, p, 361).

42. Pursuant to Article 374, the Supreme Court could not take oral evidence from witnesses directly, but the parties could make a request to the relevant district- or city court to hear witness evidence (*bevisopptak*). In such event, the statements of the parties and/or witnesses were recorded *in extenso* by the first instance judge. The records were included in the Supreme Court's case file and may be read out by the parties' representatives during the Supreme Court hearing, should they so wish, like other documentary evidence contained in the file.

III. THE CONVENTION ON THE RIGHTS OF THE CHILD OF THE UNITED NATIONS

43. The human rights of children and the standards to which all governments must aspire in realising these rights for all children, are set out in the Convention on the Rights of the Child. This instrument entered into force on 2 September 1990 and has been ratified by 193 countries, including Norway, which has also incorporated it together with the Convention into its domestic legal order (1999).

44. The Convention spells out the basic human rights that children everywhere – without discrimination – have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. It further protects children's rights by setting standards in health care, education and legal, civil and social services.

45. States Parties to the Convention are obliged to develop and undertake all actions and policies in the light of the best interests of the child (Article 3). Moreover, States Parties have to ensure that a child is not separated from his or her parents against their will unless such separation is necessary for the best interests of the child; and that a child who is separated from one or both parents is entitled to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests (Article 9).

46. Article 19 reads:

> "1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
>
> 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

47. The applicant complained that the investigations carried out by the child welfare services, despite a first such investigation showing that his former wife's allegations were groundless, had constituted an unjustified interference with his right to respect for private and family life under Article 8 of the Convention. He moreover complained that, because of dismissal of his case by the Norwegian courts, and hence their refusal to review the merits of his case, he had been denied access to a court and an effective remedy, in breach of Articles 6 and 13 of the Convention, respectively.

48. Article 8 reads:

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

49. The Court reiterates that its examination under the above provision will be limited to the applicant's complaint about the child welfare services second investigation into his ability to assume the care for his two sons, which it declared admissible on 5 January 2006. It was undisputed that the second investigation constituted an interference with his right to respect for private and family life under paragraph 1 of Article 8 of the Convention. The Court sees no reason to hold otherwise. On the other hand, the applicant disputed that the measure was justified for the purposes of paragraph 2, whereas the Government contested his submission and invited the Court to find no violation of Article 8 of the Convention.

1. Arguments of the parties

(i) The applicant

50. The applicant argued that all the domestic authorities involved in this case seemed to have accepted that a report of concern would suffice to allow the "investigation snowball" to roll downhill and gather momentum, even without making an adequate evaluation of the credibility of the report. He emphasized that the report of concern had been made by a person who had only observed from a considerable distance the incident in which the applicant had collapsed and who could not have been able to ascertain

whether the incident resulted from acute illness or from intoxication or why the applicant's car keys had been taken from him. This person had also lied about what was registered with the police as there was nothing in the register corresponding to his allegations. At an early stage all of this was pointed out to the child care authorities at the Hillevåg District Office, as was the fact that several persons, who had assisted the applicant after he fell, could confirm that the incident was unrelated to intoxication or abuse of intoxicating substances. While agreeing with the Supreme Court and the Government that the threshold for opening an investigation ought to be low, the applicant submitted that the authorities had failed to carry out a comprehensive professional assessment of the validity of reports as required under section 4-3 of the 1992 Act. They should have contacted the applicant to hear his explanation of the incident and should have heard first hand accounts from several witnesses who had assisted him and who could confirm that he had not appeared intoxicated or under the influence of any substances.

51. The applicant moreover disputed that the interference pursued a legitimate aim. The authorities' failure to attempt to assess the validity of any of the reports of concern suggested that they had been determined to go on until they found some evidence of addiction.

52. Nor could the second investigation be deemed "necessary" in the absence of any relevant and sufficient reasons for investigating allegations of dependency. This matter had already been investigated over a period of 5 months in the first investigation, with no less than 10 unannounced control visits to the applicant's home. The relevant documents contained no elements that would lend support to such allegations and no changes had occurred by the time the second investigation had been commenced, other than a very dubious and unverified report as well as several anonymous reports probably originating from the applicant's estranged wife's family.

53. Whereas the Government attempted to justify the second investigation on the basis of the "conclusion" in the final report of the first investigation, i.e. that the children were living under an insecure and unpredictable care situation, the latter did not suggest that the situation was so serious as to warrant measures to be taken. In particular, the report contained no recommendations regarding addiction, simply because no such abuse had been found. The basis for the second investigation had been a highly doubtful report about alleged intoxication, not about the parental conflict that had been the focus of attention and the reason for the "conclusion" in the first investigation report.

