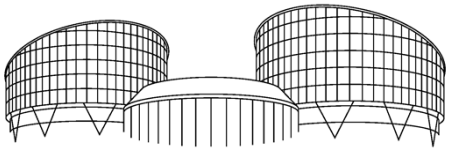

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ABDI IBRAHIM v. NORWAY

(Application no. 15379/16)

JUDGMENT

Art 8 • Respect for family life • Severing parent-child ties without adequate decision-making process • Cultural and religious background of mother and child militating in favour of maintaining possibility of contact

STRASBOURG

17 December 2019

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Abdi Ibrahim v. Norway,

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

Robert Spano, *President,*
Marko Bošnjak,
Valeriu Griţco,
Egidijus Kūris,
Ivana Jelić,
Arnfinn Bårdsen,
Darian Pavli, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 3 December 2019,

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

PROCEDURE

1. The case originated in an application (no. 15379/16) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Somali national, Ms Mariya Abdi Ibrahim ("the applicant"), on 17 March 2016.

2. The applicant, who had been granted legal aid, was represented by Ms A. Lutina, a lawyer practising in Oslo. The Norwegian Government ("the Government") were represented by their Agent, Mr M. Emberland of the Office of the Attorney-General (Civil Affairs).

3. The applicant alleged that there had been a violation of her rights under Articles 8 and 9 of the Convention when the domestic authorities had consented to her son being adopted by his foster parents.

4. On 20 September 2016 the application was communicated to the Government. In the Court's letters of 11 September 2019, the parties were invited to make any submissions they might wish on the possible relevance of the Grand Chamber's judgment in the case of *Strand Lobben and Others v. Norway* ([GC], no. 37283/13) to the instant case. Both parties made additional submissions further to that invitation.

5. Written submissions were received from the Government of the Czech Republic, which had been granted leave to intervene as a third party in the proceedings in accordance with Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in Somalia in 1993. In 2009 she left her home unaccompanied while she was pregnant. The father came from the same city as the applicant. They were not married and he did not acknowledge paternity. The applicant went to her uncle in Kenya and in traumatic circumstances there she gave birth to her son, X, in November 2009.

7. In February 2010 the applicant left Kenya with X. They first went to Sweden, before applying for asylum in Norway that same month. The applicant was granted a temporary residence permit with refugee status in Norway by a decision dated 4 June 2010. She has two cousins in Norway.

8. In order to be assisted in caring for X, the applicant and X went to a parent-child institution in 2010. On 28 September, the institution sent a notification of concern to the child welfare services, as it found X to be at risk of harm in the care of the applicant. The notification stated in conclusion the following:

> "In [the parent-child institution]'s opinion, the child's life would have been in danger if the staff had not protected him during the stay. It is our assessment that we cannot protect the child sufficiently within our framework, and we also find that the child is suffering."

According to the institution, the applicant had been informed of these concerns via an interpreter the day before.

9. X was then placed in emergency foster care and on 6 November 2010 the municipality applied to the County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*) for a care order. The applicant opposed the application and lodged alternative claims for X to be placed in her cousin's home or in a Somali or Muslim foster home. Her claims to that effect were not heard; the Board issued a care order on 10 December 2010 and granted her contact rights of two hours, four times yearly; X was placed in care with a Christian family on 13 December 2010. The child welfare services were authorised to supervise the contact sessions.

10. The applicant brought the Board's decision before the District Court and during the hearing before that court dropped the alternative claim for X to be placed in a Somali or Muslim foster home.

11. In its judgment of 6 September 2011 the District Court upheld the Board's decision in respect of the care order but altered the decision on contact rights and fixed those at one hour, six times yearly. It based its decision on contact rights, *inter alia*, on the need for X to keep in touch with his cultural background and on its opinion that it was, at the time, uncertain whether the applicant's care skills would improve and, accordingly, whether the care order would be long-term. At the same time, it found that X's

vulnerability and need for peace and stability in his care situation did not indicate frequent contact. There is no information about the applicant having appealed against the District Court's judgment.

