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La CEDU su adozione contro la volontà della madre
(CEDU, sez. II, sent. 17 dicembre 2019, ric. n. 60371/15)

Con la sentenza in oggetto - al pari della *Abdi Ibrahim v. Norway* (ric. n.15379/16), emessa nella medesima data - la Corte Edu ha censurato le decisioni delle autorità e dei tribunali norvegesi relative alla presa in cura di bambini in tenera età, consentendone l'adozione da parte di famiglie affidatarie contro la volontà delle madri naturali e negando alle medesime il diritto di mantenere qualunque contatto con i propri figli.

In particolare, nel caso *A.S. v. Norway* in esame, la ricorrente è una cittadina polacca nata nel 1968, il cui figlio, nato nel 2009, era stato dato in affidamento nel 2012. La richiesta di porre fine all'affidamento, presentata dalla madre nel 2014, era stata respinta nel marzo 2015; le autorità giudiziarie, avevano, altresì, negato il diritto di avere contatti con il bambino e di conoscere l'indirizzo della famiglia affidataria, senza in alcun modo considerare il miglioramento, nel tempo, delle capacità genitoriali della ricorrente, anche grazie alla frequentazione di speciali corsi.

La Corte, rifacendosi al recente caso *Strand Lobben v. Norvegia*, ha ribadito di essere chiamata ad uno "stretto scrutinio" in presenza di limitazioni all'accesso dei genitori, dopo la presa in carico di un bambino da parte delle pubbliche autorità.

In questi casi, nell'interesse dei minori, le autorità hanno il dovere di adottare misure per facilitare il ricongiungimento familiare non appena questo sia ragionevolmente possibile.

In caso di conflitto fra gli interessi del bambino e quelli del genitore, spetta alle autorità operare un giusto bilanciamento: pur potendo prevalere gli interessi dei bambini su quelli dei genitori, la recisione dei legami familiari può, tuttavia, ammettersi solo in circostanze assai eccezionali.

La Corte ha riscontrato che nei processi decisionali di cui al caso in oggetto non si è debitamente tenuto conto delle opinioni e degli interessi della madre, con conseguente violazione dei diritti umani della medesima, in particolare sotto il profilo della violazione del diritto al rispetto della vita privata e familiare, *ex* art.8 Cedu.

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

SECOND SECTION

CASE OF A.S. v. NORWAY

(*Application no. 60371/15*)

JUDGMENT

Art 8 • Respect for family life • Severing parent-child ties without adequate decision-making process

STRASBOURG

17 December 2019

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

In the case of A.S. 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. 60371/15) 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.S. ("the applicant"), a Polish national who lives in O. The applicant, who was granted legal aid, was represented before the Court by Ms N. Hallén, a lawyer practising in Oslo. The President of the Section to which the case had initially been assigned acceded to the applicant's request not to have her name disclosed (Rule 47 § 4 of the Rules of Court).

2. The Norwegian Government ("the Government") were represented by Mr M. Emberland of the Attorney General's Office (Civil Matters) as their Agent, with Ms H.L. Busch as associate.

3. The applicant alleged that the domestic authorities, by refusing to terminate the foster care placement of her child, X, and by not allowing her to have contact with him or information about his whereabouts, had violated both her and her child's right to respect for their family life under Article 8 of the Convention.

4. On 1 April 2016 the Government were given notice of the above complaint and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court. 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 also received from the Government of Poland, who made use of their right to intervene in the proceedings as a third party under Article 36 § 1 of the Convention and Rule 44 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1968 and moved to Norway in 1988. In December 2009 she gave birth to X, a boy, following artificial insemination. X has no registered father and the applicant has sole parental responsibility for him. At birth the baby was described as dysmature.

7. From April 2010, when X was a little under four months old, child welfare services received a number of notifications of concern (bekymringsmeldinger) from health visitors at the municipal health clinic (helsestasjon) and the applicant's family, concerning, inter alia, lack of interaction between the applicant and X. Based on their enquiries, and after attempting a number of assistance and guidance measures, X was ultimately placed in an emergency foster home on 27 March 2012.