54. In the second investigation the authorities had failed to appreciate that the children, only after the completion of the first investigation on 17 December 2001, had learned that their mother had abandoned them by moving to Finland. By then focusing on the father for possible addiction abuse, the child care authorities had disregarded the very negative effect on

the children, who were then respectively six and eight years old, of being abandoned by their mother. They had also failed to understand what burden it meant for the father to be investigated for the same allegations twice in less than two months; a father who had the sole responsibility for taking care of two children less than nine years of age that had just experienced abandonment by their mother. The investigation had severely disrupted the applicant's private and family life. Again he had to use his energy and concentration not only to take care of his two young children, but also to defend himself against a totally unjustified investigation conducted by persons who apparently would not leave him and his family alone until they had obtained evidence that he abused intoxicating substances.

55. It must be emphasized that the applicant's doctor was also the doctor of the children in this case and thereby had an independent duty to report on serious concerns about the applicant's care of his children to the Hillevåg authorities even without having been requested to do so. This was never done and no information provided by the applicant's doctor to the Hillevåg authorities was of such a nature that it supported any suspicion of addiction, nor did it support any allegation that the applicant's care of the children was inadequate.

(ii) The Government

56. The Government emphasised that the second investigation was limited in nature and scope. It consisted of obtaining information from the school, kindergarten, doctor and police and conducting an interview with the applicant's former wife, who was in Finland, and did not involve such measures as home visits or measures directly involving the applicant's children.

57. Moreover, the Government submitted, the investigation had a legal basis in section 4-3 of the 1992 Act. Having regard to the purpose of the Act and to Norway's obligations under the United Nations Convention on the Rights of the Child, the threshold for initiating such investigations ought to be low. The fact that the first investigation had been based on the same kinds of allegations about violence and misuse of medication, drugs or alcohol –which had not been confirmed or led to measures being taken under the 1992 Act - could not in itself be sufficient grounds for the child welfare services to conclude that the new reports of concern were unwarranted. Having regard to the conclusion in the first investigation that the applicant's children were “living in an insecure and unpredictable care situation”, the child care authorities not only had a legal right but also a legal obligation to follow up new reports of concern or other information relevant to the children's care situation. The communication by the instances concerned of the confidential information to the child welfare services had been authorised under section 6-4 (2) (3) of the Act.

58. Furthermore, the investigation had pursued the legitimate aim of "protection of the rights ... of others" and was "necessary" for the pursuance of such an aim. There was no support for the applicant's allegation that the child welfare services had any interest of their own in nailing a substance abuse problem to the applicant, which allegation should be rejected as entirely unfounded. Nor was there any evidence for his assertion that the authorities failed to assess the reports of concern pursuant to sections 4-2 and 4-3 of the 1992 Act. In particular, there was no reason for the authorities to question the observations of apparent intoxication made by a police officer, who was trained by profession to observe and assess situations. The officer had no connections to the applicant's family or any involvement in his conflict with his estranged wife. His report had in addition been supported by two further such reports form other third parties during the subsequent month. Having regard also to the contents of the report of the first investigation, there was a sufficient basis for the authorities to initiate the second investigation in April 2002. This was confirmed by the information obtained in the latter context.

59. The applicant's contention to the effect that the authorities had been overzealous and biased in this regard had no basis. In this connection it might be noteworthy that according to statistics of the relevant Ministry, during the period from 1996 to 2005 between 14 and 19 % of all reports of concern had been shelved without investigation; and between 43 and 46 % of those instances where an investigation had been opened had been concluded without any action having been taken.

60. Contrary to what the applicant seemed to believe, the purpose of the investigation carried out under section 4-3 of the 1992 Act had not been to find out whether the applicant had a substance abuse problem but to be able to assess whether the children were at risk, whether they lived under conditions warranting measures being taken.

1. The Court's assessment

61. The Court finds no reason to question the Norwegian Supreme Court's finding that the contested investigation had a legal basis in domestic law, namely sections 4-3 and 6-4 of the 1992 Act (see paragraph 53 of the Supreme Court's judgment quoted at paragraph 36 above).

62. Nor does the Court find any reason to doubt the assessment made by the Supreme Court that the second investigation pursued the best interests of children (ibidem, paragraph 54). It is satisfied that the disputed measures were aimed at protecting the "rights and freedoms" of the applicant's children and thus pursued legitimate aims within the meaning of paragraph 2 of Article 8.

63. As to the further question whether the impugned interference was "necessary", the Court notes by way of preliminary observation that it fell within the range of measures envisaged in Article 19 of the UN Convention

on the Rights of the Child for States to take in order to prevent abuse and neglect of children (see paragraph 46 above). This is an important consideration to be borne in mind in the assessment of the necessity of the interference. Indeed, the parties were in agreement before the Court that, as pointed out by the Supreme Court, the threshold for commencing a section 4-3 investigation should be low.