12. On 11 September 2013 the child welfare services applied to the County Social Welfare Board for an order to withdraw the applicant's parental responsibilities for X, and for consent to the foster parents' adopting him. An alternative claim that the applicant be refused contact with X was also lodged.

13. The Board, composed of one lawyer qualified to act as a professional judge, one psychologist and one lay person, heard the case from 27 to 28 February 2014. The meeting was attended by the municipality's representative and its counsel, and the applicant and her counsel. Twelve witnesses and an expert testified.

14. In its decision of 21 March 2014 the Board granted the child welfare services' principal request. It found that X had become so attached to his foster parents that removing him from the foster home could lead to serious problems for him and, also, that the applicant would be permanently unable to provide him with proper care. Based on an overall assessment of the general and individual factors in the case, the Board found that there were particularly compelling reasons for granting consent for the foster parents to adopt X. In its view, adoption would be in X's best interests as it would create stability and security for him. Adoption would also be more effective than long-term foster placement in contributing to his healing at the personality level (*tilheling på det personlighetsmessige plan*). It stated that X's rights would be strengthened and that he would gain a stronger identity as a member of a caring family.

15. Upon the applicant's appeal against the Board's decision, the District Court held a hearing from 4 to 6 November 2014. The court's bench was composed of one professional judge, one psychologist and one lay person. Eight witnesses were called. An expert witness attended and was present throughout the hearing, and testified after the other evidence had been presented.

16. In its judgment of 21 November 2014, the District Court upheld the Board's decision. The District Court endorsed the Board's grounds for depriving the applicant of parental responsibility and granting consent for adoption, and referred to the Board's reasons, but with some specifications and additions.

17. On further appeal by the applicant, the High Court held a hearing from 12 to 13 May 2015. The High Court's bench comprised three professional judges, one psychologist and one lay person. The applicant attended, together with her counsel. Eight witnesses gave evidence, of whom four, including psychologists S.H.G. and K.P., gave expert testimony. Before the High Court, the applicant acknowledged that X had become so attached to his foster parents that to return to her would be

difficult. She also accepted that X had had reactions to contact sessions and admitted that it might be the case that contact should be avoided at certain periods in the future, but she would not apply for his return and at that time it could not, she maintained, be concluded with certainty that any contact with her in the future would not be in X's best interests. In particular she argued that his need to keep in touch with his cultural and religious roots indicated that the possibility for contact should also be ensured in the future.

18. In its judgment of 27 May 2015 the High Court stated that the parties agreed that X had become so attached to his foster parents that removing him could lead to serious problems for him, and that a unanimous High Court agreed with the parties on this point. It went on to reiterate that X had been placed with the foster parents when he was one year old and had, at the time of its judgment, been there for four and a half years. Before this, he had spent two and a half months in an emergency foster home. He had only lived with his biological mother for the first ten months of his life. He regarded the foster parents as his parents and all available information indicated that he was strongly attached to them.

19. In addition, X was a vulnerable child with special care needs. It had to be assumed that he would be at particular risk of serious harm if he were removed from the environment he was used to and placed in the care of his biological mother, with whom he had only had sporadic contact. Since a return to the applicant was in any event not at stake (*ei tilbakeføring under alle omstende [er] uaktuell*), it was unnecessary to decide on whether the applicant would be permanently incapable of providing appropriate care for him.

20. The decision in the case rested on an assessment of whether adoption would be in X's best interests. A majority in the High Court concluded that it would, and mostly agreed with the grounds given for this in the Board's decision and the District Court's judgment.

21. In the majority's view, there were several risk factors relating to the applicant's ability to provide proper care. There had also been many (*fleire*) who had observed that the applicant had had serious difficulties caring for X during the first year in Norway. At the time of the High Court's judgment, the applicant had become older and seemed more mature. Given her age and history, it was understandable that she had had considerable challenges in respect of caring for X. X had to be regarded as a child with special care needs and appeared to have possible early attachment disorder. The majority found that he had been subjected to gross neglect, both practically and emotionally. The parent-child institution had referred to him being in physical danger several times during their stay there. Another witness, M.L., had also been concerned about the applicant's ability to care for X on a practical level. To the High Court, the most central aspect of the neglect nonetheless appeared to be the lack of emotional contact and security.