8. In a decision of 18 September 2012 by the County Social Welfare Board (fylkesnemnda for barnevern og sosiale saker), X was placed in foster care. The Board assumed that the placement would be long-term (plasseringen ... antas å bli langvarig). This entailed to the Board that the purpose of contact sessions was for X to know his roots (ha kjennskap til sitt opphav), not to maintain an attachment to the applicant. In addition, X was particularly vulnerable and had had negative reactions to contact with the applicant. For essentially those reasons, the applicant's contact rights were set at two hours twice a year, under supervision.

9. The care order was unanimously confirmed by the City Court (tingrett) on 25 February 2013. The City Court found that there were pervasive and extensive deficiencies in the applicant's ability to provide care, and that for a long time X had been subjected to extensive and serious neglect in respect of both the physical and emotional care which he received. It stated that it agreed with the municipal child welfare services that one should aim for a long-term placement in care (det bør tas sikte på en langvarig omsorgsovertakelse), but that it could not at that time say whether a full adoption would be better in the long-term. On the issue of contact rights, the City Court stated, inter alia, that regard had to be had to the long-term nature of the placement in care, including that return of X to the applicant's care was not an aim at the time (tilbakeføring [er] per i dag ikke ... en målsetning). The purpose of contact would therefore be for X to maintain his knowledge of his biological mother (opprettholde sitt kjennskap til sin biologiske mor). In conclusion, the applicant was granted the right to have contact with X – under the supervision of the child welfare services – for one hour twice a year.

10. In the spring of 2014 the applicant demanded that the foster care placement be terminated, or, in the alternative, that she be granted extended contact rights.

11. On 5 November 2014 the County Social Welfare Board, composed of one lawyer qualified to act as a professional judge, one psychologist and one lay person, rejected the applicant's request, following an oral hearing held over two days where eleven witnesses were heard. The applicant was

also refused contact rights, and it was decided that she should not be entitled to have information about X's whereabouts.

12. On 21 November 2014 the applicant brought a case before the City Court, which was composed of one professional judge, one expert (a psychologist) and one lay person. The court heard the case on 2 and 3 March 2015. The applicant attended the hearing and gave testimony. Fourteen witnesses were heard, including the applicant's general practitioner (GP), her psychiatrist, a psychologist who had counselled her, and two psychologists whom she had engaged as private experts in the case. Prior to the hearing, on 30 January and 9 February 2015 respectively the City Court had decided that it was not necessary to appoint its own expert or facilitate the applicant's two privately engaged experts' observations of the applicant and X together. Both decisions were in line with the municipality's arguments.

13. In its judgment of 27 March 2015 the City Court found that the applicant would not be able to provide X with proper care either at that time or in the future, and it therefore declined her application for the foster care placement to be discontinued.

14. The court based its assessment on the grounds that X was a vulnerable child with special care needs. X had been two years and three months old when he had been placed in an emergency foster home. Up until then, he had been in his mother's care. When he had been taken into care in 2012, he had been described as having a low level of cognitive, motor and linguistic functioning; he had been emotionally flat, unable to express his own needs, and had had little expectation of interaction with others. He had developed a serious eating disorder, and had had patterns of compulsive behaviour and an abnormally great need for sleep. In a report from an outpatient clinic of 29 August 2012, it had been indicated that X's symptoms were consistent with pervasive developmental disorders. The symptoms had been partly on the autism spectrum. However, a later assessment at a hospital's child assessment unit in December 2012 had concluded that he did not have an ordinary autistic disorder. Since the boy had moved into the foster home in March 2013, there had been no suspicion that he was suffering from a developmental disorder.