64. Turning to the particular circumstances, the Court finds that the necessity of the second investigation must be viewed in the context of the first investigation concluded by the Hinna District Office in its report of 10 January 2002 (see paragraph 16 above). In that report, it was observed that, mainly due to parental conflict, the children were "living in an insecure and unpredictable care situation", though the situation was not considered to be such as described in section 4-12 of the 1992 Act. Moreover, while there were no independent reports to the effect that the applicant was intoxicated due to an abusive consumption of medicines, it was noted that his doctor had stated that she considered his intake of medicines to be too high. It was deemed peculiar that, on his lawyer's advice, the applicant had not wished to comment on this matter.

65. Secondly, what had triggered the opening of the second investigation on 28 February 2002 was a new report of concern by a named third party relating to an incident on 16 February 2002, alleging that the applicant had difficulty standing on his feet due to intoxication at a sports centre (see paragraph 17 above). Thereafter, two other sources, one of which was anonymous, had reported respectively on 4 and 25 March 2002 incidents of intoxication in his children's presence and one anonymous source had reported on 14 March 2002 that the applicant was violent and threatening and had mentioned rumours about drug abuse (see paragraphs 19 to 21 above). Before opening the second investigation, the child welfare authorities communicated to the applicant some of the reports of concern with an invitation to discuss the allegations, which he declined. In the Court's view, the decision-making process did not leave anything to be desired. The fact that an investigation based on the same kind of allegations of substance abuse had been concluded a few months earlier could not of itself justify discarding the new reports of concern as being unwarranted. In this regard it sees no reason for questioning the findings made by the Supreme Court (see paragraphs 50 to 51 above of the Supreme Court's judgment quoted at paragraph 36 above).

66. Against this background, the Court is of the view that the national authorities were entitled to consider that initiating a second investigation into the children's situation while under the applicant's care was supported by relevant and sufficient reasons. Indeed, the correctness of their assessment in this regard was confirmed by the findings set out in the second investigation report.

67. In any event, a general duty such as that suggested by the applicant, for the child welfare authorities to thoroughly investigate the validity of a report of concern before opening an investigation could hardly be derived from Article 8 of the Convention. If it were to be a prerequisite that all such reports, even those that appear credible on their face, should be verified in advance, it would risk delaying such investigations, deflecting attention and resources away from the real problems and reducing their effectiveness and hampering efforts in instances where it was paramount to establish urgently and without delay whether a child was living under conditions that may harm his or her health or development. In this connection, the Court cannot but note the emphasis placed on effectiveness in Article 19 of the UN Convention on the Rights of the Child (see paragraph 46 above).

68. Therefore, the Court finds nothing to indicate that the authorities' assessment as to the necessity of opening a new investigation went beyond the wide margin of appreciation that was accorded to them in such matters under Article 8 of the Convention (see *Johansen v. Norway*, judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-III, pp. 1003-1004, § 64; *Kutzner v. Germany*, no. 46544/99, § 66, ECHR 2002-I).

69. As to the modalities of the second investigation, the Court observes that the applicant, led by his lawyer, refused to cooperate with the child welfare services in this respect. It cannot be said that by obtaining information from the general practitioner of the applicant and his sons, the sons' respective school and kindergarten and the police, the child welfare services failed to strike a proper balance between the applicant's interest in maintaining the confidentiality of certain personal data and the best interests of the children. The disclosure of information to the child welfare authorities was of limited nature, was subject to a duty on their part to maintain the confidentiality of the information and was notified to the applicant; it was thus accompanied by effective and adequate safeguards against abuse (see *M.S. v. Sweden*, cited above, pp. 1449-50, §§ 42-44; *Anne-Marie Andersson v. Sweden* (dec.) no. 220022/92, 22 May 1995). Their choice of means clearly fell within their margin of appreciation, regard being had to such factors as the nature and seriousness of the interests at stake and the gravity of the interference (see *Z v. Finland*, judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 348, § 99), and did not render the interference disproportionate to the legitimate aims pursued.

70. The Court therefore agrees with the finding of the national Supreme Court that the second investigation, including the manner of its implementation, was necessary for the purposes of the Article 8 § 2 of the Convention. Thus there has been no violation of Article 8 in the present case.

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

71. The applicant complained that the summary dismissal of his case by the City Court and the High Court, which decision was later upheld by the Supreme Court, violated his right of access to a court. This gave rise to a violation of Article 6 § 1 of the Convention which, in so far as is relevant, reads:

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

72. The Government disputed the applicability of this provision to the proceedings in issue.

A. Applicability of Article 6 § 1

1. Arguments of the parties

(i) The applicant

73. The applicant argued that, having regard to the fact that the Convention had been incorporated into Norwegian law, his allegations of violation of the Convention, notably its Article 8, did involve a dispute over a right that was arguably recognised under national law. As could be seen from the Supreme Court's decision (at paragraph 39, quoted at paragraph 36 above), by virtue of the incorporation of Articles 6 and 13 into the domestic legal system, the limitations on judicial review implied by Article 54 of the Code of Civil procedure no longer operated. Moreover, as incorporated, his substantive Convention rights took precedence over the child welfare authorities' rights and duties pursuant to section 4-3 of the 1992 Act. He had further presented weighty arguments for his submission that those authorities had failed in their duty to examine whether there was a "reasonable cause" in the sense of this provision, in particular the validity of the report of concern by the off-duty police officer and of the other such reports. None of the various persons and instances who had been contacted by the child welfare authorities in the second investigations had made any reports suggesting deficiencies in the applicant's care of the children or confirming substance abuse.

