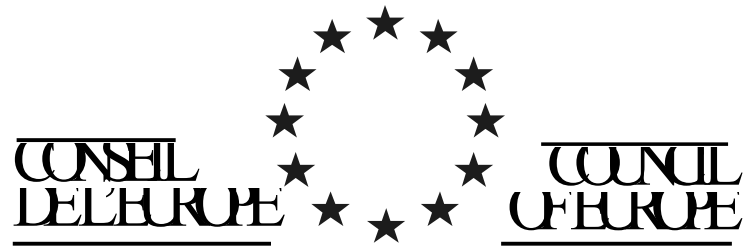

CASE OF Z AND OTHERS v. THE UNITED KINGDOM

(Application no. 29392/95)

JUDGMENT

STRASBOURG

10 May 2001

In the case of Z and Others v. the United Kingdom,

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mrs E. PALM,
Mr C.L. ROZAKIS,
Mr J.-P. COSTA,
Mr L. FERRARI BRAVO,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr J. CASADEVALL,
Mr B. ZUPANČIČ,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mrs W. THOMASSEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS,
Mr K. TRAJA,
Mr A. KOVLER,
Lady Justice ARDEN, ad hoc *judge*,

and also of Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 28 June and 11 October 2000 and on 4 April 2001,

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

PROCEDURE

1. The case was referred to the Court, in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), by the European Commission of Human Rights ("the Commission") on 25 October 1999 (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention).

2. The case originated in an application (no. 29392/95) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under former Article 25 of the Convention by the applicants, Z, A, B, C and D, five British nationals, on 9 October 1995.

3. The applicants alleged that the local authority had failed to take adequate protective measures in respect of the severe neglect and abuse which they were known to be suffering due to their ill-treatment by their

parents and that they had no access to a court or effective remedy in respect of this. They relied on Articles 3, 6, 8 and 13 of the Convention.

4. The Commission declared the application admissible on 26 May 1998. On 6 September 1999, pursuant to the express wishes of D's adoptive parents, the Commission decided that D should no longer be an applicant. In its report of 10 September 1999 (former Article 31 of the Convention) [*Note by the Registry*. The report is obtainable from the Registry], it expressed the unanimous opinion that there had been a violation of Article 3 of the Convention, that no separate issue arose under Article 8, that there had been a violation of Article 6 and that no separate issue arose under Article 13.

5. Before the Court the applicants had been granted legal aid. The President of the Court acceded to their request not to have their names disclosed (Rule 47 § 3 of the Rules of Court).

6. On 6 December 1999 a panel of the Grand Chamber determined that the case should be decided by the Grand Chamber (Rule 100 § 1). The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24. The President of the Court decided that in the interests of the proper administration of justice, the case should be assigned to the Grand Chamber that had been constituted to hear the case of *T.P. and K.M. v. the United Kingdom* ([GC], no. 28945/95, ECHR 2001-V) (Rules 24, 43 § 2, and 71). Sir Nicolas Bratza, the judge elected in respect of the United Kingdom, who had taken part in the Commission's examination of the case, withdrew from sitting in the Grand Chamber (Rule 28). The United Kingdom Government ("the Government") accordingly appointed Lady Justice Arden to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

7. The applicants and the Government each filed a memorial. Third-party comments were also received from Professor G. Van Bueren, Director of the Programme on International Rights of the Child, University of London, who had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 61 § 3).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 28 June 2000 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*

Ms S. McGRORY, Foreign and Commonwealth Office, *Agent*,
Mr D. ANDERSON QC, Foreign and Commonwealth Office,
Ms J. STRATFORD, Foreign and Commonwealth Office, *Counsel*,
Ms S. RYAN, Foreign and Commonwealth Office,
Ms J. GRAY, Foreign and Commonwealth Office,
Mr M. MURMANE, Foreign and Commonwealth Office, *Advisers*;

(b) *for the applicants*
Mr B. EMMERSON QC, *Counsel*,
Ms P. WOOD, Solicitor,
Mrs M. MAUGHAN, Solicitor,
Ms E. GUMBEL QC,
Ms N. MOLE, of the AIRE Centre, *Advisers*.

The Court heard addresses by Mr Emmerson and Mr Anderson.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicants are four full siblings:
– Z, a girl born in 1982;
– A, a boy born in 1984;
– B, a boy born in 1986;
– C, a girl born in 1988.

10. The applicants' parents were married in November 1981.

11. The family was first referred to social services in October 1987 by their health visitor due to concerns about the children and marital problems. Z was reported to be stealing food at night. Following the referral, a professionals' meeting, involving the relevant agencies, was held on 24 November 1987, at which it was decided that a social worker and health visitor should visit. The family were reviewed at a further meeting in March 1988 and as it appeared that concerns had diminished, the file was closed.

12. In September 1988 a neighbour reported that the children were locked outside the house for most of the day.

13. In April 1989 the police reported that the children's bedrooms were filthy. The family's general practitioner also reported that the children's bedrooms were filthy and that their doors were locked. The children's head-teacher, Mrs Armstrong, expressed concern in May 1989 and requested a case conference. In June 1989 the NSPCC (National Society for the Prevention of Cruelty to Children) and the emergency team made a referral after complaints by neighbours that the house was filthy and that the children spent most of the day in their bedrooms, rarely being allowed out to play, and crying frequently. In August 1989 the maternal grandmother complained to the social services about the mother's care and discipline of the children.

14. At a professionals' meeting on 4 October 1989, at which the social services, the applicants' head-teacher, the applicants' general practitioner

and health visitor attended, it was decided that no social worker would be allocated to the family. The school was to monitor the older children's weight and the health visitor was to continue to visit the family regularly. It was agreed that the problem was one of limited and neglectful parenting rather than a risk of physical abuse, and that the parents should be assisted to manage their responsibilities better.

15. In October 1989, whilst the applicants were on holiday, their house was burgled. On entering, the police found it in a filthy state. Used sanitary towels and dirty nappies were discarded in a cupboard and the children's mattresses were sodden with urine. At a professionals' meeting on 13 December 1989, the health visitor requested that the four older children be placed on the Child Protection Register as she felt that their mother could not offer consistent care. This suggestion was rejected. However, a social-work assistant, Ms M., was assigned to the family. It was not considered appropriate to convene a case conference at this stage. Prior to the meeting, Z and A had mentioned to the head-teacher that A had been hit with a poker. It was decided that this statement would be investigated.

16. At a professionals' meeting on 23 March 1990, an improvement was noted in respect of the cleanliness of the house, the children's bedding being clean save on two occasions. However, it was reported that Z and A were taking food from bins at the school. There was still considered to be cause for concern, especially since the birth of another child was expected.

17. At a professionals' meeting on 11 July 1990, the applicants' headmistress reported a deterioration in the children's well-being; Z and A were still taking food from bins and A was soiling himself. Ms M. was visiting weekly at this stage and said that she was checking the children's bedrooms. She had noted that the children ate at 4 or 4.30 p.m. and then did not eat again until the morning. The children were also sent to bed at 6 p.m. It was planned to give the applicant's mother further assistance through a voluntary agency.

18. In or about September 1990, A and B were both reported to have bruising on their faces. The police investigated after neighbours had reported screaming at the applicants' home but apparently found no signs of bruising. They reported to the social services that “the conditions of the house were appalling and not fit for [the] children to live in”.

19. At a further professionals' meeting on 3 October 1990, the assistant social worker, Ms M., stated that she was concerned about the applicants' soiling and their mother's lack of interest. Apparently, the children were defecating in their bedroom and smearing excrement on their windows. The head-teacher expressed concern, particularly concerning the boys A and B, and stated that the children had described blocks of wood being placed against their bedroom doors. It was decided to continue monitoring the children.

20. At a professionals' meeting on 5 December 1990, a decision was made to arrange a case conference for January 1991 as a result of concern regarding the applicants' care and the state of their bedroom. Ms M. considered that standards in the boys' bedroom had dramatically dropped. She found the room to be damp and smelly. A's bed was broken and had a metal bar protruding from it. The bedding was damp and grubby with soil marks.

21. In a report dated 24 January 1991, the headmistress stated that A was shabby, ill-kempt and often dirty and that he had been raiding the playground bins for apple cores. Z was pathetic, lacking in vitality and frequently and inexplicably tearful, becoming increasingly isolated from the other girls in her peer group with unfortunate incidents in which detrimental remarks were made about her appearance. B presented as withdrawn, pathetic and bedraggled. He regularly arrived cold, was frequently tearful and craved physical contact from adult helpers. He also appeared to crave for food. She concluded that they were still concerned that the children's needs were not being adequately met and that home conditions and family dynamics were giving reasons for concern.

22. At the case conference held on 28 January 1991, Ms M. stated that the boys' bedroom had no light, carpet or toys and that their bedding was wet, smelly and soil-stained. Their mother did not change the beds. Their head-teacher stated that Z was tearful and withdrawn, A had been raiding school bins and was often dirty, and B was very withdrawn, craved attention and was ravenously hungry. The chairman of the conference concluded that, despite the many concerns about the parenting of the applicants and the conditions in the home, there was little evidence to support going to court. It was felt that the parents were not wilfully neglecting their children and, bearing in mind their own poor upbringing, it was considered that the applicants' parents were doing what they could and that continued support was required to try and improve the situation. It was decided not to place the children on the Child Protection Register.

23. On 5 March 1991 B was found to have “unusual” bruises on his back.

24. At a later social services meeting in April 1991, no change to the children's living conditions was noted. The head-teacher stated that Z and A were still taking food from bins and that A was becoming more withdrawn. Ms M. reported that the mother had stated that the children were taking food from the park bins on the way to school.

25. In July 1991 the applicants' mother informed social services that the children would be better off living in care. On 12 August 1991 the social services received a phone call from a neighbour who stated that the children were frequently locked outside in a filthy back garden, that they constantly screamed and that they were kept for long periods in their bedrooms where they smeared faeces on their windows. The maternal grandparents later told

the guardian *ad litem* that Z, who was treated by her mother as a little servant, was expected to clean the excrement from the windows.

26. From 19 to 28 August 1991, the three older children spent some time with foster carers in respite care. The foster carers reported that A did not know how to wash, bathe or clean his teeth on arrival. He wet his bed every night and stole food from his brother. B was described as being "very frightened. He could not understand how he could play in the garden and the door was left open for him to come back in, he expected to be locked out". He also had to be taught to use the toilet properly and to clean himself.

27. At a professionals' meeting on 18 September 1991, Ms M. stated that the conditions in which the boys were sleeping were deteriorating. The mattresses in the boys' bedroom were ripped and the springs were coming through. The boys were stealing food, and C had also been seen to do this. Their mother stated that she could not control them. It was decided not to arrange a child-protection meeting but to carry out a monthly weight check on the three older children at school, and for the health visitor to check the weight of the two younger children. It was also decided to arrange respite care for Z, A and B in the holidays as well as on one weekend in four.

28. In November-December 1991 C was found to have developed a squint. His mother failed to keep appointments at the eye-clinic over the following months.

29. At a professionals' meeting on 21 November 1991, it was reported that the applicants' mother had said that she could not control the applicants' behaviour which consisted of refusing to go to bed when asked and stealing food. It was considered that the home was in an acceptable condition, though the boys' room still needed attention. The children's weights were recorded. It was noted that Z had put on 2 lb in the previous two months whereas she had only put on 2.5 lb in the preceding two years. A had only put on 3 lb in a year. B had put on 0.5 lb in a year and was on the 50th centile for height. C was on the 25th centile for weight. There was a discussion about the three elder children being accommodated by the local authority to allow the mother "to get back on her feet". The social services considered a six-week period whilst the general practitioner envisaged a period of eighteen to twenty-four months.