15. The City Court also based its assessments on the foster mother's descriptions of the boy's development from the time when he had been placed in the foster home. His motor skills had developed well. He had gone from repeating what other people said in a low voice to uttering things himself. Whereas previously he could not accept praise, he was now able to accept it when someone said something positive about him and show that he was pleased with himself. He allowed himself to be comforted and accepted physical intimacy with certain people. He had also shown progress in relation to meals. When he had been placed in foster care, he had not shown when he was hungry. He had liked to be fed and preferred baby porridge. After a long period of adjustment he was now able to eat a more varied diet. He was also able to communicate that he was hungry or full. In stressful situations he still had difficulties swallowing. He had also become socialised. His compulsive behaviour symptoms had decreased, and he tolerated getting his hands and clothes dirty. He still tired easily and had shorter days in kindergarten than other children of his age. However, his need for sleep was normal. He displayed an enormous need for security; he needed to be prepared for events and was very concerned with having everyone in the foster family present. If there were irregularities in his everyday life, he became very restless. Examples of this included

when the supervisor visited the foster home or when the family went to their cabin. In such situations, he started thinking that he was going to move.

16. X's development had been confirmed by the educational supervisor in his kindergarten. The foster home supervisor had also stated that he had had a steep learning curve from the time when he had been placed in the foster home. S., a psychologist at A. outpatient clinic, had testified that she saw the boy's development as linked to the fact that his care situation had changed. His needs were being met in the foster home, and his functioning at the time when he had been placed in emergency care could, in all likelihood, be ascribed to his mother's inadequate care during the first two years of his life. In S.'s assessment, relational or developmental trauma had been inflicted on X while he had been in his mother's care. The court agreed with S.'s assessment of the causal relationship.

17. S. had also testified that, given his trauma, X would be vulnerable for the rest of his life. He would be particularly vulnerable to changes and stress, and he would have a far greater need for predictability than other children. On the basis of the evidence presented regarding the boy's development and the challenges he still struggled with, the City Court also agreed with S.'s assessment on this point.

18. Given X's vulnerability and needs, in the City Court's opinion he would need very sensitive caregivers who would be able to familiarise themselves with his needs and accommodate them.

19. The City Court did not doubt that the applicant was very involved with her son and that, to the best of her ability, she loved him very much. She had had a deep-rooted desire to become a mother and had gone as far as becoming pregnant by using an unknown donor at a clinic abroad. She had testified in court that this process had demanded a lot from her, and that she had focused strongly on this task both before and during her pregnancy. She had acquired knowledge of children from television shows, among other things, and was very concerned with expert advice.

20. In examining whether the circumstances had changed, the City Court observed that the care order in 2012 had been based on a professional assessment that the applicant's care was inadequate in all areas. In the report from the outpatient clinic of 29 August 2012 (see paragraph 14 above), the applicant had been described as having very little in the way of intuitive parenting skills. She was at a loss when situations involving the child arose, and incapable of leading the child or creating structure. She appeared to be insecure, without the ability to create meaning in situations or provide the child with developmental support. The City Court's judgment of 25 February 2013 (confirming the care order) had also been based on the applicant's complete lack of general and intuitive competence to provide care (see paragraph 9 above).

21. The applicant had acknowledged in court that the care order in 2012 had been justified. She had stated that she realised that her interaction with X had been poor and that she had been unable to set limits for him, but had emphasised that the situation was different now. She had taken several courses, among other things, a parenting course – ICDP (International Child Development Programme) – and a course for kindergarten assistants for speakers of minority languages. She had also worked in a kindergarten for about six months, and had referred to her professional references from there. She had allowed herself to be assessed by S.C., a private psychiatrist, who had testified in court that he had not found her to be suffering from any mental health problems. She had also engaged E.S. and S.H.G., psychologists who were experts in the child welfare issues raised in the case.

22. The court questioned the applicant's declared acknowledgement regarding the neglect that had formed the basis for the care order in 2012. During her testimony, she had not acknowledged that X had shown signs of problems to any great extent. She had described him as a well-functioning and social child, and had instead questioned how his being taken into care had affected him. The court noted that the applicant had used a great deal of resources in preparing her claim for revocation of the care order in respect of X, and stated that it was positive that she had wanted to strengthen her competence through a parenting course and a work placement for kindergarten assistants. However, the court could not see that these measures had had much effect on her ability to provide care. Her challenge was that she had little intuitive parenting skills. She did not have the capacity to intuitively understand the child's needs. Although she had wanted to understand the boy's perspective, she had not been able to. It was not possible to acquire such basic parenting skills through courses and a work placement in a kindergarten. It was therefore difficult to see that the applicant's position as a carer for X was very different from what it had been at the time the care order had been issued.