74. Furthermore, the applicant submitted that while it was undisputed that the measures entailed an interference with his right to respect for private and family life, being subjected to a section 4-3 investigation was very serious in that it was based on the premise that there was a reasonable cause to assume that circumstances prevail which might provide a basis for measures pursuant to Chapter 4 of the 1992 Act. This included not only support measures but also compulsory taking into care. The commencement

of an investigation gave the child welfare authorities a legal basis for requiring entry into the family home and for requiring that the child be subject to medical or other examinations, if need be with the assistance of the police. The dispute was therefore genuine and serious.

75. Also, in the absence of any possibility of administrative appeal, the institution of judicial proceedings was the only recourse available to the applicant for obtaining an interlocutory injunction from the national courts. However the dismissal of his case by the City Court and the High Court without any evaluation of the merits had decisively prevented him from obtaining relief in the form of an interlocutory injunction and a subsequent decision on his complaint of violation of Article 8 of the Convention. The subsequent summary dismissal of the applicant's case by the Supreme Court had also been decisive with respect to his right to obtain judicial review under Articles 6 and 13 of his Article 8 complaint.

(ii) The Government

76. The Government maintained that in the absence of any arguable claim on the part of the applicant pertaining to his "civil rights", Article 6 § 1 of the Convention was not applicable to his case.

77. In this regard the Government emphasised that, according to the Court's case-law, "the starting point must be the provisions of the relevant domestic law and their interpretation by the domestic courts" (see *Roche v. the United Kingdom* [GC], no. 32555/96, § 120, ECHR 2005-...). They also referred to the *Anne-Marie Andersson v. Sweden* judgment of 27 August 1997 (*Reports of Judgments and Decisions* 1997-IV, p. 1417, § 36).

78. The Government submitted that, under Norwegian law, a parent had no standing for lodging an administrative or judicial appeal against a decision to investigate or against particular measures taken in the investigation. As held by the Supreme Court in the present case, a decision to make an investigation pursuant to section 4-3 of the 1992 Act, or to take measures in the course of an investigation such as obtaining information pursuant to its section 6-4, was not an individual decision in the sense of the Public Administration Act. As a general rule, it was not possible to make the lawfulness of such procedural steps the object of a separate lawsuit pursuant to Article 54 of the Code of Civil Procedure.

79. Thus the lower courts had dismissed the applicant's case on the ground that no legal relationship or right existed under Article 54 of the Code of Civil Procedure. A decision to carry out an investigation was merely a step in the child welfare services' preparatory assessment of whether there were grounds for administrative intervention in the case. It was thus not decisive for the applicant's rights and obligations.

80. The above was in sharp contrast to the extensive rights under the 1992 Act of administrative and judicial review of decisions relating to the

taking of a child into public care, the deprivation of parental responsibility and restrictions on access. This difference resulted from a deliberate choice by the legislator and was based on good reasons. If a preparatory fact-finding procedure or rather the parents' attempt to avoid such procedure — were to be deemed a "civil right" within the meaning of Article 6 § 1 of the Convention, it could have serious consequences for the welfare of exposed children in the form of obstruction or postponement. Should, for example, parents as a matter of parental "rights" be entitled to challenge in legal proceedings the child welfare services' presence in a public criminal case concerning child abuse or the services' right to observe children in public places? These were examples of fact-finding procedures which could not be viewed as involving civil rights and which illustrated the difficulty of defining which fact-finding steps (if any) should be deemed to involve such rights.

81. In the Government's opinion, the scope and manner of the disputed fact-finding steps taken by the child care authorities were neither invasive nor serious as regards the applicant's legitimate privacy interests. Any assessment of the genuineness and seriousness of the dispute should have due regard to the principle of the best interests of the child set out in Article 3 of the UN Convention on the Rights of the Child. Moreover, the disputed investigation did not result in the determination of any legal rights or obligations on the part of the applicant or his children.

2. The Court's assessment

82. The Court reiterates that, according to the principles laid down in its case-law (see, for instance, *Zander v. Sweden*, 25 November 1993, Series A no. 279-B, p. 38, § 22, and *Kerojärvi v. Finland*, 19 July 1995, Series A no. 322, p. 12, § 32; *Anne Marie Andersson*, cited above, § 33; *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, §§ 40-64, ECHR 2007-...;), it must ascertain whether there was a dispute ("*contestation*") over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the existence of a right but also to its scope and the manner of its exercise; and the outcome of the proceedings must be directly decisive. Finally, the right must be civil in character.