30. In December 1991 a social worker was introduced to the applicants' mother with a view to assisting her with shopping, budgeting and cooking.

31. Z, A and B were accommodated by volunteers between January and March 1992, and showed to have gained weight. In March and again in April, their mother asked if the boys, A and B, could be placed for adoption.

32. On 14 January 1992 C started to attend a nursery group at a family centre. She was noted to be unsocialised, lacking in confidence, unable to share, and with poor speech.

33. At a further professionals' meeting on 9 March 1992, it was decided that further respite care would be considered. The children's weights were noted, increases being seen for Z, A and B.

34. The children's parents divorced in April 1992.

35. At another professionals' meeting on 30 April 1992 it was decided that the applicants' mother's request that A and B be placed for adoption be followed up. The headmistress voiced concern over the fundamental pattern of the mother's care of the children, in particular in relation to Z's role in the home and the mothering role which she played. Ms M. reported that conditions were deteriorating for A and B.

36. On 10 June 1992 the applicants' mother demanded that the children be placed in care as she could not cope. She stated that if they were not removed from her care she would batter them. The applicants were placed in emergency foster care. The applicants were entered onto the Child Protection Register under the categories of neglect and emotional abuse after a child-protection meeting on 22 June 1992.

37. The applicants were all fostered separately. Initially, Z was noted to have dirty, ill-fitting clothes. She stated that she did not like living with her siblings as she did not like having to look after them all the time. A wet the bed every night, shunned physical contact and suffered from nightmares. B did not know how to use the toilet or toilet paper. C bonded very quickly with her foster parents.

38. On 8 October 1992 the local authority decided to seek care orders in respect of the children. Interim care orders were made on 7 December 1992.

39. A guardian *ad litem*, who was appointed on 18 January 1993, recommended that all the applicants should be the subject of care orders in order to protect them from further harm. She stated that there was "an abundance of evidence that the children have been subjected to physical and mental ill-treatment". She noted that their health had also been neglected by their parents who frequently missed appointments with opticians and doctors.

40. All the applicants were seen by Dr Dora Black, a consultant child psychiatrist, in January 1993. Dr Black stated that the three older children were all showing signs of psychological disturbance. Z was exhibiting signs of serious depressive illness and had assumed responsibility for her family and for its breakdown. Her mother's behaviour towards her was described as cruel and emotionally abusive. A and B, who suffered from nightmares, were both identified as showing signs of post-traumatic stress disorder and A was also chronically under-attached. Dr Black noted that all children had been deprived of affection and physical care. She described their experiences as "to put it bluntly, horrific", and added that the case was the worst case of neglect and emotional abuse that she had seen in her professional career. In her opinion, social services had "leaned over backwards to avoid putting these children on the Child Protection Register

and had delayed too long, leaving at least three of the children with serious psychological disturbance as a result".

41. Full care orders were made in respect of the applicants on 14 April 1993 by Judge Tyrer sitting at Milton Keynes County Court.

42. In June 1993 the Official Solicitor, acting as the applicants' next friend, commenced proceedings against the local authority claiming damages for negligence and/or breach of statutory duty arguing that the authority had failed to have regard to their welfare as was required by statute and should have acted more quickly and more effectively when apprised of their condition. It was argued that the local authority's failure to act had resulted in psychological damage. The application was struck out as revealing no cause of action, by Mr Justice Turner on 12 November 1993.

43. The applicants appealed to the Court of Appeal, which, on 28 February 1994, upheld the decision of Mr Justice Turner to strike out the application.

44. The applicants appealed to the House of Lords. On 29 June 1995 the House of Lords rejected their appeal, finding that no action lay against the local authority in negligence or breach of statutory duty concerning the discharge of their duties relating to the welfare of children under the Children Act 1989 in respect of child care. The case is reported as *X and Others v. Bedfordshire County Council* [1995] 3 All England Law Reports 353.

45. Lord Browne-Wilkinson gave the leading judgment. In respect of claims for breach of statutory duty, he stated, *inter alia*:

> "... My starting point is that the Acts in question are all concerned to establish an administrative system designed to promote the social welfare of the community. The welfare sector involved is one of peculiar sensitivity, involving very difficult decisions how to strike the balance between protecting the child from immediate feared harm and disrupting the relationship between the child and its parents. In my judgment in such a context it would require exceptionally clear statutory language to show a parliamentary intention that those responsible for carrying out these difficult functions should be liable in damages if, on subsequent investigation with the benefit of hindsight, it was shown that they had reached an erroneous conclusion and therefore failed to discharge their statutory duties. ...
>
> When one turns to the actual words used in the primary legislation to create the duties relied upon in my judgment they are inconsistent with any intention to create a private law cause of action."

46. As regards the claims that the local authority owed a duty of care to the applicants pursuant to the tort of negligence, Lord Browne-Wilkinson stated, *inter alia*:

> "I turn then to consider whether, in accordance with the ordinary principles laid down in *Caparo* [1990] 2 AC 605, the local authority ... owed a direct duty of care to the plaintiffs. The local authority accepts that they could foresee damage to the plaintiffs if they carried out their statutory duties negligently and that the relationship between the authority and the plaintiffs is sufficiently proximate. The third

requirement laid down in *Caparo* is that it must be just and reasonable to impose a common law duty of care in all the circumstances ...

The Master of the Rolls took the view, with which I agree, that the public policy consideration that has first claim on the loyalty of the law is that wrongs should be remedied and that very potent counter considerations are required to override that policy (see [1994] 4 AER 602 at 619). However, in my judgment there are such considerations in this case.

First, in my judgment a common law duty of care would cut across the whole statutory system set up for the protection of children at risk. As a result of the ministerial directions contained in 'Working Together' the protection of such children is not the exclusive territory of the local authority's social services. The system is inter-disciplinary, involving the participation of the police, educational bodies, doctors and others. At all stages the system involves joint discussions, joint recommendations and joint decisions. The key organisation is the Child Protection Conference, a multi-disciplinary body which decides whether to place the child on the Child Protection Register. This procedure by way of joint action takes place, not merely because it is good practice, but because it is required by guidance having statutory force binding on the local authority. The guidance is extremely detailed and extensive: the current edition of 'Working Together' runs to 126 pages. To introduce into such a system a common law duty of care enforceable against only one of the participant bodies would be manifestly unfair. To impose such liability on all the participant bodies would lead to almost impossible problems of disentangling as between the respective bodies the liability, both primary and by way of contribution, of each for reaching a decision found to be negligent.

Second, the task of the local authority and its servants in dealing with children at risk is extraordinarily delicate. Legislation requires the local authority to have regard not only to the physical well-being of the child but also to the advantages of not disrupting the child's family environment. ... In one of the child abuse cases, the local authority is blamed for removing the child precipitately; in the other for failing to remove the children from their mother. As the Report of the Inquiry into Child Abuse in Cleveland 1987 (Cmnd. 412) ('Cleveland Report 1987') said, at p. 244:

> '... It is a delicate and difficult line to tread between taking action too soon and not taking it soon enough. Social services whilst putting the needs of the child first must respect the rights of the parents; they also must work if possible with the parents for the benefit of the children. These parents themselves are often in need of help. Inevitably a degree of conflict develops between those objectives.'

Next, if liability in damages were to be imposed, it might well be that local authorities would adopt a more cautious and defensive approach to their duties. For example, as the Cleveland Report makes clear, on occasions the speedy decision to remove the child is sometimes vital. If the authority is to be made liable in damages for a negligent decision to remove a child (such negligence lying in the failure properly first to investigate the allegations) there would be a substantial temptation to postpone making such a decision until further inquiries have been made in the hope of getting more concrete facts. Not only would the child in fact being abused be prejudiced by such delay, the increased workload inherent in making such investigations would reduce the time available to deal with other cases and other children.

> The relationship between the social worker and the child's parents is frequently one of conflict, the parent wishing to retain care of the child, the social worker having to consider whether to remove it. This is fertile ground in which to breed ill-feeling and litigation, often hopeless, the cost of which both in terms of money and human resources will be diverted from the performance of the social service for which they were provided. The spectre of vexatious and costly litigation is often urged as a reason for not imposing a legal duty. But the circumstances surrounding cases of child abuse make the risk a very high one which cannot be ignored.
>
> If there were no other remedy for maladministration of the statutory system for the protection of children, it would provide substantial argument for imposing a duty of care. But the statutory complaints procedures contained in section 76 of the 1980 Act and the much fuller procedures now available under the 1989 Act provide a means to have grievances investigated though not to recover compensation. Further, it was submitted (and not controverted) that the local authorities Ombudsman would have power to investigate cases such as these.
>
> Finally, your Lordships' decision in *Caparo* [1990] 2 AC 605 lays down that in deciding whether to develop novel categories of negligence the court should proceed incrementally and by analogy with decided categories. We were not referred to any category of case in which a duty of care has been held to exist which is in any way analogous to the present cases. Here, for the first time, the plaintiffs are seeking to erect a common law duty of care in relation to the administration of a statutory social welfare scheme. Such a scheme is designed to protect weaker members of society (children) from harm done to them by others. The scheme involves the administrators in exercising discretion and powers which could not exist in the private sector and which in many cases bring them into conflict with those who, under the general law, are responsible for the child's welfare. To my mind, the nearest analogies are the cases where a common law duty of care has been sought to be imposed upon the police (in seeking to protect vulnerable members of society from wrongs done to them by others) or statutory regulators of financial dealing who are seeking to protect investors from dishonesty. In neither of these cases has it been thought appropriate to superimpose on a statutory regime a common law duty of care giving rise to a claim in damages for failure to protect the weak against the wrongdoer. ... In my judgment, the courts should proceed with great care before holding liable in negligence those who have been charged by Parliament with the task of protecting society from the wrong doings of others."

47. Z and C, the two girls, were meanwhile adopted. The boys, A and B, were initially in foster care. Following the breakdown of B's adoptive placement, he was placed in a therapeutic residential placement in July 1995. After two years, he was again placed with foster parents where he remained, attending school in a special-needs group. In January 1996, A was placed in a therapeutic community, where he stayed for two years. He apparently had a number of foster placements which broke down. Records indicated that he had been in twelve different placements in eight years. He is currently in a children's home.

48. In March 1996, applications were made to the Criminal Injuries Compensation Board (CICB) on behalf of all the children by the adoption society to whom the local authority had delegated certain responsibilities. It was claimed on behalf of Z that she had suffered severe neglect and chronic

deprivation which rendered it likely that specialist care would be necessary during her adolescence, a time where emotional repercussions of the abuse might become apparent; on behalf of A that he had suffered physical deprivation, emotional abuse, physical abuse and possible sexual abuse – he had suffered permanent physical scarring and was still receiving treatment from a child psychiatrist; on behalf of B that he had suffered extreme physical and emotional deprivation and shown signs of sexual abuse – he also had suffered permanent physical scarring and was receiving therapy; and on behalf of C that she had suffered extreme physical and emotional deprivation, and in addition that her need for eye treatment was not being met by her parents.

49. In February 1997, the CICB awarded 1,000 pounds sterling (GBP) to Z, GBP 3,000 to A and GBP 3,000 to B for injuries suffered between 1987 and 1992; it awarded GBP 2,000 to C for injuries suffered between 1988 and 1992. In a letter dated 20 May 1998 from the CICB to the Official Solicitor, it was stated:

> "The Board Member who assessed these cases recognised that the children were exposed to appalling neglect over an extended period but explained to their advisers that the Board could not make an award unless it was satisfied on the whole available evidence that an applicant had suffered an injury – physical or psychological – directly attributable to a crime of violence ... He was nevertheless satisfied, that setting aside 'neglect' the children had some physical and psychological injury inflicted upon them as enabled him to make an award to each child ..."