23. The applicant had also testified in court that family members would support her if X were returned to her. She had stated that her father, who was eighty years old, would move to Norway and live with her in her flat. She had also pointed out that both her mother and sister lived in the same city as her. The court could not see that the applicant's family members were resourceful people who could compensate for her inadequacies as a caregiver to any great extent. Her mother and sister had been a part of her social network in the city all along, and as far as they were concerned, the situation was no different from what it had been at the time the care order had been issued.

24. The City Court went on to observe that there had been four contact sessions since the care order had been issued in 2012. The most recent contact session had taken place after the County Social Welfare Board's consideration of the case in November 2014. In the City Court's opinion, reports from the contact sessions also confirmed that the applicant's ability to provide care had not changed. She repeatedly corrected X's perception of who his mother was, despite the fact that he reacted by becoming insecure and confused. She behaved invasively and changed activities frequently, without X showing that he was following her. During the last contact session she had been very concerned with filming the boy, without caring about how this affected their interaction. The court gave consideration to the fact that a supervised contact situation could be a difficult arena in which to display natural caring skills. The applicant had also acted more calmly during one of the other contact sessions, in April 2014. However, viewing the four reports from the contact sessions in conjunction with each other, the court was nevertheless of the opinion that her behaviour showed that she still did not see the boy's perspectives and needs (ser guttens perspektiv og behov).

25. X had had strong reactions in connection with the four contact sessions. His foster mother had written down his reactions to all of the contact sessions. The educational supervisor at the kindergarten had noted several of the same reactions. The psychiatric outpatient clinic for children and young people (barne- og ungdomspsykiatrisk poliklinikk – BUP) and the foster home supervisor had also provided statements regarding X's reactions which the foster family had told them about. The court found that X had sought security after all four contact sessions. Among other things, he had followed his foster mother around the home and called for her. He had been restless before being put to bed, his sleep had been disturbed, and he had woken up several times during

the night. He had been tired and worn out, had slept during the day and had needed more sleep at night. He had been fidgety and had changed his play activities frequently, had had heightened emotions, and had become very angry, very sad and very happy. His reactions after the last contact session in November 2014 had been particularly strong. After this session, X's functioning had deteriorated considerably. He had wet himself during the night and behaved like a baby. He had wanted to be bounced on people's laps ("ride ranke") and to put things in his mouth. He had been fidgety when playing, had had to be fed, and had retched while eating. These reactions had lasted two months. X's foster mother testified that after the last contact session the family had started to doubt whether they would ever again see the boy as he had been before the contact session.

26. The applicant had argued that X's reactions were an expression of how much he missed her. This view had been supported by her privately appointed psychologists, E.S. and S.H.G. (see paragraph 21 above). They had argued that the attachment that had formed between X and the applicant during the first two years of his life was strong, and that his reactions had to be interpreted as a sign that he missed his primary caregiver, the applicant. The court had a different interpretation of the reactions after the contact sessions. In its opinion, it was possible that the reactions were somewhat complex. However, its assessment was nevertheless that the reactions were mainly an expression of the boy's insecure attachment to the applicant and the fact that the contact sessions had had a retraumatising effect on him. His reactions indicated that there was a great risk that returning him to the applicant would seriously jeopardise his mental health, therefore such a return would be completely irresponsible.

27. In the court's opinion, assistance measures would not go far towards compensating for the applicant's inadequate ability to provide care appropriate to X's needs. This was precisely connected to the fact that her shortcomings were related to basic and intuitive parenting skills.

28. In the court's opinion, the attachment condition in the second sentence of the first paragraph of section 4-21 of the Child Welfare Act (see paragraph 38 below) had also been satisfied, for the following reasons.