83. As regards the first of the above-mentioned criteria, that the dispute concern a right which arguably exist under national law, it should further be reiterated that Article 6 § 1 does not guarantee any particular content for those (civil) "rights" in the substantive law of the Contracting States: the Court may not create through the interpretation of Article 6 § 1 a substantive right which has no legal basis in the State concerned (see *Fayed*, cited above, pp. 49-50, § 65). Its guarantees extend only to rights which can be said, at least on arguable grounds, to be recognised under domestic law (see *James and Others v. the United Kingdom*, judgment of

21 February 1986, Series A no. 98, and *Z and Others*, § 81, and the authorities cited therein, together with *McElhinney v. Ireland* [GC], no. 31253/96, § 23, 21 November 2001; and *Fogarty v. the United Kingdom* [GC], no. 37112/97, § 117, ECHR 2001-XI (extracts)). In assessing whether there is a civil "right" and in determining the substantive or procedural characterisation to be given to the impugned restriction, the starting-point must be the provisions of the relevant domestic law and their interpretation by the domestic courts (see *Masson and Van Zon v. the Netherlands*, judgment of 28 September 1995, Series A no. 327-A, p. 19, § 49). Where, moreover, the superior national courts have analysed in a comprehensive and convincing manner the precise nature of the impugned restriction, on the basis of the relevant Convention case-law and principles drawn therefrom, this Court would need strong reasons to differ from the conclusion reached by those courts by substituting its own views for those of the national courts on a question of interpretation of domestic law (see *Z and Others*, cited above, § 101) and by finding, contrary to their view, that there was arguably a right recognised by domestic law (see *Fogarty*, cited above, § 120).

84. Turning to the question whether an arguable claim existed in the present case, the Court observes that the child welfare authorities enjoyed a very wide discretion in assessing whether the conditions for opening an investigation pursuant to section 4-3 and for ordering the disclosure of confidential personal data pursuant to section 6-4 were fulfilled. In instances where the relevant conditions were deemed to be fulfilled the authorities were under an obligation to carry out an investigation and the duty of secrecy pertaining to personal data did not apply. With regard to the latter point, the present case can be assimilated to those of *Anne Marie Andersson* (cited above, §§ 34-37) and *M.S. v. Sweden* (cited above, pp. 1451-52, §§ 48-50), in which the Court found that a "right " to prevent communication of the personal data in question could not, on arguable grounds, be said to be recognised under comparable provisions of Swedish law and that, accordingly, Article 6 § 1 was not applicable. The Court is further mindful of the fact that the disputed measures were not classified as a "decision" that could form the subject of an administrative appeal under the Public Administration Act or a judicial appeal under Article 54 of the Code of Civil Procedure, according to traditional doctrine and as applied by the lower courts in the present case. It could hardly be said that the investigation itself had a decisive effect on the applicant's rights. Only subsequent measures taken in light of the findings made during an investigation, notably compulsory taking into care or restrictions on access, would have been capable of having such effect. However, no such measures were taken in this case.

85. However, having regard to its conclusion below that there was in any event no failure on the part of the respondent State to comply with the

guarantees of Article 6 § 1, the Court does not find it necessary to determine whether this provision was applicable to the instant case.

B. Compliance with Article 6 § 1

1. Arguments of the parties

(i) The applicant

86. The applicant maintained that the summary dismissal of his case by the City Court and the High Court, which decision was later upheld by the Supreme Court, violated his right of access to a court. The City Court and the High Court had dismissed his suit on the ground that he lacked "legal interest" in receiving a judgment on his claim which was an absolute requirement for access to court under Article 54 of the Code of Civil Procedure. This assessment had been made despite the fact that the second investigation was still in progress at that time and that he had asked for an interlocutory injunction to stop the violation of his Article 8 rights and for a declaratory judgment to the effect that the investigation violated those rights. For the applicant, the importance of a declaratory judgment was to have it established that it was unlawful to open a second investigation. He thus quite obviously had a "legal interest" in the outcome of his lawsuit.

87. In any event, praying in aid the opinion of the dissenting member of the Supreme Court (see paragraph 61 of the Supreme Court's decision quoted at paragraph 36 above), the applicant submitted that before dismissing his suit the national courts should have accorded him a full hearing of the merits of his suit. There was every reason to allow a detailed investigation of the facts on the case, including an investigation into the veracity of the reports relied on by the child welfare authorities. However, at all levels he had been denied the benefit of presenting his case with testimony and cross examination of witnesses to demonstrate that the investigation had been ill-founded. The City Court and the High Court had dismissed the case without holding a hearing and without any consideration of the evidence. They had refused even a summary evaluation of the merits of the case. When the Supreme Court had summarily dismissed the suit there had been no urgency whatsoever associated with ascertaining whether the second investigation amounted to a violation of Articles 6 § 1, 8 and 13 of the Convention. The oral hearing before the Supreme Court had only lasted 1½ day, during which his lawyer had been able to plead for 4½ hours. The Supreme Court had only carried out a superficial evaluation of the written evidence and had heard no witnesses on the issue whether the opening of the second investigation had had an adequate factual basis.