22. The High Court's majority stated that the above could be a reflection of the applicant's functioning and life situation during the pregnancy, birth and postnatal period, but it had all the same created a serious situation for X and his development. He had displayed trauma reactions when seeing his mother again. These reactions following contact sessions could, for example, be that he screamed for several hours at a time, or was agitated and anxious for several days. The reactions had been noticed at the kindergarten too. His reactions had been observed both during and after the contact sessions. The hospital had also made a statement regarding these reactions. The majority disagreed with psychologist S.H.G., who had been of the view that X's reactions could be related to his emergency placement in care in 2010, as it found it unlikely that a separation when X had been ten months old could give such reactions later in his life.

23. X had become calmer after contact sessions had been discontinued in 2013. Since then, he had allegedly only met the applicant twice. It had been very stressful for him to experience these emotional outbursts after contact sessions with the applicant. He was still vulnerable to sounds, large crowds and too many stimuli. This indicated that he was highly sensitive, which was to be expected in someone who was displaying reactions to trauma.

24. In the majority's view, X needed to feel as secure as possible in his relationships. He needed stability, calm and continuity where he lived at the time – in the foster home. The better mental development that could be secured, the better equipped he would be to deal with any identity issues that could arise during his adolescence. All the available information suggested that X had a strong and fundamental attachment to his foster parents and foster family. Great emphasis had to be placed on this relationship, in line with the case-law of the Supreme Court.

25. The considerations of ensuring that a particularly vulnerable child would have a continued attachment to the environment in which he was deeply rooted had to be weighed against other weighty considerations that applied. The High Court reiterated that in all cases adoption entailed a breach of the biological principle, which held a very strong position in any decision. In the instant case, the foster parents had not been willing to carry out an "open adoption" with contact visits for the applicant also in the future, and there were additional aspects in the case related to ethnicity, culture and religion, and also religious conversion. The fact that the applicant was a Muslim and the intended foster parents Christian raised special issues that were further highlighted by the latter being active Christians who intended to baptise the adopted child.

26. The High Court noted that the County Social Welfare Board, in connection with the care order, had commented on the choice of foster home based on ethnic, cultural and religious considerations. Further information about which assessments had been carried out by the child welfare services when X had been placed in a foster home with ethnically

Norwegian parents had not emerged during the presentation of evidence, but the High Court assumed that there had been no available foster parents with a more similar cultural background. It was known that there was a serious shortage of foster parents from minority backgrounds. The High Court stated that regardless of how one otherwise looked upon the choice of foster home, the placement that had initially been made had a bearing on the assessment of what was in the best interests of X at the time of its judgment.

27. In the foster home, X had been brought up in accordance with his foster parents' values. It had to be assumed that it was these values that he regarded as his own and identified with at the time of the High Court's assessment. In this situation, consideration of the ethnicity, culture and religion of the biological family had to carry less weight than it would otherwise. In the event of a further foster home placement, X would also be exposed to the values that the foster parents abided by. There was nonetheless an important distinction between being a foster child and an adopted child, since the parents, if the child were adopted, planned to baptise him and change his name. The applicant would experience this as a final break with the religious values she held, and would find it difficult to accept. It was possible to feel that it would be a more flexible solution to postpone the baptism until the child himself could decide in the matter when he turned fifteen, but the majority still could not see that these circumstances carried decisive weight against adoption.

28. The High Court's majority considered that a further foster home placement could give rise to trouble in connection with the applicant's wishes that X for example be circumcised, attend Koran school and follow Muslim food traditions. Her statement in the High Court that she at the time had seen it as best for X to remain with his foster parents had not been called into question, but the High Court was somehow uncertain (*noko usikker*) as to how permanent this opinion would be, and whether demands for X to be returned to her care would be made in future. A vulnerable boy such as X required a calm and stable situation. Adoption would create clarity, strengthen X's identity development and make him an equal member of the family.