II. RELEVANT DOMESTIC LAW

A. Local authority's duties in respect of child care

50. Prior to the coming into force of the current legislation, the Children Act 1989, on 14 October 1991, the local authority's duty in respect of child care was governed by the Child Care Act 1980.

Sections 1 and 2 of the Child Care Act 1980 provided that:

> "1. It shall be the duty of every local authority to make available such advice, guidance and assistance as may promote the welfare of children by diminishing the need to receive or keep them in care.
>
> 2. (1) Where it appears to a local authority with respect to a child in their area appearing to them to be under the age of seventeen -
>
> (a) that he has neither parent nor guardian or has been and remains abandoned by his parents or guardian or is lost;
>
> (b) that his parents or guardian are, for the time being or permanently, prevented by reason of mental or bodily disease or infirmity or other incapacity or any other

circumstances from providing for his proper accommodation, maintenance and upbringing; and

(c) in either case, that the intervention of the local authority under this section is necessary in the interests of the welfare of the child, it shall be the duty of the local authority to receive the child into their care under this section."

51. Section 17 of the Children Act 1989 has since provided, *inter alia*:

"17. Provision of services for children in need, their families and others

(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part) -

(a) to safeguard and promote the welfare of children within their area who are in need; and

(b) so far as is consistent with that duty, to promote the upbringing of such children by their families,

by providing a range and level of services appropriate to those children's needs.

(2) For the purpose principally of facilitating the discharge of their general duty under this section, every local authority shall have the specific duties and powers set out in Part I of Schedule 2.

...

(10) For the purposes of this Part a child shall be taken to be in need if -

(a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining a reasonable standard of health or development without the provision for him of services by a local authority under this Part;

(b) his health or development is likely to be significantly impaired or further impaired, without the provision for him of such services; or

(c) he is disabled ...

(11) ...; and in this Part

'development' means physical, intellectual, emotional, social or behavioural development; and

'health' means physical or mental health."

52. Part III of the Children Act 1989 deals with local authority support for children and families. The policy of the Act is made clear by paragraph 7 of Part I of Schedule 2, which requires local authorities to take reasonable steps designed to reduce the need to bring proceedings relating to children.

53. Section 20 provides that

"20(1) Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of -

(a) there being no person who has parental responsibility for him;

(b) his being lost or having been abandoned; or

(c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

...

(4) A local authority may provide accommodation for any child within their area (even though a person who has parental responsibility for him is able to provide him with accommodation) if they consider that to do so would safeguard or promote the child's welfare."

54. Part V of the Children Act 1989 deals with the protection of children. Section 47 provides as follows:

"47(1) Where a local authority -

...

(b) have reasonable cause to suspect that a child who lives or is found, in their area is suffering, or is likely to suffer, significant harm,

the authority shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare.

...

(8) Where, as a result of complying with this section, a local authority conclude that they should take action to safeguard or promote the child's welfare they shall take action (so far as it is within their power and reasonably practicable for them to do so)."

B. Complaints procedure

55. The complaints procedure is provided by section 26 of the Children Act 1989:

"Review of cases and inquiries into representations

...

(3) Every local authority shall establish a procedure for considering any representations (including any complaint) made to them by -

(a) any child ... who is not being looked after by them but is in need;

(b) a parent of his;

...

(e) such other person as the authority consider has a sufficient interest in the child's welfare to warrant his representations being considered by them,

about the discharge by the authority of any of their functions under this Part in relation to the child.

(4) The procedure shall ensure that at least one person who is not a member or officer of the authority takes part in -

(a) the consideration; and

(b) any discussions which are held by the local authority about the action (if any) to be taken in relation to the child in the light of this consideration.

...

(7) Where any representation has been considered under the procedure established by the local authority under this section, the authority shall -

(a) have due regard to the findings of those considering the representation; and

(b) take such steps as are reasonably practicable to notify (in writing) -

(i) the person making the representation;

(ii) the child (if the authority consider that he has sufficient understanding); and

(iii) such other persons (if any) as appear to the authority to be likely to be affected,

of the authority's decision in the matter and their reasons for taking that decision and of any action which they have taken, or propose to take.

(8) Every local authority shall give such publicity to their procedure for considering representations under this section as they consider appropriate."

56. The powers of the Secretary of State to investigate the actions of the local authority are set out in sections 81 and 84 of the Children Act 1989.

"81. (1) The Secretary of State may cause an inquiry to be held into any matter connected with -

(a) the function of the social services committee of a local authority, in so far as those functions relate to children;

...

84. Local authority failure to comply with statutory duty: default power of Secretary of State

(1) If the Secretary of State is satisfied that any local authority has failed, without reasonable excuse, to comply with any of the duties imposed on them by or under this Act he may make an order declaring that authority to be in default with respect to that duty.

...

(3) Any order under subsection (1) may contain such directions for the purpose of ensuring that the duty is complied with, within such period as may be specified in the order, as appears to the Secretary of State to be necessary.

(4) Any such directions shall, on the application of the Secretary of State, be enforceable by mandamus."

C. Actions for damages against the local authority

57. In England and Wales there is no single tort which imposes liability to pay compensation for civil wrongs. Instead there is a series of separate torts, for example, trespass, conversion, conspiracy, negligence and defamation.

58. Negligence arises in specific categories of situations. These categories are capable of being extended. There are three elements to the tort of negligence: a duty of care, breach of the duty of care, and damage. The duty of care may be described as the concept which defines the categories of relationships in which the law may impose liability on a defendant in damages if he or she is shown to have acted carelessly. To show a duty of care, the claimant must show that the situation comes within an existing established category of cases where a duty of care has been held to exist. In novel situations, in order to show a duty of care, the claimant must satisfy a threefold test, establishing:

– that damage to the claimant was foreseeable;

– that the claimant was in an appropriate relationship of proximity to the defendant; and,

– that it is fair, just and reasonable to impose liability on the defendant.

These criteria apply to claims against private persons as well as claims against public bodies. The leading case is *Caparo Industries plc v. Dickman* ([1990] 2 Appeal Cases 605).

59. If the courts decide that as a matter of law there is no duty of care owed in a particular situation, that decision will (subject to the doctrine of precedent) apply in future cases where the parties are in the same relationship.

60. The decision in *X and Others v. Bedfordshire County Council* ([1995] 3 All England Law Reports 353) is the leading authority in the United Kingdom in this area. It held that local authorities could not be sued for negligence or for breach of statutory duty in respect of the discharge of

their functions concerning the welfare of children. The leading judgment is reported at length in the facts above (see paragraphs 45-46 above).

61. Since *X and Others v. Bedfordshire County Council*, there have been two further significant judgments regarding the extent of liability of local authorities in child care matters.

62. The Court of Appeal gave judgment in *W. and Others v. Essex County Council* ([1998] 3 All England Law Reports 111). This case concerned the claims by a mother and father (first and second plaintiffs), who had agreed to act as foster parents, that the defendant local authority placed G., a 15-year-old boy, in their home although they knew that he was a suspect or known sexual abuser. During G.'s stay in their home, the plaintiffs' three children (fourth to sixth plaintiffs) were all sexually abused and suffered psychiatric illness. The plaintiffs brought an action against the local authority and the social worker involved, claiming damages for negligence and for negligent misstatement. On the defendants' application to strike out the statement of claim as disclosing no reasonable cause of action, the judges struck out the parents' claims but refused to strike out the claims of the children. The Court of Appeal upheld his decision. The headnote for the judgment summarised the Court of Appeal's findings as follows:

> "(1) Although no claim in damages lay in respect of decisions by a local authority in the exercise of a statutory discretion, if the decision complained of was so unreasonable that it fell outside the ambit of the discretion conferred, there was no *a priori* reason for excluding common law liability. In the instant case, the giving of information to the parents was part and parcel of the defendants' performance of their statutory powers and duties, and it had been conceded that it was arguable that those decisions fell outside the ambit of their discretion. Accordingly, since it had also been conceded that the damage to the children was reasonably foreseeable and that there was sufficient proximity, the question for the court was whether it was just and reasonable to impose a duty of care on the council or the social worker. Having regard to the fact that common law duty of care would cut across the whole statutory set up for the protection of children at risk, that the task of the local authority and its servants in dealing with such children was extraordinarily difficult and delicate, that local authorities might adopt a more defensive approach to their duties if liability in damages were imposed, that the relationship between parents and social workers was frequently one of conflict and that the plaintiff children's injuries were compensatable under the Criminal Injuries Compensation Scheme, it was not just and reasonable to do so. It followed that no duty of care was owed to the plaintiff parents who in any event were secondary victims in respect of their claim for psychiatric illness ...
>
> (2) (Stuart-Smith LJ dissenting) It was arguable that the policy considerations against imposing a common law duty of care on a local authority in relation to the performance of its statutory duties to protect children did not apply when the children whose safety was under consideration were those in respect of whom it was not performing any statutory duty. Accordingly, since in the instant case, the plaintiff children were not children for whom the council had carried out any immediate caring responsibilities under the child welfare system but were living at home with their parents, and express assurances had been given that a sexual abuser would not be placed in their home, their claim should proceed ..."

63. On further appeal by the parents, the House of Lords on 16 March 2000 held that it was impossible to say that the psychiatric injury allegedly suffered by the parents, flowing from a feeling that they had brought the abuser and their children together or from a feeling of responsibility for not having detected the abuse earlier, was outside the range of psychiatric injury recognised by the law, nor was it unarguable that the local authority had owed a duty of care to the parents. The parents' claim could not be said to be so certainly or clearly bad that they should be barred from pursuing it to trial and their appeal was allowed.

64. The House of Lords gave judgment on 17 June 1999 in *Barrett v. London Borough of Enfield* ([1999] 3 Weekly Law Reports 79). That case concerned the claims of the plaintiff, who had been in care from the age of ten months to 17 years, that the local authority had negligently failed to safeguard his welfare causing him deep-seated psychiatric problems. The local authority had applied to strike out the case as disclosing no cause of action. The House of Lords, upholding the plaintiff's appeal, unanimously held that the judgment in *X and Others v. Bedfordshire County Council* did not in the circumstances of this case prevent a claim of negligence being brought against a local authority by a child formerly in its care.

65. Lord Browne-Wilkinson, in his judgment in that case, commented as follows on the operation of the duty of care:

> "(1) Although the word 'immunity' is sometimes incorrectly used, a holding that it is not fair, just and reasonable to hold liable a particular class of defendants whether generally or in relation to a particular type of activity is not to give immunity from a liability to which the rest of the world is subject. It is a prerequisite to there being any liability in negligence at all that as a matter of policy it is fair, just and reasonable in those circumstances to impose liability in negligence. (2) In a wide range of cases public policy has led to the decision that the imposition of liability would not be fair and reasonable in the circumstances, e.g. some activities of financial regulators, building inspectors, ship surveyors, social workers dealing with sex abuse cases. In all these cases and many others the view has been taken that the proper performance of the defendant's primary functions for the benefit of society as a whole will be inhibited if they are required to look over their shoulder to avoid liability in negligence. In English law the decision as to whether it is fair, just and reasonable to impose a liability in negligence on a particular class of would-be defendants depends on weighing in the balance the total detriment to the public interest in all cases from holding such class liable in negligence as against the total loss to all would-be plaintiffs if they are not to have a cause of action in respect of the loss they have individually suffered. (3) In English law, questions of public policy and the question whether it is fair and reasonable to impose liability in negligence are decided as questions of law. Once the decision is taken that, say, company auditors though liable to shareholders for negligent auditing are not liable to those proposing to invest in the company (see *Caparo Industries plc v. Dickman* [1990] 1 All ER 568, [1990] 2 AC 605), that decision will apply to all future cases of the same kind. The decision does not depend on weighing the balance between the extent of the damage to the plaintiff and the damage to the public in each particular case."