88. The applicant submitted that the Supreme Court had full jurisdiction to decide whether the lower courts' dismissal without any consideration of the merits of the applicant's lawsuit was in accordance with national law. However, acting as a "lawmaker" outside its normal jurisdiction, it had dismissed the lawsuit on a summary evaluation of the merits and on the ground that it was manifestly ill-founded. Instead, the proper way would have been to quash the unlawful dismissal of his suit and refer the case back to the City Court for normal review of its merits after hearing witnesses directly. In this manner, an appeal could be heard by the High Court and, ultimately, by the Supreme Court. It had not been possible for the applicant to know in advance that the Supreme Court would proceed in the way it did and, for example, deem it unnecessary to express a view on the veracity of the allegation that the applicant had been "visibly intoxicated". This meant that it would have been entirely futile for the applicant to adduce evidence on the merits of his suit. The Supreme Court in essence did not wish to carry out a thorough judicial review based on extensive evidence and oral arguments in court regarding the factual aspects of the lawsuit.

89. Finally, as to the Government's argument that he could instead have lodged compensation proceedings or libel proceedings, such avenues would only have allowed him to obtain reparation for damage caused by the investigation. The reason why he had opted for interlocutory injunction and a declaratory judgment was precisely to put an end to the investigation.

(ii) The Government

90. The Government argued that the Supreme Court's reasons for dismissing the case fell within the scope of legitimate and proportionate limitations on the right of access to a court as interpreted by the European Court in its case-law. The essence of the Supreme Court's decision upholding the dismissal of the applicant's request for a declaratory judgment to the effect that the investigation had been unlawful, was that the investigation had already been closed. The applicant had not advanced any other legal claims on the basis of the investigation, for example a claim for damages. In these circumstances, making the legality of a closed investigation the object of a lawsuit under Article 54 of the Code of Civil Procedure would have had no significance for his legal position. The main purpose of the limitation inherent in Article 54 of the Code of Civil Procedure requiring a current and actual legal interest in obtaining a declaratory judgment was to limit, in the interest of the proper administration of justice, the workload of the courts and not overburden them with ill-founded cases. The application of this limitation to the present case did not unduly restrict or reduce the applicant's access to a court. Therefore the proportionality requirement was satisfied.

91. Even if the applicant had experienced the investigation as a strain and would regard judicial review as a redress, these issues did not affect his

legal position, given the claim he had chosen to bring to court. The requirement of a current and actual legal interest did not impair "the very essence" of the right of access to a court. Furthermore, other courses of legal action had been available to him; the applicant could have obtained a full review of his Article 8 claim notably by bringing a compensation claim or a private defamation suit. As pointed out by the Supreme Court, he could also have brought legal action against any administrative decision that might have been made on the basis of the investigation. Thus, the Government stated, the applicant would have had legal standing under Article 54 of the Code of Civil Procedure had he lodged compensation proceedings under section 3-6 of the Damage Compensation Act 1969 for infringement of his privacy by the allegedly unfounded investigation. Under this provision or under Chapter 28 of the Code of Criminal Procedure and Chapter 23, Article 247, of the Penal Code, he would also have had standing to bring defamation proceedings for any allegedly unfounded and defamatory statements in the investigation report.

92. The Government concluded that the Supreme Court's summary dismissal pursuant to Article 54 of the Code of Civil Procedure concerning the legality of an investigation which was limited in scope and had already been concluded, pursued a legitimate aim, complied with the principle of proportionality and did not impair the very essence of the right of access to a court.

93. The Government in addition emphasised that the applicant's complaints under the Convention had been subjected to review by the Supreme Court. In their view, the Supreme Court did have sufficient jurisdiction to deal with the applicant's appeal for the purposes of Article 6 § 1. To afford a preliminary- or limited review of whether a claim was arguable might be compatible with the right of access to a court. Moreover, it was the material contents of such review, not its label as under national law as "summary dismissal", that mattered. Thus, in the case at hand, the applicant had been free to submit any documentary evidence and to call any witnesses he wished and the Supreme Court had decided to hold a full hearing of the case. All the main documents submitted with the application to the European Court had been submitted to the Supreme Court.

94. The applicant had not availed himself of the opportunity to have the written evidence supplemented by witness statements but, had he so done, a first instance court would have been commissioned to take witness statements, the transcripts of which would have formed part of the Supreme Court case file. Since the appeal was limited to points of law, it was immaterial that the Supreme Court could not hear witnesses directly. In any event, had the Supreme Court considered that the appeal could not properly be examined without hearing witnesses directly, it could have refused leave to appeal, or showed restraint in setting aside the lower court's assessment

of witness evidence or have quashed the lower court's judgment and referred the case back for fresh examination.