29. In the light of the above, the High Court's majority found that there were particularly compelling reasons for allowing the adoption and thus voted to dismiss the applicant's appeal. The minority found that the reasons for allowing the adoption were not sufficiently compelling, but that there were reasons for not granting her contact rights for the time being.

30. On 23 September 2015 the Supreme Court's Appeals Leave Committee (*Høyesteretts ankeutvalg*) refused the applicant leave to appeal.

II. RELEVANT LAW AND PRACTICE

A. The Constitution

31. Articles 102 and 104 of the Norwegian Constitution of 17 May 1814 (*Grunnloven*), as revised in May 2014, read as follows:

Article 102

"Everyone has the right to the respect of their privacy and family life, their home and their communication. Search of private homes shall not be made except in criminal cases. The authorities of the state shall ensure the protection of personal integrity."

Article 104

"Children have the right to respect for their human dignity. They have the right to be heard in questions that concern them, and due weight shall be attached to their views in accordance with their age and development.

For actions and decisions that affect children, the best interests of the child shall be a fundamental consideration.

Children have the right to protection of their personal integrity. The authorities of the State shall create conditions that facilitate the child's development, including ensuring that the child is provided with the necessary economic, social and health security, preferably within their own family."

It follows from the Supreme Court's case-law – for instance its judgment of 29 January 2015 (*Norsk Retstidende* (*Rt.*) 2015 page 93, paragraphs 57 and 67) – that the above provisions are to be interpreted and applied in the light of their international law models, which include the Convention and the case-law of the European Court of Human Rights.

B. Child Welfare Act

32. Section 4-20 of the Child Welfare Act of 17 July 1992 (*barnevernloven*) reads:

Section 4-20 Deprivation of parental responsibility. Adoption

"If a county social welfare board has made a care order for a child, the county social welfare board may also decide that the parents shall be deprived of all parental responsibility. If, as a result of the parents being deprived of parental responsibility, the child is left without a guardian, the county social welfare board shall as soon as possible take steps to have a new guardian appointed for the child.

When an order has been made depriving the parents of parental responsibility, the county social welfare board may give its consent for a child to be adopted by people other than the parents.

Consent may be given if

(a) it must be regarded as probable that the parents will be permanently unable to provide the child with proper care or the child has become so attached to persons and the environment where he or she is living that, on the basis of an overall assessment, removing the child may lead to serious problems for him or her, and

(b) adoption would be in the child's best interests, and

(c) the adoption applicants have been the child's foster parents and have shown themselves fit to bring up the child as their own, and

(d) the conditions for granting an adoption under the Adoption Act are satisfied.

When the county social welfare board consents to adoption, the Ministry shall issue the adoption order."

33. Other relevant materials of domestic and international law are reiterated in the Court's recent judgment in the case of *Strand Lobben and Others v. Norway* [GC], no. 37283/13, §§ 122-139, 10 September 2019, to which reference is made.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

34. The applicant complained that the withdrawal of her parental responsibilities for X and the authorisation of his adoption had violated her right to respect for family life as provided in Article 8 of the Convention. Furthermore, the applicant maintained that her child, X, being adopted by a Christian family had violated her right to freedom of religion as provided in Article 9 of the Convention. Being the master of the characterisation to be given in law to the facts of the case (see *Söderman v. Sweden* [GC], no. 5786/08, § 57, ECHR 2013; and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 113-114, 20 March 2018),), the Court considers that the applicant's submissions relating to her and X's cultural and religious background also fall, within the particular context of the instant case, to be examined under Article 8, which reads as follows:

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

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

35. The respondent Government contested those arguments.

A. Admissibility

36. The Court notes that the complaint under Article 8 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 (a). It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' and third party's submissions

(a) The applicant

37. The applicant argued that the deprivation of her parental authority and consent to X being adopted by his foster parents had not been necessary. The two experts in the adoption case, psychologists K.P. and S.H.G., had delivered contradictory assessments. K.P. had already made an assessment in the case concerning public care.