D. Striking-out procedure

66. At the relevant time, Order 18, Rule 19 of the Rules of the Supreme Court provided that a claim could be struck out if it disclosed no reasonable cause of action. This jurisdiction has been described as being reserved for "plain and obvious cases", in which a claim was "obviously unsustainable".

67. In applications to strike out, the courts proceeded on the basis that all the allegations set out in the claimant's pleadings were true. The question for the courts was whether, assuming that the claimant could substantiate all factual allegations at trial, the claim disclosed a reasonable cause of action.

68. The striking out procedure, now contained in Part 3.4(2) of the Civil Procedure Rules in force since 1999, is regarded as an important feature of English civil procedure, performing the function of securing speedy and effective justice, *inter alia*, by allowing a court to decide promptly which issues need full investigation and trial, and disposing summarily of the others. By means of this procedure, it can be determined at an early stage, with minimal cost to the parties, whether the facts as pleaded reveal a claim existing in law.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

69. The applicants alleged that the local authority had failed to protect them from inhuman and degrading treatment contrary to Article 3 of the Convention, which provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

70. In its report the Commission expressed the unanimous opinion that there had been a violation of Article 3 of the Convention. It considered that there was a positive obligation on the Government to protect children from treatment contrary to this provision. The authorities had been aware of the serious ill-treatment and neglect suffered by the four children over a period of years at the hands of their parents and failed, despite the means reasonably available to them, to take any effective steps to bring it to an end.

71. The applicants requested the Court to confirm this finding of a violation.

72. The Government did not contest the Commission's finding that the treatment suffered by the four applicants reached the level of severity prohibited by Article 3 and that the State failed in its positive obligation,

under Article 3 of the Convention, to provide the applicants with adequate protection against inhuman and degrading treatment.

73. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment. The obligation on High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals (see *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2699, § 22). These measures should provide effective protection, in particular, of children and other vulnerable persons and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (see, *mutatis mutandis*, *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII, pp. 3159-60, § 116).

74. There is no dispute in the present case that the neglect and abuse suffered by the four applicant children reached the threshold of inhuman and degrading treatment (as recounted in paragraphs 11-36 above). This treatment was brought to the local authority's attention, at the earliest in October 1987. It was under a statutory duty to protect the children and had a range of powers available to them, including the removal of the children from their home. These were, however, only taken into emergency care, at the insistence of the mother, on 30 April 1992. Over the intervening period of four and a half years, they had been subjected in their home to what the consultant child psychiatrist who examined them referred as horrific experiences (see paragraph 40 above). The Criminal Injuries Compensation Board had also found that the children had been subject to appalling neglect over an extended period and suffered physical and psychological injury directly attributable to a crime of violence (see paragraph 49 above). The Court acknowledges the difficult and sensitive decisions facing social services and the important countervailing principle of respecting and preserving family life. The present case, however, leaves no doubt as to the failure of the system to protect these applicant children from serious, long-term neglect and abuse.

75. Accordingly, there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

76. The applicants alleged, in the alternative to their complaints under Article 3 of the Convention, that the circumstances in which they suffered

ill-treatment, causing them physical and psychological injury, disclosed a breach of Article 8 of the Convention, which under the principle of respect for private life, protected physical and moral integrity.

77. Having regard to its finding of a violation of Article 3, the Court considers that no separate issue arises under Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

78. The applicants complained that they had been denied access to a court to determine their claims against the local authority in negligence. They relied on Article 6 of the Convention.

79. Article 6 § 1 provides in its first sentence:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

80. The Government denied that there was any civil right in issue in the case or any restriction on access, while the Commission found unanimously that there had been a breach of Article 6, in that the House of Lords had applied an exclusionary rule concerning the liability of local authorities in child care matters which constituted in the circumstances a disproportionate restriction on the applicants' access to a court.

A. Submissions of the parties

1. The applicants

81. The applicants submitted that their negligence claim was plainly arguable as a matter of domestic law, relying, *inter alia*, on *Osman*, cited above. The right to sue in negligence, a cause of action framed in general terms, was an established civil right in domestic law. The local authority had conceded that they could have foreseen damage to the applicants if they carried out their duties negligently and that there was a proximate relationship, thereby satisfying the first two limbs of the test for the duty of care. There was a strong argument that public policy considerations required a duty of care to be imposed and there was no prior decision excluding liability. The applicants also pointed to the fact that the judge who made the care orders specifically released the case papers to the Official Solicitor so that he could investigate and, if appropriate, pursue negligence claims; that the Official Solicitor considered that there were arguable claims in negligence; that the Legal Aid Board granted legal aid to pursue the claims to the House of Lords; and that the Court of Appeal which rejected the claims by a majority granted leave to appeal to the House of Lords, the precondition for such leave being that the claim was arguable in domestic

law; that the Master of the Rolls, in the Court of Appeal, found that there was duty of care, stating the contrary to be "an affront to common sense"; and that in previous cases, local authorities had paid settlements in negligence cases, on the basis that they were potentially liable. There was a serious dispute in domestic law, therefore, as to the existence of any exclusionary principle, which has continued since, and Article 6 was applicable.

82. The exclusionary rule applied by the House of Lords permitted the applicants' claims to be struck out without determining the facts and without a trial. This applied regardless of the merits or the seriousness of the harm suffered. Designed to protect local authorities from wasting resources on having to defend an action at all, this amounted in practical effect to an immunity and acted as a restriction on access to a court.

83. The application of a blanket rule which excluded the determination of the applicants' claims irrespective of the seriousness of the harm suffered, the nature and extent of negligence involved, or the fundamental rights which were at stake, constituted a disproportionate restriction on their right of access to a court. They emphasised the severity of the damage suffered by them due to prolonged exposure to abuse and neglect against which the public policy arguments against imposition of liability had little weight, namely, the alleged risk of frivolous litigation, the increased caution of social services in fulfilling their functions or the difficulty or sensitivity of the issues. Indeed, the requirement to investigate effectively cases of treatment contrary to Article 3 pointed strongly to the recognition of a right of access to a court where the State's responsibility had been engaged for inhuman or degrading treatment of vulnerable children. They referred to the Court's finding in *Osman* (cited above, p. 3170, § 151) that the domestic courts should be able to distinguish between degrees of negligence or harm and give consideration to the justice of a particular case. An exclusionary rule on that basis should be capable of yielding to competing human rights considerations on the facts of a particular case.

2. The Government

84. The Government submitted that Article 6 guaranteed a fair trial in the determination only of such civil rights and obligations as are (at least arguably) recognised in national law. It does not bear on the substantive question of whether a right to compensation exists in any given situation. The proceedings brought by the applicants established that no right existed. The decision to strike out their claim touched on the scope of the domestic law. By ruling that a right of action did not exist in a particular set of circumstances, the courts were applying substantive limits to tort liability, as the legislature might do in statute (see, for example, *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172,

pp. 16-17, § 36). There was no established cause of action which was restricted. Accordingly, they claimed that Article 6 § 1 was not applicable.

85. The Government argued in the alternative that there was no immunity applied which could be regarded as a restriction on access to a court. Even assuming that there was an arguable issue, there could in their view be no doubt that the dispute was subject to a fair and public hearing in compliance with the guarantees of Article 6. The striking-out procedure was an important way of securing the speedy and cost-effective determination of cases that were hopeless in law. It achieved those aims without inhibiting claimants' rights to present any arguments in their favour to a court. Thus, as factual matters were assumed to be those pleaded, the claimants were not prejudiced by the lack of hearing of evidence, while they could put forward any arguments in their favour to persuade the court that their claim was sustainable as a matter of law.

86. Assuming that their arguments on the above failed, the Government argued that any restriction on access to a court nonetheless pursued a legitimate aim and was proportionate. It aimed to preserve the efficiency of a vital sector of public service. The exclusion of liability was strictly limited in scope to the category of cases to which it applied, actions for misfeasance, vicarious liability for employees remaining unaffected. The domestic courts had themselves weighed up the public policy issues for and against liability in light of the principles of English tort law and the social and political philosophy underlying those principles. A very substantial margin of appreciation would therefore be appropriate in any international adjudication.

B. The Court's assessment

1. Applicability of Article 6 of the Convention

87. The Court recalls its constant case-law to the effect that "Article 6 § 1 extends only to '*contestations*' (disputes) over (civil) 'rights and obligations' which can be said, at least on arguable grounds, to be recognised under domestic law; it does not itself guarantee any particular content for (civil) 'rights and obligations' in the substantive law of the Contracting States" (see *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 46-47, § 81; *Lithgow and Others v. the United Kingdom*, judgment of 8 July 1986, Series A no. 102, p. 70, § 192; and *The Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301-A, pp. 36-37, § 80). It will however apply to disputes of a "genuine and serious nature" concerning the actual existence of the right as well as to the scope or manner in which it is exercised (see *Benthem v. the Netherlands*, judgment of 23 October 1985, Series A no. 97, pp. 14-15, § 32).

88. In the present case, the applicants were claiming damages on the basis of alleged negligence, a tort in English law which is largely developed through the case-law of the domestic courts. It is agreed by the parties that there was no previous court decision which indicated that liability existed in respect of damage caused negligently by a local authority in carrying out its child protection duties. It was in the applicants' case that the domestic courts were called on to rule whether this situation fell within one of the existing categories of negligence liability, or whether any of the categories should be extended to this situation (see paragraphs 57-65 above).

89. The Court is satisfied that at the outset of the proceedings there was a serious and genuine dispute about the existence of the right asserted by the applicants under the domestic law of negligence as shown, *inter alia*, by the grant of legal aid to the applicants and the decision of the Court of Appeal that their claims merited leave to appeal to the House of Lords. The Government's submission that there was no arguable (civil) "right" for the purposes of Article 6 once the House of Lords had ruled that no duty of care arose has relevance rather to any claims which were lodged or pursued subsequently by other plaintiffs. The House of Lords' decision did not remove, retrospectively, the arguability of the applicants' claims (see *Le Calvez v. France*, judgment of 29 July 1998, *Reports* 1998-V, pp. 1899-900, § 56). In such circumstances, the Court finds that the applicants had, on at least arguable grounds, a claim under domestic law.

90. Article 6 was, therefore, applicable to the proceedings brought by these applicants alleging negligence by the local authority. The Court must, therefore, examine whether the requirements of Article 6 were complied with in those proceedings.

2. Compliance with Article 6 of the Convention

91. The Court, in *Golder v. the United Kingdom* (judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36), held that the procedural guarantees laid down in Article 6 concerning fairness, publicity and expeditiousness would be meaningless if there were no protection of the pre-condition for the enjoyment of those guarantees, namely, access to a court. It established this as an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary power which underlie much of the Convention.

92. Article 6 § 1 "may ... be relied on by anyone who considers that an interference with the exercise of one 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). 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).

93. 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.

94. It is contended by the applicants in this case that the decision of the House of Lords, finding that the local authority owed no duty of care, deprived them of access to a court as it was effectively an exclusionary rule, or an immunity from liability, which prevented their claims from being decided on the facts.

95. The Court observes, firstly, that the applicants were not prevented in any practical manner from bringing their claims before the domestic courts. Indeed, the case was litigated with vigour up to the House of Lords, the applicants being provided with legal aid for that purpose. Nor is it that any procedural rules or limitation periods had been relied on. The domestic courts were concerned with the application brought by the defendants to have the case struck out as disclosing no reasonable cause of action. This involved the pre-trial determination of whether, assuming the facts of the applicants' case as pleaded were true, there was a sustainable claim in law. The arguments before the courts were, therefore, concentrated on the legal issues, primarily whether a duty of care in negligence was owed to the applicants by the local authority.