2. The Court's assessment

95. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, p. 18, § 36). This "right to a court", of which the right of access is an aspect, may be relied on by anyone who considers on arguable grounds that an interference with the exercise of his (civil) rights is unlawful and complains that he has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 § 1 (see *Le Compte, Van Leuven and De Meyere v. Belgium*, judgment of 23 June 1981, Series A no. 43, p. 20, § 44; *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 30, § 81; and *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, p. 24, § 55). Where there is a serious and genuine dispute as to the lawfulness of such an interference, going either to the very existence or the scope of the asserted civil right, Article 6 § 1 entitles the individual "to have this question of domestic law determined by a tribunal" (see *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 30, § 81; see also *Tre Traktörer AB v. Sweden*, judgment of 7 July 1989, Series A no. 159, p. 18, § 40).

96. The right is not absolute, however. It may be subject to legitimate restrictions such as statutory limitation periods, security for costs orders, regulations concerning minors and persons of unsound mind (see *Stubbings and Others v. the United Kingdom*, judgment of 22 October 1996, *Reports* 1996-IV, pp. 1502-03, §§ 51-52; *Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316-B, pp. 80-81, §§ 62-67; and *Golder*, cited above, p. 19, § 39). Where the individual's access is limited either by operation of law or in fact, the Court will examine whether the limitation imposed impaired the essence of the right and, in particular, whether it pursued a legitimate aim and there was a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, pp. 24-25, § 57). If the restriction is compatible with these principles, no violation of Article 6 will arise.

97. In the present case, the applicant's action under Article 54 of the Code of Civil Procedure had been dismissed by the national courts because he was found not to have had an actual and current legal interest in a declaratory judgment. According to the High Court the disputed investigation was only a measure taken in the child welfare authorities' preparation of the case. Since it was not decisive for the applicant's rights and obligations, he did not have a "legal interest" in the sense of Article 54

in having it judicially established whether the investigation had been unlawful. While acknowledging the correctness of this interpretation according to national case-law, the Supreme Court emphasised that the investigation had been closed by the time the case had reached it (see paragraph 25 of the Supreme Court's decision, quoted at paragraph 36 above). Furthermore, an investigation under section 4-3 of the 1992 Act and a request for disclosure of personal data under its section 6-4 did not constitute an individual decision in the sense of the Public Administration Act but "procedural steps", the lawfulness of which could not form "the object of a separate lawsuit pursuant to Article 54 of the Code of Civil Procedure". Moreover, the Supreme Court pointed out that "any errors made at this stage could be significant in a lawsuit brought against any administrative decision that might be taken, and could possibly also form the basis for a claim for damages (see paragraph 30 of the Supreme Court's decision, ibidem). Also, the Supreme Court had regard to its own jurisprudence, according to which "sparing society – both the courts and the parties involved – lawsuits which, even if they were to succeed, would have no significance for the plaintiff's legal position, constituted a legitimate aim (see paragraph 35 of the Supreme Court's decision, ibidem). Having regard to the foregoing, the Court accepts that the restriction on the right of access to a court based on Article 54 of the Code of Civil Procedure was in the interest of a proper administration of justice.

98. The Court is also mindful of the general consideration invoked by the Government, albeit in a different context (that of applicability; see paragraph 80 above), concerning the particular need to ensure expediency and efficiency of investigations in order to protect the best interests of children. A right for a parent to institute court proceedings with respect to investigations into his or her care of a child could easily undermine the child welfare services' ability to carry out their tasks in an effective way. Such a right would therefore be to the detriment of children living in unacceptable conditions.

99. Accordingly, the limitation on the applicant's right of access to a court resulting from the decision to dismiss his case was based on reasonable considerations.

100. The Court further observes that when addressing its requests for information about deficiencies in the applicant's care for the children to his doctor, to the children's respective school and kindergarten and to the police, the Hillevåg District Office stated that it had reason to fear that the children were living in a situation such as that described in section 4-12 of the 1992 Act. As held above, the impugned disclosure of information was of limited nature, was subjected to secrecy, served to establish whether there was a need to take public care measures and was lawful and necessary for the protection of the children's best interests. In this connection regard should be had to the various considerations mentioned in paragraph 84

above (concerning the issue of applicability of Article 6 § 1) to the effect that the applicant did not have an arguable claim concerning a "right" that was recognised under national law.