38. The District Court had granted the applicant visiting rights of one hour, six times yearly. This right had been implemented by the child-welfare authorities in a manner not open to criticism until 23 August 2013. After this date, she had not had access even though visits had remained on her visit schedule. She had been given access to X on 3 January 2014 in connection with K.P.'s assessment, and on 17 September 2014 for the purpose of S.H.G.'s assessment. Following the District Court's judgment on adoption, the applicant had been denied access to her son, even though the judgment had been appealed against.

39. There had been no exceptional circumstances in the instant case. The nature of X's reactions after visits had never been established. The two experts had disagreed on this point. Some of the meetings had been positive. As the applicant had not had access to X before the appeal hearing, there had been no new evidence in the case. The case of *Strand Lobben and Others v. Norway* [GC], no. 37283/13, 10 September 2019, had several similarities to the instant case, notably as concerned the very limited contact between the applicant and X that had been facilitated by the authorities since the care order had been issued and the lack of explanations as to how X's vulnerability had sustained through many years of foster care.

40. X had been placed in a Christian family with a background very different from the applicant's and X's as to origin, language and ethnicity. Thus, the authorities could not have had reunification of the family as an aim. By placing X in a Christian home where the family, including X, went to church and ate pork, the respondent State had also systematically violated the applicant's right to freedom of religion.

(b) The Government

41. The Government submitted that while the measures taken in the case had been far-reaching, they had clearly been supported by relevant and sufficient reasons. Reference was made to the reasons given by the High Court.

42. The applicant had been directly involved in the proceedings in person and granted legal aid and provided with a lawyer of her choice. She had been given full access to the information relied on by the courts and given the opportunity to present relevant evidence, including witnesses. She had, furthermore, been entitled to appeal against the decision of the County Social Welfare Board and the judgments of the District Court and High Court. She had been aided by an interpreter.

43. The measures taken had been in X's best interests. His best interests had been assessed by the Board and two levels of domestic courts. After careful consideration all bodies had found that adoption was in his best interests. The Government emphasised that when assessing what is in the best interest of the child, national courts inherently have to make assessments on the uncertain course of future events bearing in mind the serious impact neglect may have on the child's well-being and development. Though the assessments may be difficult, the Government is obliged to act to protect vulnerable children and, in striking a fair balance between the rights of the parents and the rights of the child, to attach crucial importance to consideration of what lies in the child's best interests.

44. Cultural differences in the area of child welfare should not inform the outcome of the Court's decision. The use of adoption as a child-welfare measure is the result of the express will of a majority of the Norwegian Parliament, which has repeatedly stated that adoptions by foster parents should be used more frequently in cases where the child is facing a long-term placement away from his or her biological parents. Parliament has based its decision on contemporary research in both child psychology and the developmental outcomes of children growing up in public care. During its repeated deliberations, Parliament has been cognisant of the case-law of the Court and has taken due regard to the interests of parents involved.

45. The domestic authorities have been confronted with the full range of direct and immediate evidence and the margin of appreciation confirms the role of the Court to assess, according to the test of the strict Convention scrutiny which applies in the present case, whether the domestic authorities have acted arbitrarily or have reached, based on all circumstances involved, an "exceptionally unreasonable" decision to the detriment of the rights of the applicant, which was not the situation in the instant case. The factors specifically highlighted by the Grand Chamber in its judgment in the case of *Strand Lobben and Others v. Norway* [GC], no. 37283/13, 10 September 2019 – notably with respect to updated expert assessments, the child's vulnerability, contact sessions, and balancing of conflicting interests – were

not similarly present in the instant case. The applicant's submissions that the visiting scheme had been disregarded after 23 August 2013 were incorrect; meetings had taken place in October and December 2013, and the later lack of contact, other than for the purposes of the expert assessments, followed from the Boards decision of 21 March 2014.

46. The Government maintained that the applicant's right to freedom of religion had not been violated as her religious sphere had not been affected by the decision complained of. They added that weight should also be given to the fact that there were few Muslim foster homes available and to what the local authorities – that had been intimately informed of X's situation – had deemed to be in X's best interests.