29. X had lived in the foster home for about two years. This was a long time in the life of a five-year-old. He had developed greatly during this period. His foster mother had refrained from working outside the home in order to meet his needs, and on the basis of the evidence presented, the court found that X had a particular attachment to her. Reports from the contact sessions showed that X sought contact with his foster parents for confirmation of what he experienced in the context of the contact sessions. He called his foster parents mum and dad, and described his foster brother as his brother. The court found that X's development during the past two years had been due to the fact that he had established a secure attachment to people who were able to see his particular needs. The court had no doubt that the foster home was now X's primary care base. As a result of the relational and developmental trauma that had been inflicted on him as a small child, X was very vulnerable to changes. Moving him from a situation where he was currently functioning well would entail a great risk of serious harm to his mental health.

30. On this basis, as required by the above-mentioned section 4-21 of the Child Welfare Act, the court found that it had been clearly substantiated that X had become so attached to his foster parents and the environment where he was living that removing him might lead to serious problems for him.

31. On the question of contact rights, the City Court's judgment contained the following passages:

"The Court has concluded above that [X] has become so attached to his foster home that moving him will lead to serious problems for him. [X's] placement therefore has a long-term perspective. A contact arrangement is not intended to facilitate or prepare for [X's mother providing] care in the future [("fremtidig tilbakeføring")]. The purpose of a contact arrangement shall be to ensure that [X] knows his biological mother.
In ... the City Court's hearing in the case in February 2013, contact was set at one hour twice a year, under supervision. This very limited contact arrangement was in effect until the most recent contact session in November 2014.
The Court has described the boy's reactions in connection with contact in its discussion of whether to revoke the care order. The Court considers that the boy's reactions are very serious. His reactions after contact are particularly worrying. The reactions after the last contact session lasted around two months. His reactions included regression to the baby stage, bed-wetting, and retching when eating. It is not uncommon for children who have been placed in foster homes to experience reactions in connection with contact with their biological parents. Such reactions do not necessarily have to form a basis for terminating contact. In the longer term, it can be useful for a child to be in contact with his or her parents, and a contact arrangement must be seen from this perspective. This means that reactions must be accepted to a certain extent.
However, the Court is of the opinion that the reactions displayed by [X] are too extensive and serious to be acceptable. Considering that [X] will start school in autumn 2015, reactions in the form of long-term regression will be particularly harmful to his development, both socially and in relation to his education. It is very important to [X]'s continued development that he is not placed in situations that could seriously harm his mental health.
On this basis, the Court has found that the risk that [X] will be harmed if contact continues is so great that the interests of the biological mother must yield. There are special factors in this case, and exceptional and strong reasons indicate that contact should be denied under the first sentence of the second paragraph of section 4-19 of the Child Welfare Act."

32. As to the question of whether the foster parents' address should be disclosed to the applicant, the City Court stated, inter alia:

"[The applicant] has not reconciled herself with the fact that her son has been taken into care and, together with her extended family, she has shown a strong commitment to having him returned to her care. In connection with the contact sessions, the mother has been very interested in information about her son's whereabouts. Among other things, she has asked how long the drive to the foster home is. The City Court shares the County Social Welfare Board's view that it has not been substantiated that there is a risk of kidnapping if the address is disclosed. However, the Court finds that there is a preponderance of probability that the mother will contact [X] if she knows where he lives. Considering the boy's very strong reactions after contact sessions, the Court finds that such unannounced contact will have a disproportionately strong effect on [him]. He needs to be protected in his established environment. The mother not being entitled to know where the child lives is an obvious encroachment on her rights as the biological mother. However, the Court finds that [the

applicant]'s need to know where [X] lives must yield to the boy's interests. The Court has therefore concluded that the address of the foster parents must be withheld from [the applicant]."