96. Moreover, the Court is not persuaded that the House of Lords' decision that, as a matter of law, there was no duty of care in the applicants' case may be characterised as either an exclusionary rule or an immunity which deprived them of access to a court. As Lord Browne-Wilkinson explained in his leading speech, the House of Lords was concerned with the issue whether a novel category of negligence, that is a category of cases in which a duty of care had not previously been held to exist, should be developed by the courts in their law-making role under the common law

(see paragraph 46 above). The House of Lords, after weighing in the balance the competing considerations of public policy, decided not to extend liability in negligence into a new area. In so doing, it circumscribed the range of liability under tort law.

97. That decision did end the case, without the factual matters being determined on the evidence. However, if as a matter of law, there was no basis for the claim, the hearing of evidence would have been an expensive and time-consuming process which would not have provided the applicants with any remedy at its conclusion. There is no reason to consider the striking-out procedure which rules on the existence of sustainable causes of action as *per se* offending the principle of access to a court. In such a procedure, the plaintiff is generally able to submit to the court the arguments supporting his or her claims on the law and the court will rule on those issues at the conclusion of an adversarial procedure (see paragraphs 66-68 above).

98. Nor is the Court persuaded by the suggestion that, irrespective of the position in domestic law, the decision disclosed an immunity in fact or practical effect due to its allegedly sweeping or blanket nature. That decision concerned only one aspect of the exercise of local authorities' powers and duties and cannot be regarded as an arbitrary removal of the courts' jurisdiction to determine a whole range of civil claims (see *Fayed v. the United Kingdom*, judgment of 21 September 1994, Series A no. 294-B, pp. 49-50, § 65). As it has recalled above in paragraph 87, it is a principle of Convention case-law that Article 6 does not in itself guarantee any particular content for civil rights and obligations in national law, although other Articles such as those protecting the right to respect for family life (Article 8) and the right to property (Article 1 of Protocol No. 1) may do so. It is not enough to bring Article 6 § 1 into play that the non-existence of a cause of action under domestic law may be described as having the same effect as an immunity, in the sense of not enabling the applicant to sue for a given category of harm.

99. Furthermore, it cannot be said that the House of Lords came to its conclusion without carefully balancing the policy reasons for and against the imposition of liability on the local authority in the circumstances of the applicants' case. Lord Browne-Wilkinson, in his leading judgment in the House of Lords, acknowledged that the public policy principle that wrongs should be remedied required very potent counter-considerations to be overridden (see paragraph 46 above). He weighed that principle against the other public policy concerns in reaching the conclusion that it was not fair, just or reasonable to impose a duty of care on the local authority in the applicants' case. It may be noted that in subsequent cases the domestic courts have further defined this area of law concerning the liability of local authorities in child-care matters, holding that a duty of care may arise in other factual situations, where, for example, a child has suffered harm once

in local authority care, or a foster family has suffered harm as a result of the placement in their home by the local authority of an adolescent with a history of abusing younger children (see *W. and Others v. Essex County Council* and *Barrett*, both cited above, paragraphs 62-65 above).

100. The applicants, and the Commission in its report, relied on *Osman* (cited above) as indicating that the exclusion of liability in negligence, in that case concerning the acts or omissions of the police in the investigation and prevention of crime, acted as a restriction on access to a court. The Court considers that its reasoning in *Osman* was based on an understanding of the law of negligence (see, in particular, *Osman*, cited above, pp. 3166-67, §§ 138-39) which has to be reviewed in the light of the clarifications subsequently made by the domestic courts and notably by the House of Lords. The Court is satisfied that the law of negligence as developed in the domestic courts since the case of *Caparo Industries plc* (cited above) and as recently analysed in the case of *Barrett* (cited above, loc. cit.) includes the fair, just and reasonable criterion as an intrinsic element of the duty of care and that the ruling of law concerning that element in this case does not disclose the operation of an immunity. In the present case, the Court is led to the conclusion that the inability of the applicants to sue the local authority flowed not from an immunity but from the applicable principles governing the substantive right of action in domestic law. There was no restriction on access to a court of the kind contemplated in *Ashingdane* (cited above, loc. cit.).

101. The applicants may not, therefore, claim that they were deprived of any right to a determination on the merits of their negligence claims. Their claims were properly and fairly examined in light of the applicable domestic legal principles concerning the tort of negligence. Once the House of Lords had ruled on the arguable legal issues that brought into play the applicability of Article 6 § 1 of the Convention (see paragraphs 87-89 above), the applicants could no longer claim any entitlement under Article 6 § 1 to obtain any hearing concerning the facts. As pointed out above, such a hearing would have served no purpose, unless a duty of care in negligence had been held to exist in their case. It is not for this Court to find that this should have been the outcome of the striking-out proceedings since this would effectively involve substituting its own views as to the proper interpretation and content of domestic law.

102. It is nonetheless the case that the interpretation of domestic law by the House of Lords resulted in the applicants' case being struck out. The tort of negligence was held not to impose a duty of care on the local authority in the exercise of its statutory powers. Their experiences were described as "horrific" by a psychiatrist (see paragraph 40 above) and the Court has found that they were victims of a violation of Article 3 (see paragraph 74 above). Yet the outcome of the domestic proceedings they brought is that they, and any children with complaints such as theirs, cannot sue the local

authority in negligence for compensation, however foreseeable – and severe – the harm suffered and however unreasonable the conduct of the local authority in failing to take steps to prevent that harm. The applicants are correct in their assertions that the gap they have identified in domestic law is one that gives rise to an issue under the Convention, but in the Court's view it is an issue under Article 13, not Article 6 § 1.

103. The Court emphasises that the object and purpose underlying the Convention, as set out in Article 1, is that the rights and freedoms should be secured by the Contracting State within its jurisdiction. It is fundamental to the machinery of protection established by the Convention that the national systems themselves provide redress for breaches of its provisions, the Court exerting its supervisory role subject to the principle of subsidiarity. In that context, Article 13, which requires an effective remedy in respect of violations of the Convention, takes on a crucial function. The applicants' complaints are essentially that that they have not been afforded a remedy in the courts for the failure to ensure them the level of protection against abuse to which they were entitled under Article 3 of the Convention. The domestic courts referred to "the public-policy consideration that has first claim on the loyalty of the law" as being that "wrongs should be remedied" (see paragraph 46 above). As far as Convention wrongs are concerned, that principle is embodied in Article 13 (see, *inter alia*, *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI). It is under Article 13 that the applicants' right to a remedy should be examined and, if appropriate, vindicated.

104. Accordingly, the Court finds that there has been no violation of Article 6 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

105. The applicants submitted that they had not been afforded any remedy for the damage which they had suffered as a result of the failure of the local authority to protect them, relying on Article 13 of the Convention, which provides:

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

106. The applicants argued that the exclusionary rule established by the House of Lords in their case deprived them of any effective remedy within the national legal system for the violation of Article 3 which they suffered. While the remedy required by Article 13 need not always be judicial in character, in their case a judicial determination was required. This was because the tort of negligence was the only remedy in national law capable of determining the substance of their complaint and which (but for the

alleged immunity) would closely match the requirements of the Convention. Also the accountability of public officials, central to both Articles 3 and 13, required a right of access to a court whereby the individual could hold the responsible officials to account in adversarial proceedings and obtain an enforceable order for compensation if the claim was substantiated. The wording of Article 13 also prohibited the creation of immunities for public officials and any such immunity must be regarded as contrary to the object and purpose of the Convention.

107. The Government pointed out that there were a number of remedies available to the applicants which went some way towards providing effective redress. This included the payment of compensation from the Criminal Injuries Compensation Board (CICB), the possibility of complaining to the Local Government Ombudsman, and the complaints procedure under the Children Act 1989. However, the Government accepted that in the particular circumstances of this case, the remedies were insufficient, alone or cumulatively, to satisfy the requirements of Article 13. They conceded that there had been a serious violation of one of the most important Convention rights, that the CICB could only award compensation for criminal acts, not for the consequences of neglect, and that any recommendation by the Ombudsman would not have been legally enforceable. They had been under the obligation, in this case, to ensure that some form of compensation was made available for damage caused by the breach of Article 3, whether by a broader statutory compensation scheme, an enforceable Ombudsman's award, or through the courts. They pointed out that from October 2000, when the Human Rights Act 1998 came into force, a victim would be able to bring proceedings in the courts against a public authority for a breach of a substantive right, and the courts would be empowered to award damages.

108. As the Court has stated on many occasions, Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Article 13 thus requires the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although the Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 also varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law (see, among other authorities, *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, pp. 1895-96, § 103).

109. The Court has previously held that where a right with as fundamental an importance as the right to life or the prohibition against torture, inhuman and degrading treatment is at stake, Article 13 requires, in

addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible, including effective access for the complainant to the investigation procedure (see *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, pp. 330-31, § 107). These cases, however, concerned alleged killings or infliction of treatment contrary to Article 3 involving potential criminal responsibility on the part of security force officials. Where alleged failure by the authorities to protect persons from the acts of others is concerned, Article 13 may not always require that the authorities undertake the responsibility for investigating the allegations. There should, however, be available to the victim or the victim's family a mechanism for establishing any liability of State officials or bodies for acts or omissions involving the breach of their rights under the Convention. Furthermore, in the case of a breach of Articles 2 and 3 of the Convention, which rank as the most fundamental provisions of the Convention, compensation for the non-pecuniary damage flowing from the breach should in principle be part of the range of available remedies.

110. The applicants have argued that in their case an effective remedy could only be provided by adversarial court proceedings against the public body responsible for the breach. The Court notes that the Government have conceded that the range of remedies at the disposal of the applicants was insufficiently effective. They have pointed out that in the future, under the Human Rights Act 1998, victims of human rights breaches will be able to bring proceedings in courts empowered to award damages. The Court does not consider it appropriate in this case to make any findings as to whether only court proceedings could have furnished effective redress, though judicial remedies indeed furnish strong guarantees of independence, access for the victim and family, and enforceability of awards in compliance with the requirements of Article 13 (see, *mutatis mutandis*, *Klass and Others v. Germany*, judgment of 6 September 1978, Series A no. 28, p. 30, § 67).

111. The Court finds that in this case the applicants did not have available to them an appropriate means of obtaining a determination of their allegations that the local authority failed to protect them from inhuman and degrading treatment and the possibility of obtaining an enforceable award of compensation for the damage suffered thereby. Consequently, they were not afforded an effective remedy in respect of the breach of Article 3 and there has, accordingly, been a violation of Article 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. Article 41 of the Convention provides:

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

A. Pecuniary damage

1. The applicants

113. The applicants submitted that they should be compensated for loss of future earnings and the costs of future medical expenses. Their experiences have, in different ways and to differing extents, blighted their lives. A substantial award should be made to enable them to enter life with a modicum of financial security, the potential to build an independent existence and the means to pay for therapeutic treatment and support.

114. The applicants provided updated medical reports dated 16 May 2000 by Dr Jean Harris-Hendriks concerning their progress and prognosis for the future.

(i) Z was described as having made a recovery from the serious depressive illness suffered at the time of her removal into care. While she was no longer suffering from any psychiatric illness, she had emotional, social and practical difficulties far beyond those normally affecting a girl of her age and was statistically vulnerable to anxiety and perhaps depressive illness in adult life. Her problems were classified as being of moderate severity. It was estimated that she would need psychotherapeutic treatment, outside the National Health Service, estimated at 60 to 100 sessions costing 70 to 90 pounds sterling (GBP) per session, to cope with her vulnerability, particularly at periods of transition. She was likely to remain vulnerable on the labour market, though it was anticipated that she would be able to take on further education, sustain her own mental health and enter the workforce. On her behalf, her representatives claimed GBP 9,000 for the cost of future psychiatric treatment, and GBP 40,000 to offset her handicap on the labour market, a total of GBP 49,000.