(c) The Czech Government

47. The Czech Government focused mainly on the approach of the respective authorities after placement of children in foster care, since working actively and immediately with biological families after the placement of the children in care as well as the frequency of contact between the children and their biological parents appeared to be crucial factors in maintaining original family ties. They also commented on deprivation of parental responsibility and on adoption without biological parents' consent.

48. The Czech Government stressed the necessity to take due account of the situation of all members of the family. The principle of the best interests of the child was not designed to be a "trump card". Although the child's interest should be paramount, this did not mean that the Contracting States should ignore the biological parents' happiness. A child-welfare system could not disregard the existence of rights of biological parents that must be duly taken into account and balanced against the best interests of the child.

49. It was also maintained that it was highly questionable whether the authorities had taken all necessary steps to ensure reunification of the family and a fair balance had been struck between the best interests of the child and their biological parent in cases where there was almost a ban on contact or very rare contact.

50. As to adoption, the Czech Government submitted that the crucial question was whether adoption, and eventually subsequent restrictions or a ban on visiting rights, in cases where the biological parents had wanted to participate in bringing up their child and to exercise visiting rights, were in compliance with Article 8 of the Convention. They stressed that there was no right to adoption for parents looking for children.

2. The Court's assessment

(a) Interference, lawfulness and legitimate aim

51. The Court reiterates that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (see, *inter alia*, *Johansen v. Norway*, judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-III, § 52). Any such interference constitutes a violation of this provision unless it is "in accordance with the law", pursues an aim or aims that are legitimate under the second paragraph of that provision, and can be regarded as "necessary in a democratic society".

52. In the instant case, it is undisputed that the decision to withdraw the applicant's parental responsibilities for X and authorise his adoption constituted an interference with the applicant's right to respect for her family life. Based on the material presented to it, the Court is satisfied that the domestic measures complained of were in accordance with the Child Welfare Act 1992 (see paragraph 32 above) and adopted in pursuance of "the protection of health or morals" and "rights and freedoms" of X in accordance with Article 8 § 2 of the Convention. Accordingly, the issue before the Court is whether the measures were proportionate.

(b) Proportionality

(i) General principles

53. The general principles applicable to cases involving child welfare measures, including measures such as those at issue in the present case, are well-established in the Court's case-law, and were recently extensively set out in the case of *Strand Lobben and Others v. Norway* [GC], no. 37283/13, §§ 202-213, 10 September 2019, to which reference is made. For the purpose of the present analysis, the Court reiterates that regard to family unity and for family reunification in the event of separation are inherent considerations in the right to respect for family life under Article 8 of the Convention. Accordingly, in the case of imposition of public care restricting family life, a positive duty lies on the authorities to take measures to facilitate family reunification as soon as reasonably feasible. Moreover, any measure implementing such temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child. The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child. Furthermore, the ties between members of a family, and the prospect of their successful reunification will perforce be weakened if

impediments are placed in the way their having easy and regular access to each other (ibid., §§ 205 and 208).

54. Furthermore, the Court repeats that in instances where the respective interests of a child and those of the parents come into conflict, Article 8 requires that the domestic authorities should strike a fair balance between those interests and that, in the balancing process, particular importance should be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parents. Moreover, family ties may only be severed in "very exceptional circumstances" (ibid., §§ 206 and 207).

55. The Court also reiterates that the margin of appreciation to be accorded to the competent national authorities will vary in light of the nature of the issues and the seriousness of the interests at stake, such as, on the one hand, the importance of protecting a child in a situation which is assessed as seriously threatening his or her health or development and, on the other hand, the aim to reunite the family as soon as circumstances permit. The Court thus recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care. A "stricter scrutiny" is called for in any further limitations, such as restrictions placed by the authorities on parental rights of access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed (ibid., § 211).