101. Furthermore, it is to be noted that, whereas the lower courts dismissed the applicant's action summarily without a review of the merits, the Supreme Court afforded him such review. He had appealed against the High Court's decision on points of law and, by way of special measure, the Supreme Court proceeded to review the case as a whole according to the rules applicable to ordinary appeals (see paragraphs 33 and 40-41 above). Under these rules the Supreme Court had full jurisdiction to decide on every aspect of the appeal, including questions of fact and of law, and was empowered to quash the lower courts' decision to dismiss the case and to order a rehearing at first instance (see paragraph 23 of the Supreme Court's decision, ibidem, and the dissenting opinion in paragraph 58 quoted at paragraph 37 above). Before deciding to uphold their dismissal of the case, the Supreme Court held an oral hearing and carried out a complete review of questions of fact and of law pertaining to the lawfulness under Norwegian law of the investigation (see in particular paragraphs 48-56 of the Supreme Court's decision, ibidem; see *Fayed*, cited above, § 78). Whilst the dismissal of the lawsuit was upheld, it could therefore arguably be maintained, in view of the scope of the Supreme Court's review, that this review complied with the right to a court under Article 6 § 1 (see *Zumtobel v. Austria*, judgment of 21 September 1993, Series A no. 268-A, p. 10, § 32; *Fischer v. Austria*, judgment of 26 April 1995, Series A no. 312, p. 18, § 34; *Z and Others*, cited above, § 101). However, for the reasons set out below, the Court does not find it necessary to determine this issue.

102. The above considerations are not diminished by the applicant's submission that he could not call witnesses for cross examination before the Supreme Court. Had he made such a request, oral evidence could have been taken by the lower court, the written records of which would then have formed part of the evidence before the Supreme Court. However, although given a time-limit within which to specify a request to this effect, he did not avail himself of this possibility (see paragraph 34 above).

103. In light of the above, it cannot be said that the dismissal of the applicant's action impaired the very essence of his right of access to a court. Accordingly, there has been no violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

104. Relying essentially on the same facts and circumstances as with respect to his complaint under Article 6 § 1 of the Convention the applicant also alleged a breach of Article 13, 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."

105. The Government disputed the above allegation and invited the Court to declare it inadmissible as being manifestly ill-founded.

106. Having regard to its reasoning and conclusion above in relation to the complaint under Article 6 § 1, the Court considers that it is not necessary to examine the case under Article 13 since its requirements are less strict than, and are here absorbed by those of Article 6 § 1 (see, amongst many other authorities *De Geouffre de la Pradelle v. France*, judgment of 16 December 1992, Series A no. 253-B, p. 43, § 37; *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 32, § 88).

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been no violation of Article 8 of the Convention;

2. *Holds* by six votes to one that there has been no violation of Article 6 § 1 of the Convention;

3. *Holds* unanimously that it is not necessary to examine the case under Article 13 of the Convention.

Done in English, and notified in writing on 25 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN	Christos ROZAKIS
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Steiner is annexed to this judgment.

C.L.R.
S.N.

PARTLY DISSENTING OPINION OF JUDGE STEINER

(Translation)

Although I share the majority's view that there has not been a violation of Article 8, I cannot agree with them regarding the Article 6 aspect.

The present case concerns one of the most sensitive issues falling within the realm of family law, namely, the well-being of the children following a breakdown of the parents' relationship. The situation, here, is unusual: on the one hand we have a father with a disability, who was nonetheless awarded custody of his children, and on the other we have the social services, whose role is to secure the children's well-being and who have wide powers in that respect. The mother, for her part, appears to play only a secondary role. The investigations were in fact therefore carried out in respect of the applicant. Although conducted in an administrative context, the investigations are of a type such as to affect the applicant, that is, the children's father. In order to answer the question as to whether a dispute over a "right" is in issue, one cannot base oneself on the fact that the applicant has not been adversely affected. If one were to proceed in that way, the existence of a right would be conditional on the – favourable or unfavourable – outcome of the dispute.

In this case there was *potentially* a dispute over a right that is none other than the very important one of a father's right to continue to have custody of his children, as awarded him in accordance with a judicial agreement reached in contentious proceedings (see paragraph 10 of the Facts). The existence of a "right" cannot therefore be seriously disputed. That the right is also a "civil" one is manifestly clear from the family-law context. This has been confirmed by the Court's case-law from the outset. Measures affecting parent-child relationships (visits, return etc.) indisputably fall within the civil-law sphere, as they are an aspect of contentious proceedings relating to personal rights (see, for example, *O. v. the United Kingdom*, judgment of 8 July 1987, Series A no. 120, § 60). In the present case the measures in question could potentially have been part of pre-contentious proceedings that could have given rise to measures affecting custody of the children. The points made in paragraph 100 of the judgment show clearly that this could have been the case.

It was therefore in the applicant's interests for a court to rule on the reasons for the investigations, their content and the manner in which they would be conducted. That was not possible because the courts refused to carry out such a review. Proceedings before the Supreme Court cannot replace a specific review on the merits.

With increasing frequency, especially in family-law cases, the decisions of this Court, rather than having regard to the substantive aspects of the case – the merits of the solution adopted by the domestic courts in a particular case being largely considered to be compatible with the Convention – are tending to place emphasis on the procedural aspects. It is surprising that this approach was not followed in the present case.