(ii) A had failed to appear for an interview with Dr Harris-Hendriks, who also commented on the lack of detailed information concerning periods spent by A in care. She had, however, interviewed him on behalf of the local authority in May 1993 and had some records concerning his past treatment and problems. On that basis, she concluded that he was suffering from long-term psychiatric illness and had a poor prognosis for recovery. His chances of fitting into the normal school system remained very poor. He

was prone to aggressiveness and had difficulty with everyday tasks. He was currently suffering from a reactive attachment disorder, resulting directly from severe parental neglect and abuse. The prognosis for the future was extremely bleak and he was likely to require intermittent hospitalisation. He was seriously handicapped on the labour market and was unlikely ever to be able to hold down a job. Assuming that he might otherwise have been able to obtain low-paid manual employment earning GBP 15,000 per year, and a normal working life to age 65, and taking into account uncertainties and early settlement, he claimed GBP 150,000 in loss of future earnings. As he had a substantial and continuing need for psychiatric treatment outside the National Health Service (NHS), he claimed GBP 50,000 as a minimum estimate for future treatment. This made a total of GBP 200,000.

(iii) B was still suffering from untreated post-traumatic stress disorder and a chronic, generalised anxiety disorder. He had horrific nightmares and, if left untreated, was likely to continue in the same disturbed emotional state. He required open-ended psychiatric treatment into adult life, outside the limited provision of the NHS. This was estimated at a cost of GBP 50,000 minimum. He is vulnerable in terms of both schooling and employment opportunities because of a chronic psychiatric disorder and limited social skills. His prospects of future employment were not as bleak as those of A, but he was likely to have substantial interruptions in his employment. On the assumption of six gaps of one year, on an average labourer's wage of GBP 15,000 per year, he claimed GBP 90,000. This made a total of GBP 140,000.

(iv) C was described as happy in her adoptive home, though carrying a substantial burden about her origins and reminders of them. She was recurrently angry and anxious about her natural mother. She had some remaining behavioural problems which were likely to be containable with good substitute parenting. She was, however, more liable than other children to anxiety and there was a statistical risk of depression in adult life. She did not currently require psychiatric treatment although provision should be made for treatment in adolescence and adulthood. At a recommended 30 to 50 sessions at GBP 70 to 90, a claim was made for GBP 4,500 for future psychiatric treatment. GBP 10,000 was claimed for loss of future earnings, making a total of GBP 14,500.

The reports commented that all the children would have benefited from compensation for their claims in 1994 as this would have allowed additional psychotherapeutic help, improving their prognosis. In A's case, his difficulties had been exacerbated by this lack of help while appropriate psychiatric, educational and environmental help might have substantially improved his prognosis. In B's case, more psychotherapeutic help could have reduced his current vulnerability and given a less gloomy prognosis. The reports also deplored that the psychotherapeutic referrals recommended for A and B in 1993 (for both) and 1998 (for B) had not been pursued by the

local authority on their behalf, and noted that one of the social workers had been told that there was no time or money for this work to be done.

2. The Government

115. The Government submitted that it was wrong to rely on domestic case-law and scales of assessment in just-satisfaction claims under Article 41 as the Court made its own assessment in accordance with principles in its own case-law. They emphasised that it must also be taken into account that the ill-treatment and neglect suffered by the applicants was not inflicted by the local authority but by their parents. It was also relevant that the breach of Article 3 arose only after there had been a failure to take effective steps when the situation in the home failed to show significant improvement – there was no ground for assuming that the children should have been removed from their home immediately. Nor should any award be made in respect of any alleged violation of Article 13 as that damage would be compensated by the award made under Article 3. In assessing what compensation would be equitable, it should also be taken into account that a number of compensatory remedies were available to the applicant, in particular, they received awards from the CICB.

116. As regards the recent medical reports, the Government considered that these were framed in largely identical terms with no attempt to distinguish the children's condition by reference to their age at the time of the violation, their sex and the duration of the treatment. No consideration was given either to what part was played by the temperament of the applicants, and by environmental factors including the care which they had received since 1992. Nor was any regard given to any harm which they might have suffered since being taken into care.

117. Turning to the specific claims made, the Government noted that Z had recovered from her depressive illness and had been doing remarkably well during her schooling, with no significant problems. There was nothing to substantiate the asserted claim for 60 to 100 sessions of psychotherapeutic treatment. Given her positive progress, the claim of statistical vulnerability to future anxiety and depressive illness was not substantiated either.

The report on A was in their view particularly unsatisfactory as it was issued without A having appeared for interview and without full information about his history. While he was not referred to a special clinic as suggested, he did receive therapeutic work in the community where he lived between 1996 and 1998. There was no or little basis for the assumption that his difficulties were exacerbated by the failure of his earlier compensation claim.

The report on B was similarly highly speculative and unsubstantiated, with regard to the alleged adverse impact of the lack of compensation. Its comments on his educational difficulties were inconsistent.

The report on C indicated that she was not psychiatrically ill and was coping well, rendering the conclusion that she had emotional and practical difficulties beyond the average girl of her age difficult to understand. The statements concerning likely future need and alleged impact of the failure of the compensation claim were unsupported by the evidence.

118. The Government submitted that in light of these considerations a reasonable sum of GBP 20,000 for Z, GBP 40,000 for A, GBP 30,000 for B, and GBP 10,000 for C would afford the applicants just satisfaction for both pecuniary and non-pecuniary damage.

3. The Court's assessment

119. As regards the applicants' claims for pecuniary loss, the Court's case-law establishes that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that this may, in the appropriate case, include compensation in respect of loss of earnings (see, among other authorities, *Barberà, Messegué and Jabardo v. Spain* (Article 50), judgment of 13 June 1994, Series A no. 285-C, pp. 57-58, §§ 16-20, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV).

120. A precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in respect of the pecuniary losses suffered by the applicants may be prevented by the inherently uncertain character of the damage flowing from the violation (see *Young, James and Webster v. the United Kingdom* (Article 50), judgment of 18 October 1982, Series A no. 55, pp. 6-7, § 11). An award may still be made notwithstanding the large number of imponderables involved in the assessment of future losses, though the greater the lapse of time involved, the more uncertain the link becomes between the breach and the damage. The question to be decided in such cases is the level of just satisfaction, in respect of both past and future pecuniary losses, which it is necessary to award each applicant, the matter to be determined by the Court at its discretion, having regard to what is equitable (see The Sunday Times *v. the United Kingdom (no. 1)* (Article 50), judgment of 6 November 1980, Series A no. 38, p. 9, § 15, and *Smith and Grady v. the United Kingdom* (just satisfaction), nos. 33985/96 and 33986/96, §§ 18-19, ECHR 2000-IX). In that determination, the awards made in comparable domestic cases is a relevant but not decisive consideration.

121. Turning to the present case, the Court recalls that all four children suffered psychological and physical damage resulting from the abuse and neglect of their parents over a period of more than four years (see paragraphs 11-40 above). The breach of Article 3 concerned the failure of the local authority to take reasonable steps available to them to protect them from that damage. There is a direct causal link, therefore, between the breach and the damage suffered by the children. While it is correct, as

asserted by the Government, that there is no finding that the children should have immediately been taken into care and that they might have suffered damage even if effective steps had been taken at an earlier stage, the Court notes that the severity of the damage suffered by the children is inextricably linked to the long period of time over which the abuse persisted, which factor is also at the heart of the violation of Article 3 in this case.

122. The Court has taken into consideration the points made by the Government concerning the medical reports provided by the applicants, in particular, the lack of any attempt to compare the children's prospects in education and employment prior to their being taken into care. It cannot be excluded, for example, that A and B, who were identified as having educational difficulties, would have experienced some problems in any event. However, such assessments would inevitably be imprecise and based on some degree of speculation, as were the views expressed by Dr Harris-Hendriks concerning the future prognosis and effect on the educational and employment prospects. It may also be noted that the medical reports have not been tested in adversarial proceedings.

123. It is nonetheless possible, on the basis of the information available to the Court, to conclude that the four children will, in all probability, suffer from the effects of their experiences for the rest of their lives. Their capacity to cope with this past trauma will depend on their own personal abilities and the support to which they may have access.

124. It is clear that Z has made an excellent recovery from her depressive illness and, receiving support from her new family, is expected to do well at school and in the future in general. C, who, due to her young age, was less damaged by events, has also successfully integrated into a new family and is attending school without problem. In their case, the Court finds that it is not possible with any degree of certainty to draw conclusions as to future difficulties in the employment sphere. Notwithstanding their current positive prognosis, it may be considered as reasonably possible that in the future they will have some need of professional help in coping with problems which may arise as they grow older and in coming to terms with their childhood experience. An award to cover future psychotherapeutic care will assist in providing them with the support necessary to that process.

125. A was the most severely damaged of the children and suffers an ongoing psychiatric illness. Therapeutic care would help him now and will be necessary in the future. The Court is satisfied that the medical report may be relied on in this respect, Dr Harris-Hendriks having previously examined A and having access to sufficient information to support her opinion. Having integrated neither into a family nor into the education system, the prognosis for A may reasonably be described as bleak. In his case, it may be claimed that the damage suffered from the abuse will in all probability affect his prospects of gaining employment in the future. An award is appropriate to reflect this loss.

126. B is suffering from post-traumatic stress and anxiety disorders, which are likely to continue to affect him for some time to come. He requires both current and future psychiatric treatment. He is attending school, in a special-needs group. It is also probable, though to a lesser extent than A, that he will have problems in obtaining and sustaining employment in later life. An award is appropriate to reflect this.

127. Bearing in mind the uncertainties of the applicants' situations, and making an assessment on an equitable basis, the Court awards Z the sum of GBP 8,000 for future medical costs; A the sum of GBP 50,000 for future medical costs and GBP 50,000 for loss of employment opportunities; B the sum of GBP 50,000 for future medical costs and GBP 30,000 for loss of employment opportunities; and C the sum of GBP 4,000 for future medical costs.

B. Non-pecuniary damage

1. The applicants

128. The applicants claimed non-pecuniary damage in respect of the physical and psychiatric damage sustained. Z had suffered a serious depressive illness and severe malnutrition, and it was predicted that she would need long-term psychiatric care, probably into adulthood. A had suffered from post-traumatic stress disorder and was chronically under-attached. There was evidence to suggest that his father had hit him with a poker and that he had been sexually abused. He had suffered permanent scarring and was expected to require long-term psychiatric care. B had also suffered post-traumatic stress disorder, with some evidence of being beaten by a poker and being sexually abused. He suffered very bad nightmares and would wake up screaming. He was expected to require long-term psychiatric care. C had been less seriously damaged but was also expected to require some psychiatric treatment. Her health had been neglected by her mother and she had a squint as a result.

According to the assessment of Dr Black, Z, A and B had suffered psychiatric damage falling at the upper end of the severe bracket. They exhibited “marked problems” in their ability to cope with life and in their relationships with family, friends and those with whom they came into contact. A and B in particular had a poor prognosis and there was a likelihood of future vulnerability. C had suffered damage in the “moderately severe” bracket. Although she presented significant problems in the areas above, she had a more favourable prognosis.

Having regard to the levels of awards in such cases in the domestic courts, the applicants considered that a reasonable sum would be GBP 35,000 for Z, GBP 45,000 for A, GBP 40,000 for B, and GBP 25,000 for C.

2. The Government

129. As stated above, the Government considered that sums of GBP 20,000 for Z, GBP 40,000 for A, GBP 30,000 for B, and GBP 10,000 for C would afford the applicants just satisfaction for both pecuniary and non-pecuniary damage.

3. The Court's assessment

130. The children in this case suffered very serious abuse and neglect over a period of more than four years. Z, A and B suffered, and in the case of the two boys, still suffer psychiatric illness as a result. A and B also suffered physical injury and C suffered neglect in respect of an eye condition. The description of the conditions which they endured and the traumatic effects which this had on the children leave the Court with no doubt that a substantial award to reflect their pain and suffering is appropriate.