(ii) Application of those principles to the present case

56. At the outset, the Court notes that the applicant did not apply for the care order to be lifted and accordingly to be reunited with X in the domestic proceedings complained of. She requested that the child welfare authorities' application to have her parental responsibilities in respect of X removed and consent to X's adoption granted be declined, and that she, contrary to the authorities' alternative claim to have her contact rights removed, be granted contact rights at the domestic courts' discretion (see paragraph 12 above). The Board granted the authorities' principal request, and the Board's decision was upheld on appeal by the District Court and, ultimately, the High Court (see paragraphs 14, 16 and 18-29 above, respectively).

57. In examining whether the domestic authorities in taking the above decisions had sufficient regard to their positive duty to facilitate family reunification, struck a fair balance between the competing interests, and provided reasons relevant and sufficient to show that the circumstances of the case were so exceptional that they justified a complete and final severance of the ties between X and the applicant, the Court first emphasises that regardless of the applicant's stand on continued foster care in the course of the adoption proceedings – and of whether the domestic

authorities at that time might have been justified in concluding that the foster care placement, if X were not adopted, would be long-term – she and her son still had the right to respect for their family life. Accordingly, although the applicant did not apply for family reunification to the domestic authorities, those authorities were nonetheless under the positive duty to take measures to facilitate the applicant's and X's continued enjoyment of a family life, at the minimum by maintaining a relationship by means of regular contact in so far as reasonably feasible and compatible the X's best interests.

58. As to the High Court's decision to replace X's foster care with adoption, contrary to his biological mother's wishes, which became the final decision in the case when the Supreme Court's Appeals Board refused the applicant leave to appeal (see paragraph 29 above), the Court notes that it essentially relied on the following reasons: X had lived in his foster home for four and a half years; he reacted negatively to contact with the applicant; he had become attached to his foster parents; and he was vulnerable and needed stability (see, in particular, paragraphs 18-19 and 24-25 above). Furthermore, adoption – in contrast to continued foster care – would rule out the possibility of the applicant requesting X's return to her in the future as well as future conflicts between her and the foster parents relating to differences in religious views (see, in particular, paragraph 28 above).

59. At the same time, the Court observes that the High Court stated that it did not call into question that the applicant, at the time, took the view that continued foster care would be in X's best interests (see paragraph 28 above), and it accordingly appears to the Court that at the time of the impugned proceedings, the applicant's interests were primarily to avoid adoption due to the final nature of that measure. Notably, as the foster parents had not wished for an "open adoption" with post-adoption contact visits (see paragraph 25 above), adoption would entail that the applicant could not be granted any right to have contact with her child in the future. Moreover, the applicant's interests included continued foster care instead of X being adopted because the latter would, in reality, entail her son's religious conversion, contrary to her wishes.

60. In respect of the issue of contact between the applicant and X, the Court notes that a very restrictive contact regime had been put in place when X was placed in foster care. When the applicant and X were first separated, the applicant had been seventeen years old and X ten months (see paragraphs 8-9 above). According to the later judgment by the High Court, it had principally been lack of emotional contact and security that had formed the central aspect of X's neglect, and it was understandable to the High Court that the applicant, given her age and history, had had considerable challenges in respect of caring for X when he was placed in public care (see paragraph 21 above). In that situation, upon the Board having granted the applicant contact rights of only two hours, four times

yearly, in its decision of 10 December 2010, the District Court, in its judgment of 6 September 2011, granted her contact rights of only one hour, six times yearly (see paragraphs 9 and 11 above).

61. The applicant not having appealed against the District Court's judgment or even applied to the Court at that time, the decisions on contact rights as such fall outside the scope of the Court's jurisdiction in the instant case (see, similarly, *Strand Lobben and Others*, cited above, §§ 145-147). Nevertheless, those decisions entailed that there had been minimal contact between the applicant and X from the very outset, contrary to the principle under Article 8 that the regime of contact ought to guard, strengthen and develop family ties. At the time when the impugned adoption proceedings began, there was thus in the Court's view already a considerable risk that the family ties between the two could end up completely broken, even though the applicant had had a positive development and become more mature in the meantime (see, *inter alia*, paragraph 21 above). That being the case, the Court, while accepting that return of X to the applicant in the short or medium term could not be envisaged, has difficulties in seeing that the domestic authorities may be said to have taken any real measures to facilitate family reunification in the longer term after the care order had been issued and X separated from his mother, before they decided to opt for the most far-reaching measure, namely his adoption. At this juncture, the Court reiterates that until the authorities are justified in concluding – after careful consideration and also taking account of the positive duty to take measures to facilitate family unification – that the ultimate aim of reunification is no longer compatible with the best interests of the child, the care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child. Moreover, where the authorities are responsible for a situation of family breakdown because they have failed in their above-mentioned obligation, they may not base a decision to authorise adoption on the grounds of the absence of bonds between the parents and the child (see *Strand Lobben and Others*, cited above, § 208).