33. The applicant appealed against the City Court's judgment to the High Court, which on 22 May 2015 refused leave to appeal.
34. The High Court observed that after the main hearing the City Court had arrived at the same conclusion as the County Social Welfare Board. That hearing had lasted two days and fourteen witnesses had been called, including the applicant's regular general practitioner (GP), her psychiatrist, a psychologist who had counselled her, and two psychologists whom she had engaged (see also paragraph 12 above).
35. In the High Court's view, the City Court's judgment appeared to be thorough and well founded. The High Court did not see that not appointing an expert witness had been a procedural error. The question of the applicant's ability to provide care seemed to have been thoroughly elucidated through, among other things, assessments from A. and F. childcare centres (which had merged) in 2012, other written documentation, and numerous witness statements. In the High Court's opinion, it had not been necessary to have a psychologist observe the interaction between the applicant and X prior to the main hearing in order to arrive at a satisfactory factual basis for a decision. The report from the last contact session on 12 November 2014 stated that the interaction had not been adequate (lite tilfredsstillende). The City Court had found that X's reactions after this contact session had been particularly strong (see also paragraph 25 above). Consideration for X's well-being therefore indicated that restraint should be shown with respect to involving him in an expert assessment. In the opinion of the High Court, no particular circumstances existed that gave any weighty indications in favour of granting leave to appeal.
36. On 3 July 2015 the Supreme Court's Committee on Leave to Appeal (Høyesteretts ankeutvalg) rejected an appeal by the applicant against the High Court's decision.

II. RELEVANT DOMESTIC LAW

A. The Constitution

37. 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

38. The relevant sections of the Child Welfare Act of 17 July 1992 (barnevernloven) read as follows:

Section 4-6 Interim orders in emergencies

"If a child is without care because the parents are ill or for other reasons, the child welfare service shall implement such assistance as is immediately required. Such measures may not be maintained against the will of the parents.
If there is a risk that a child will suffer material harm by remaining at home, the head of the child welfare administration or the prosecuting authority may immediately make an interim care order without the consent of the parents.
In such a case, the head of the child welfare administration may also make an interim order under section 4-19.
If an order has been made under the second paragraph, an application for measures as mentioned in section 7-11 shall be sent to the county social welfare board as soon as possible, and within six weeks at the latest, but within two weeks if it is a matter of measures under section 4-24.
If the matter is not sent to the county social welfare board within the time-limits mentioned in the fourth paragraph, the order lapses."

Section 4-19 Contact rights. Secret address.

"Unless otherwise provided, children and parents are entitled to contact with each other.
When a care order has been made, the county social welfare board shall determine the extent of contact, but may, for the sake of the child, also decide that there shall be no contact. The county social welfare board may also decide that the parents shall not be entitled to know the child's whereabouts.
..."

Private parties may not demand that a case regarding contact shall be dealt with by the county social welfare board if the case has been dealt with by the county social welfare board or a court of law in the preceding twelve months."

Section 4-21. Revocation of a care order.

"The county social welfare board shall revoke a care order when it is highly probable that the parents will be able to provide the child with proper care. The decision shall nonetheless not be revoked if the child has become so attached to people 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. Before a care order is revoked, the child's foster parents shall be entitled to state their opinion.
Parties may not demand that a case concerning revocation of a care order be dealt with by the county social welfare board if the case has been dealt with by the county social welfare board or a court of law in the preceding twelve months. If a demand for revocation of a previous order or judgment has not been upheld with reference to the second sentence of the first paragraph of section 4-21, new proceedings may only be demanded when documentary evidence is provided to show that significant changes have taken place in the child's situation."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

39. The applicant complained that the decisions refusing to terminate the foster care placement of her child, X, and allow her to have contact with him and let her know of his whereabouts had entailed a breach of her right to family life as provided for in Article 8 of the Convention, which reads as follows:

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

40. The Government contested that argument.

A. Admissibility

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

B. Merits

1. The parties' submissions and third-party comments

(a) The applicant

42. The applicant argued that the respondent State had violated her and her son's right to respect for their family life by removing him from her care and failing to provide her with information about him.
43. The applicant submitted that the reasons given for her son's placement in public care had been vague and ambiguous. If there had been any failures in her care of her son, these could have been corrected by assistance measures. The notifications of concern had been unfounded. X had suffered from allergies and other minor health conditions, but not as a result of neglect – they had been typical childhood illnesses. The police had never found any irregularities as regards the applicant or X.
44. The written statements from the applicant's GP clearly indicated that X had received good and appropriate care from his mother, and it was disturbing that his testimony had not been included in the City Court's reasons or taken into consideration by that court. Furthermore, other evidence supported the applicant's contention that she had had good and proper relations with X.
45. The child welfare authorities' observations on the contact sessions indicated that the applicant's interaction with X had been good. This had also been confirmed by others, yet only the negative opinions of the authorities had been considered valuable in the proceedings.
46. There was no objective evidence that showed that the applicant's son's development had improved after he had been placed in foster care, and even if this had been the case, this would have been insufficient for the decision that he could not reside with her.
47. The decision not to inform the applicant of her son's whereabouts had been totally unfounded and disproportionate. In addition, the authorities had not acted in good faith; that was clear from the manner in which her son had been taken away without her being heard, the method of gathering expert witness opinions, and the refusal to appoint an expert witness in the case.
48. No safeguards had been put in place in order for the applicant to have her son returned to her. The applicant's testimony and evidence had been neglected in the proceedings and in the reasoning of the impugned decisions; it had not even been quoted. X had expressed his longing for his biological mother and willingness to return to her, which the domestic courts had failed to address. The Court's judgment in the case of Strand Lobben and Others v. Norway [GC], no. 37283/13, 10 September 2019, was highly relevant to the instant case, inter alia as the mother's developments had not been properly assessed in either case and there had been similar restrictions on contact between mother and child in both cases.

(b) The Government

49. The Government did not dispute that there had been an "interference" with the applicant's right to respect for her family life. However, the interference could in no respect be classified as arbitrary. The measures taken had been in accordance with the law and had pursued a legitimate aim, namely the rights of X.
50. The child welfare authorities, the County Social Welfare Board and the City Court had all had the benefit of direct contact with the persons concerned. The domestic courts had conducted an in-

depth assessment of the entire situation and a whole series of factors, particularly those of a factual, emotional, psychological, material and medical nature. They had made a balanced and reasonable assessment of the respective interests of each person, with constant concern for determining what would be the best solution for X, as his best interests had been of decisive importance.

51. The domestic authorities had repeatedly tried to help the applicant through assistance measures and by providing guidance, with the aim of helping X within his family, but this approach had been unsuccessful and harmful to the child. The initial aim in 2012, to provide a care order for only a limited period of time, had also proved futile. The decisions not to terminate the foster care placement, not to grant contact rights and not to inform the applicant of X's whereabouts had to be considered against that background. The case of Strand Lobben and Others v. Norway [GC], no. 37283/13, 10 September 2019, had, unlike the instant case, concerned adoption, and had to be distinguished from the present instance on several grounds, including with respect to the authorities' attempts to strike a fair balance between the interests of mother and child, the domestic courts' access to expertise, and the child's vulnerability.

52. There had been concerns about X's care situation since he had been only four months old. Reference had been made to the reports from the family centres and the decisions from the County Social Welfare Boards and City Courts. The child welfare authorities had operated in accordance with the principle of the least possible intervention, but the assistance measures had not helped. The applicant had been offered counselling from the time when she had initially had contact with the authorities, but had not been able to make use of the advice she had been given.

53. The applicant had been fully involved in the proceedings before the City Court in 2015. The reasons provided in the judgment indicated that that court had given due consideration to the statements from the applicant herself as well as the witnesses she had called, including the expert witnesses acting on her behalf.