131. In making this assessment, the Court recalls that the rates applied in domestic cases, though relevant, are not decisive. It does not consider it appropriate or desirable to attempt to distinguish between the children in this context. Making an assessment on an equitable basis, the Court awards each child the sum of GBP 32,000.

C. Costs and expenses

132. The applicants claimed GBP 52,781.28 inclusive of value-added tax (VAT) by way of legal costs and expenses, which included fees for attendance at hearings before the Commission and the Court, fees for Dr Harris-Hendriks and submissions on Article 41 of the Convention.

133. The Government did not dispute the hourly rate or number of hours claimed by the applicants' principal legal advisers. They did query the involvement of a leading counsel as an expert on negligence law in addition to the leading counsel with human rights expertise. They also queried the involvement of the AIRE Centre in addition to an experienced counsel and solicitor, and noted that the AIRE Centre's fees for attending the hearing had also been billed in full in the second case, *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, ECHR 2001-V, heard before the Court on the same day. They proposed that GBP 43,000 was a reasonable sum, taking these deductions into account. However, if no violation of Articles 6 and 8 of the Convention was found, they disputed the necessity for any of the fees incurred after April 2000 when the Government conceded a breach of Articles 3 and 13 of the Convention. In those circumstances, a reasonable sum would be GBP 36,000.

134. The Court recalls that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to

quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). It observes that the case involved important and complex issues, both concerning the facts which were established by the Commission, and the legal aspects. It does not consider that the costs incurred after April 2000 should be disallowed as such, as there were outstanding issues to be determined, including the claims of pecuniary and non-pecuniary damage arising out of the breaches conceded by the Government. As, however, the complaint made under Article 6, which was a significant part of the application, was unsuccessful, the costs and expenses allowed should be reduced. The Court has had regard to the fact that the Article 6 complaint was to some extent interconnected with the complaint about the inadequacy of remedies under Article 13.

135. In light of these matters, the Court awards the global sum of GBP 39,000 for legal costs and expenses, inclusive of VAT.

D. Default interest

136. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 7.5% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 3 of the Convention.

2. *Holds* unanimously that no separate issue arises under Article 8 of the Convention.

3. *Holds* by twelve votes to five that there has been no violation of Article 6 of the Convention.

4. *Holds* by fifteen votes to two that there has been a violation of Article 13 of the Convention.

5. *Holds* unanimously
   (a) that the respondent State is to pay the applicants, within three months, the following amounts:
      (i) GBP 8,000 (eight thousand pounds sterling) to Z, GBP 100,000 (one hundred thousand pounds sterling) to A, GBP 80,000 (eighty

thousand pounds sterling) to B, and GBP 4,000 (four thousand pounds sterling) to C in respect of pecuniary damage;
(ii) GBP 32,000 (thirty-two thousand pounds sterling) to each applicant for non-pecuniary damage;
(iii) GBP 39,000 (thirty-nine thousand pounds sterling) in respect of costs and expenses, inclusive of VAT;

(b) that simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement;

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

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 10 May 2001.

Luzius WILDHABER
President

Paul MAHONEY
Deputy Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Lady Justice Arden as to Article 6;

(b) concurring opinion of Lady Justice Arden as to Article 41, joined by Mr Kovler;

(c) partly dissenting opinion of Mr Rozakis joined by Mrs Palm;

(d) partly dissenting opinion of Mrs Thomassen joined by Mr Casadevall and Mr Kovler.

L.W.
P.J.M.

CONCURRING OPINION OF LADY JUSTICE ARDEN AS TO ARTICLE 6

I agree that Article 6 of the Convention is applicable in this case and that it is not violated for the reasons given by the majority. I attach particular importance to the majority's affirmation of the well-established principle of Convention case-law that Article 6 does not guarantee any particular content for civil rights and obligations (see paragraphs 87, 98, 100 and 101 of the judgment). In the present case the applicants failed to obtain any remedy under the domestic law because the domestic courts held that they had no cause of action in English law (*X v. Bedfordshire County Council* [1995] 2 Appeal Cases 633).

Founding themselves upon the erroneous proposition as a matter of domestic law that they had some general right to sue in negligence where the defendant's act had caused damage and there was sufficient proximity, the applicants sought to argue that the decision of the English courts amounted to a sweeping or blanket immunity. I agree with the conclusion, in paragraph 98 of the judgment, that the facts of this case do not support that argument. In my view, when the courts in England, proceeding incrementally under the common law system of judicial law-making, hold that a hitherto unconsidered category of harm does not, as a matter of law, fall within the scope of the tort of negligence, they cannot properly be described as creating an "immunity", whether blanket or limited (see the speech of Lord Browne-Wilkinson in *Barrett v. the London Borough of Enfield* [1999] 3 Weekly Law Reports 79, paragraph 65 of the judgment in the present case). What the decision of the House of Lords in the present case did was to determine a legal issue fixing the limits on the substantive content of a domestic "civil right". In any event the decision was fully and carefully reasoned. It could not be regarded as the product of arbitrariness and it applied only to closely defined circumstances (see paragraphs 98-99 of the judgment).

Paragraph 98 of the judgment refers to *Fayed v. the United Kingdom* (judgment of 21 September 1994, Series A no. 294-B). In that case the Court contemplated the possibility that there might be a violation of the right of access to a court if, for example, a State could remove from the jurisdiction of the courts a whole range of civil claims, or confer immunities from civil liability on large groups or categories of persons (ibid., pp. 49-50, § 65). At the same time, however, the Court also stated that the Convention enforcement bodies could not create, by way of interpretation of Article 6, a substantive civil right which had no legal basis in the State concerned. Yet that is what the applicants are inviting the Court to do in the present case. Once the conclusion is reached that the right on which the applicants seek to rely has no legal basis in national law, the question of whether there was an

"immunity" such as to rely on the principle referred to in *Fayed* strictly does not arise.

In *Fayed* the Court did not settle the question whether the operation of a defence to a claim in defamation conferred by English law on a public officer was such as to attract the application of the right of access to a court under Article 6 § 1 or, rather, the substantive right to respect for one's private life under Article 8. Instead, it chose to "proceed on the basis that Article 6 § 1 [was] applicable to the facts of the case" (ibid., pp. 50-51, § 67). It explained that it did so as a matter of procedural convenience because the same central issues of legitimate aim and proportionality would have been raised under Article 8, and because the parties' arguments had been directed solely to Article 6 § 1. The result in that case does not, therefore, set any precedent for the applicability of Article 6 § 1 or detract from the principle to which, as stated, I attach particular importance, namely that Article 6 does not guarantee any particular content for civil rights and obligations (see paragraphs 87, 98, 100 and 101 of the present judgment).

CONCURRING OPINION OF LADY JUSTICE ARDEN AS TO ARTICLE 41, JOINED BY JUDGE KOVLER

Article 41 of the Convention enables the Court in appropriate cases to "afford just satisfaction to the injured party". The judgment of the Court awards two sums to each applicant by way of just satisfaction: one sum in respect of pecuniary damage and the other sum in respect of non-pecuniary damage. In the case of pecuniary damage, each applicant is awarded a different sum. However, in respect of non-pecuniary damage, each applicant is awarded an identical amount. Thus, with regard to non-pecuniary damage, the applicants' cases are not assessed individually. The applicants are treated as having suffered equal distress. In addition, no distinction is drawn between the suffering of any one applicant as against that of any other applicant, despite the differences between the cases of the applicants.

I agree that the just satisfaction which the Court awards to the applicants for the violation of Article 13 should include a sum on account of non-pecuniary damage in addition to the sums awarded in respect of pecuniary damage. I have no doubt that such an award is justified. However, in my opinion, the Court should not award the same sum to each applicant but rather should make a separate award to each applicant, reflecting the suffering of that applicant.

As paragraph 128 of the judgment shows, the applicants themselves have sought different amounts: GBP 35,000 for Z, GBP 45,000 for A, GBP 40,000 for B, and GBP 25,000 for C.

All the applicants endured suffering before they were taken into care. After they were taken into care they were assessed by consultant child psychiatrists: in 1993 by Dr Black, and in 2000 by Dr Harris-Hendriks. The diagnosis of A indicates that his case is the most serious. In 1993 he was diagnosed as suffering from post-traumatic stress disorder, and in 2000 he was diagnosed as suffering from a personality disorder for which the prognosis was unfavourable. B was considered to have a post-traumatic stress disorder in both 1993 and 2000, as well as social difficulties, and in addition in 2000 a generalised anxiety disorder, but the prognosis for him was uncertain rather than unfavourable. On the other hand, the initial diagnosis in 1993 of Z as suffering from a severe depressive illness has not been borne out, though it is considered that she may suffer anxiety and perhaps depressive illness in later life. In 2000 C's difficulties were described as moderate; she was regarded as vulnerable to anxiety and likely to need psychotherapeutic help in the future, but she had not suffered any psychiatric disorder.

In the circumstances my preferred course would have been to have performed a separate assessment of the amount to be awarded for non-pecuniary damage to each applicant. Having considered the evidence on the Article 41 issue, I consider that an appropriate amount would have been

GBP 25,000 for Z, GBP 40,000 for A, GBP 35,000 for B, and GBP 15,000 for C.

PARTLY DISSENTING OPINION OF JUDGE ROZAKIS JOINED BY JUDGE PALM

With great regret I am unable to follow the assessment and the conclusions of the majority of the Court that, in the instant case, there has been no violation of Article 6 § 1 of the Convention in so far as access of the applicants to a court of law is concerned. The reasons which have led me to depart from the majority's findings are as follows:

1. The majority is satisfied that the proceedings before the national courts, which culminated in a decision of the House of Lords, met the requirements of Article 6 § 1 as regards the applicants' right to have access to a court for the determination of their civil rights. As the Court observes in paragraph 101 of the judgment, the applicants may not "claim that they were deprived of any right to a determination on their merits of their negligence claims. Their claims were properly and fairly examined in the light of the applicable domestic principle concerning the tort of negligence". And, as it is also stated in paragraph 95, "[t]he arguments before the courts were, therefore, concentrated on the legal issues, primarily whether a duty of care in negligence was owed to the applicants by the local authority". It is difficult for one to accept this approach. The applicants' claims before the national courts did not, of course, refer to this preliminary issue. Their complaint was that the local authorities acted with gross negligence in a case involving a statutory duty of care and that, because of the damage inflicted on them by the failure of the authorities to properly discharge their responsibilities, compensation was due. They submitted this civil right to the courts and nurtured the legitimate expectation that it would be dealt with by the courts through an examination on the merits following an adversarial procedure that would enable them to prove the veracity of their claims. If it may be asserted that, as a general rule the question of access to a court is determined by the subject matter of the claims before the national courts, then the applicants never enjoyed access: at all stages of the domestic examination of their case, the national courts solely examined the jurisdictional problem of whether they could entertain the merits of the case before them, thus confining themselves to the preliminary question of whether an exclusionary rule exists, preventing them from examining the merits. An exclusionary rule which was eventually established by them, not on the basis of statutory requirements or specific precedents that were binding on them, but on the basis of a particular interpretation by them of the requirements of English law in the light of the circumstances of the case before them.

2. It is one matter, of course, to accept that there was no access to a court – which, unfortunately, the majority did not clearly accept – and another to say that, in the circumstances of a particular case, the absence of access is justified because it serves a particular purpose which is proportionate to the

damage done to an individual not enjoying the protection otherwise afforded to him by Article 6 of the Convention.