62. As to the few contact sessions that had actually taken place, the Court takes note that the High Court in its judgment on adoption found that X had shown negative reactions to contact with the applicant. The findings on the nature of those reactions were principally based on reports from the foster parents, although the High Court stated that reactions had been observed at the kindergarten too, and "not just at home". The reactions "could, for example, be that [X] screams for several hours at a time, or is agitated and anxious for several days" (ibid.). Moreover, the Court notes that, while the applicant did not contest before the High Court that X had had reactions to contact sessions (see paragraph 17 above), the experts that appeared before that court had very different views as to the causes of those

reactions. Whereas the High Court dismissed psychologist S.H.G.'s opinion that X's reactions could be due to the separation from his mother – because it found that a separation when X had been only ten months old could not lead to the reactions in question later in his life – it was of the view that the reactions were related to his care situation with the applicant as that had been before that separation (see paragraph 22 above).

63. The Court has no grounds for substituting its views for those of the domestic authorities on the above evidentiary issues. However, it is of the view that the sparse contact that had taken place between the applicant and X after he was placed in foster care provided limited experience from which any clear conclusions could be drawn in respect of contact in the future. Furthermore, it considers that the High Court provided limited grounds for its findings in respect of the nature and causes of X's reactions in the light of the fact that those findings were crucial to its conclusion that X should be adopted contrary to his mother's wishes. To the Court it seems, moreover, that little had been done in the years preceding the adoption decision in order to clarify the causes of X's reactions and whether they could possibly be treated, or whether the quality of the contact between the applicant and X could in other ways be improved. In short, the Court considers that there were limited materials that could confirm that any kind of contact between X and the applicant would remain negative on such a long-term basis that the domestic authorities, at the time when the adoption decision was taken, were justified in concluding that they had persuasive evidence that a decision to permanently break off all contact with his mother would really be in the child's best interests. Finally, the Court notes that the reasons given in the High Court's decision focused largely on the potential effects of removing X from his foster parents and returning him to the applicant rather than on the grounds for terminating all contact between X and the applicant. In this respect, the High Court appears to have given more importance to the foster parents' opposition to "open adoption" than to the applicant's interest in continued family life with her child.

64. Viewing the case a whole and adding to the other particular reasons that in the instant case militated in favour of maintaining the possibility of some contact between X and the applicant, notably relating to their cultural and religious background, the above considerations enable the Court to conclude that in the course of the case culminating in X's adoption, insufficient weight was attached to the aim that the applicant and X enjoy family life. Emphasising the gravity of the interference and the seriousness of the interests at stake, the Court does not consider that the decision-making process leading to the impugned decision to withdraw the applicant's parental responsibilities for X and authorise his adoption, was conducted so as to ensure that all views and interests of the applicant were duly taken into account.

65. For the reasons stated above, the Court concludes that there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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."

67. The applicant did not claim compensation for damage, but, in general terms, reimbursement of costs and expenses incurred before the Court.

68. The Government stated in response, also in general terms, that they were satisfied that the Court would ensure that the applicant's claim would be supported by documentation and be limited to an amount reasonable in quantum.

69. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicant has been granted legal aid and has not submitted any documents to show that she has sustained any further costs and expenses. Nor has she made any statements to indicate that that has been the case. The Court accordingly rejects the claim.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 8 of the Convention admissible;

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

3. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 December 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Robert Spano
Deputy Section Registrar	President