I am prepared to subscribe to this alternative approach, on which the majority has also embarked – without, however, making a clear distinction between the absence of access and the circumstances justifying a proportional denial of it. However, I am not prepared to accept that the facts of the case may lead us to the conclusion that the applicants were correctly and proportionately deprived of their right because the public-interest considerations prevailed over their legitimate expectation to have their claims examined on the merits.

First of all, it transpires clearly from the facts of the case that the right to sue in negligence was an established civil right in domestic law, that the public-care authorities accepted that they had been negligent in their behaviour, and that there was a proximate relationship in accordance with the criteria determined by national law. Further, the way that the judicial authorities dealt with the matter shows that the case presented serious issues that warranted serious examination: as the applicants pointed out, the judge who made the care orders specifically released the case papers to the Official Solicitor so that he could investigate and, if appropriate, pursue negligence claims; the Official Solicitor considered that there were arguable claims in negligence; the Legal Aid Board granted legal aid to pursue the claims to the House of Lords; and the Court of Appeal, which rejected the claims by a majority, granted leave to appeal to the House of Lords, the precondition for such leave being that the claim was arguable in domestic law; the Master of the Rolls in the Court of Appeal found that there was a duty of care, stating the contrary to be "an affront to common sense"; and, in previous cases, local authorities had settled negligence claims on the basis that they were potentially liable.

So, the only reason which eventually led to this case being struck out was an interpretation by the national courts, and particularly the House of Lords, based on an argument of expediency and as a matter of policy. Indeed, by applying the third test of the English law of torts on negligence – namely, whether it was fair, just and reasonable to impose liability on the public-care authorities in the circumstances of the case, the House of Lords found that it would be detrimental to the exercise of the duties of the public body in question to impose upon them the excessive burden of tortious liability for acts or omissions in the discharge of their duties. The position taken by the House of Lords in this matter was novel and tantamount to a refusal to extend tortious liability for civil wrongs arising out of a duty of care by local authorities for child care.

It is not the Court's task to enter into an examination of the social-policy considerations which led the national courts to interpret the third test in the way they did. Yet, it is its task to look at the circumstances surrounding the particular decisions taken and to assess their significance when applying its

own test of proportionality; and it seems difficult for me to accept that in view of the importance attached to the facts of the case by the various judicial and other bodies, and the novel character of the House of Lords' ruling, the creation of new case-law barring the examination of the case on its merits was proportionate to the need for adequate protection of individuals (and society generally) against negligence by public authorities.

Secondly, and more importantly, this Court has found a violation of Article 3 of the Convention on the basis of a finding that "the neglect and abuse suffered by the four applicant children reached the threshold of inhuman and degrading treatment" (see paragraph 74 of the judgment). Again it is difficult for me to accept that serious matters of public concern – as are all matters involving a violation of Article 3 – may be left outside the protection of independent and impartial tribunals established by law, and providing all the guarantees required by Article 6 of the Convention. The majority, however, holds a different view since it accepts that, even in circumstances where there has been a violation of the substance of Article 3, the Contracting States "are afforded some discretion as to the manner in which they conform to their Convention obligations ..." provided that some effective remedy exists to deal with individual complaints concerning inhuman and degrading treatment. Hence, they conclude that, in the present situation, Article 13, but not Article 6, has been violated.

It seems to me that the present case may be considered as the *locus classicus* of the limits afforded to States by the Convention to determine the modalities of access to domestic courts. Our case-law has repeatedly underlined the fact that the right to a tribunal is not unlimited – and rightly so. Yet, the Court is free to determine in which instances a Contracting State oversteps its freedom of choice and becomes liable under Article 6; and one criterion which can readily assist the Court in drawing the line between instances where a State retains its discretion, and instances where a State is bound to offer judicial guarantees to those falling under its jurisdiction, is the severity of the complaint before the national authorities. If the complaint may involve a violation of core Convention rights – such as Articles 2 and 3 – the Court is bound, to my mind, to find that the States are obliged not simply to offer an effective remedy (as required by Article 13), but a judicial remedy covering all the requirements of Article 6.

3. Most of the ideas put forward in the previous lines have as their source of inspiration *Osman v. the United Kingdom* (judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII) which the majority has not followed in the present judgment. The main reason which has led the majority to depart from the established case-law is explained in paragraph 100 of the present judgment:

> "... The Court considers that its reasoning in *Osman* was based on an understanding of the law of negligence ... which has to be reviewed in the light of the clarifications subsequently made by the domestic courts and by notably the House of Lords. The

> Court is satisfied that the law of negligence as developed in the domestic courts since the case of *Caparo Industries plc* ... and as recently analysed in the case of *Barrett* ... includes the fair, just and reasonable criterion as an intrinsic element of the duty of care and that the ruling of law concerning that element in this case does not disclose the operation of an immunity. In the present case, the Court is led to the conclusion that the inability of the applicants to sue the local authority flowed not from an immunity but from the applicable principles governing the substantive right of action in domestic law. ..."

I do not think that in *Osman* the Court was very much concerned with this subtle issue raised by this judgment in the above-mentioned paragraph. The Court in *Osman* never said that the jurisdictional bar was an immunity to be distinguished from the applicable principles governing the substantive right of action in domestic law. It simply considered that "the application of the [exclusionary] rule in this manner without further enquiry into the existence of competing public interest considerations only serves *to confer a blanket immunity* on the police for their acts and omissions during the investigation and suppression of crime and amounts to an unjustifiable restriction on an applicant's right to have a determination on the merits of his or her claim against the police in deserving cases" (see *Osman*, cited above, p. 3170, § 151 – emphasis added). It went on to express the opinion that, in cases where the harm sustained by a complainant was of the most serious nature, examination of the merits could not be automatically excluded by the application of a rule which "*amounts to the grant of an immunity to the police*". In conclusion, the Court in *Osman* was mainly concerned with the fact that the applicants in a very serious case of possible substantive human-rights violations did not have the opportunity to air their grievances before a court of law; it was not concerned with whether the reason behind it being impossible to examine the case on the merits was or was not the result of an immunity provided for by national law acting as a procedural bar having such an effect. It simply found that the impossibility amounted to a grant of an immunity. Under these circumstances how can we distinguish between *Osman* and the present case?

For all the above reasons I believe that Article 6 (access to a court) has been violated and, hence, I consider that Article 13 does not raise a separate ground for violation, Article 6 being the *lex specialis* in this case.

PARTLY DISSENTING OPINION OF JUDGE THOMASSEN JOINED BY JUDGES CASADEVALL AND KOVLER

I am unable to agree with the majority that there has been no violation of Article 6 of the Convention in this case.

The Court is unanimous that the authorities failed to protect the applicants, young children, from inhuman and degrading treatment and its majority observes that the applicants were denied "a determination of their allegations that the local authority failed to protect them from inhuman and degrading treatment and the possibility of obtaining an enforceable award of compensation for the damage suffered thereby" (see paragraph 111 of the judgment).

Despite the severe negligence by the authorities, which allowed the ill-treatment of the applicants to continue for so many years and caused the applicants physical and psychiatric injuries amounting to a violation of Article 3, the applicants could not hold the authorities accountable in domestic court proceedings. By reference to policy factors (for example, difficulties of attributing responsibility between different agencies, sensitivity of decisions, risk of inculcating in local authorities a cautious and defensive approach to exercise of their duties, risk of costly and vexatious litigation) the domestic courts decided that the local authority could not be held liable in negligence in the exercise of their statutory powers to protect children. *De facto*, the local authority was thus declared to be immune for claims because they had acted in the exercise of their statutory powers to protect children.

In my view the applicants' rights under Article 6 were thereby violated as they had no access to a court in order to have a decision on their claims, which were arguable under national law. The facts of this case and the way in which domestic law operated are very similar to those in *Osman v. the United Kingdom* (judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII) where the applicants' claims for negligence against the police were struck out for policy reasons relating to the perceived interests in preventing the efficiency of the police service being undermined by litigation. In *Osman* the Court found that the application of an exclusionary rule barring liability of the police for negligence in the exercise of their functions of investigating and preventing crime constituted a disproportionate restriction on access to a court for the applicants. The majority's reasons for not following the decisions in *Osman* (see paragraph 100 of the judgment) are not, to my mind, convincing. There seem to have been no striking or significant changes in the law of negligence since that case and all relevant matters concerning the content of domestic law had been brought to the attention of the Court by the parties in *Osman*. I am of the opinion that the conclusion under Article 6 in this case must be the same.

It is true that, as the majority observes in paragraph 95 of the judgment, the applicants were not prevented in any practical manner from bringing their claims before the domestic courts. The case was litigated up to the House of Lords, the applicants being provided with legal aid for that purpose. Nor is it the case that any procedural rules of limitation had been relied on. However, the notion of "access to a court" under Article 6 guarantees not only that the applicants have their claims brought before the courts, but implies also the right to have those claims examined on the basis of the facts before the courts and to have them decided on.

I agree with the majority saying in paragraph 98 that Article 6 does not in itself guarantee any particular content for civil rights and obligations in national law. But where there is an arguable claim under domestic tort law as in this case (see paragraph 89 of the judgment), requiring that the applicants obtain a decision by a court on the liability of those responsible for allowing their ill-treatment to continue for many years, cannot, in my opinion, be said to determine the content of domestic law.

I would observe that the Court's supervision of the activities of national courts in defining "access" or "liability" seems to take place on a wider basis. In *Fayed v. the United Kingdom* (judgment of 21 September 1994, Series A no. 294-B, pp. 49-50, § 65), the Court said:

> "Certainly the Convention enforcement bodies may not create by way of interpretation of Article 6 § 1 a substantive civil right which has no legal basis in the State concerned. However, it would not be consistent with the rule of law in a democratic society or with the basic principle underlying Article 6 § 1 – namely that civil claims must be capable of being submitted to a judge for adjudication – if, for example, a State could, without restraint or control by the Convention enforcement bodies, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities from civil liability on large groups or categories of persons ..."

To reach its conclusion that the decision by the House of Lords did not amount to the granting of an immunity, the Court's majority observes, in paragraph 99, that in cases concerning the liability of local authorities in child-care matters brought after the applicants' case, the domestic courts have held that a duty of care may arise. But this does not change the fact that an immunity was conferred on the authorities in the applicants' case. Apparently the immunity applied in the applicants' case was found no longer appropriate in subsequent cases, the national courts taking into account, amongst other factors, the Court's approach in *Osman*, cited above.

While it has been alleged by the Government that a finding of a violation in this case would undermine the striking-out procedure used to avoid pointless litigation of baseless claims, I consider that this argument has not been substantiated by the material placed before the Court. The domestic courts have continued to strike cases out after the Court's judgment in *Osman*. A finding of a violation in this case would mean only that these applicants' claims, which involved serious ill-treatment contrary to a

fundamental human right, should not have been struck out on the basis of general policy arguments. This Court has found no denial of access to a court where judges have struck out cases where there has been no proximity or foreseeability (see, for example, *Powell v. the United Kingdom* (dec.), no. 45305/99, ECHR 2000-V, and *Bromiley v. the United Kingdom* (dec.), no. 33747/96, 23 November 1999, unreported).

The majority of the Court finds that the applicants were not afforded an effective remedy in respect of the breach of Article 3 and they conclude that Article 13, not Article 6, was violated.

My conclusion would be that the "remedy" to which the applicants were entitled should have been access to a court in order to have their damages settled. Restrictions to access to a court in order to protect the interests of the local authority exercising their powers to protect children may be necessary and justified under Article 6. However, I would say that in this case, where it is agreed that the child applicants were victims of the failure of the system to protect them from serious, long-term neglect and abuse, the immunity conferred on the local authority because of policy reasons cannot be seen as proportionate.

Therefore, I believe that Article 6 was violated.

I voted for a violation of Article 13 because I agree with the majority that the applicants, whose rights under Article 3 of the Convention were violated, had no effective remedy before the national authorities.