54. There had been exceptional circumstances that had justified the decisions not to grant contact rights and not to inform the applicant of X's whereabouts. Initially, in March 2012 the applicant had been granted contact rights entitling her to have contact once a week, but these had been reduced in September that year, owing to the strong reactions which the visits had reportedly caused in X. Even though the visits thereafter had been limited and supervised, X had continued to have strong reactions. When it had been decided that contact rights should not be granted, that decision had been assessed by experts and had been based on the professional view that children who were harmed in their early years could risk suffering serious harm for the rest of their lives. It had thus been deemed that it was in X's best interests to deny the applicant contact, in order to ensure that he was given stable and secure care. Allowing contact would have harmed X's health and development, and in the Government's view, this would have contravened X's right to integrity under Article 8 of the Convention. Lastly, there had been sufficient grounds for not disclosing X's whereabouts to the applicant.

(c) The Polish Government

55. The Polish Government referred in particular to the circumstances of the present case and the context of the general concerns connected to the functioning of the child protection system in the

respondent State, and asked the Court to carefully examine whether the drastic interference with the applicant's rights under Article 8 of the Convention had been necessary and proportional in the present case, and whether it had been arbitrary.

56. The Polish Government emphasised that the measures undertaken in the applicant's case had been particularly far-reaching, in such a way that they had totally deprived the applicant of her family life with her only child and had been inconsistent with the aim of reuniting the family. In the Polish Government's opinion, such measures should only be applied in exceptional circumstances, and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests. Such decisions should also be systematically reviewed in order to verify if the reasons for ordering the placement in public care still existed. In the Polish Government's view, it was doubtful whether the authorities of the respondent State had done everything in their power to reunite the applicant with her son, in such a way as to guarantee the rights stemming from Article 8 of the Convention.

2. The Court's assessment

(a) Interference, lawfulness and legitimate aim

57. 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".

58. In the instant case, it is undisputed that the decisions not to discontinue the foster care placement of X, not to grant the applicant contact rights and not to inform her of X's whereabouts constituted an interference with the applicant's right to respect for her family life. The Court does not see that it may be questioned that the impugned measures were adopted in accordance with the law, namely the 1992 Child Welfare Act, and that they pursued legitimate aims, namely the protection of health and morals, and the protection of X's rights and freedoms. Accordingly, the issue before the Court is whether the measures were proportionate.

(b) Proportionality

(i) General principles

59. 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 of their having easy and regular access to each other (ibid., §§ 205 and 208).

60. Furthermore, the Court recalls 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).

61. 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 the general principles to the facts of the case

62. At the outset, the Court observes that, in its judgment of 27 March 2015, the City Court concluded that the placement of X in a foster home had a "long-term perspective" (see paragraph 31 above). The Court emphasises that to the extent such a conclusion also implies – as it did in the instant case – that the authorities give up reunification of the child and the natural parents as the ultimate goal, thereby de facto transforming the placement order from being a temporary measure into becoming a permanent one, and since all subsequent measures, including the visiting regime, will flow as corollaries to this, the conclusion that the placement must be considered to be long-term should only be drawn after careful consideration and also taking account of the authorities' positive duty to take measures to facilitate family reunification (see, mutatis mutandis, Strand Lobben and Others, cited above, §§ 208-209). Moreover, adding the permanency envisioned in the impugned decision – and thus its inconsistency with the aim of reuniting the family – to the fact that the City Court refused to grant the applicant any rights to see X whatsoever – and thereby "totally deprived

the applicant of her family life with the child" (Johansen v. Norway, 7 August 1996, § 78, Reports of Judgments and Decisions 1996-III) – it is particularly clear in a case such as the instant that the Court must carry out a "stricter scrutiny" of whether the domestic authorities have shown that the circumstances were so exceptional that they justified the measures complained of (see paragraphs 60-61 above, and, for example, Johansen, cited above, §§ 64 and 78), and of the decision-making process leading to the imposition of those measures. Moreover, the Court must be assured that any absence of bonds between the natural parents and the child is not because the authorities did not take any real measures to facilitate family reunification at a meaningful point in time (see, mutatis mutandis, Strand Lobben and Others, cited above, § 208).

63. Furthermore, although the application in the present case does not concern the initial decision to take over the care for X, the Court must in its assessment take note of the fact that the domestic authorities, including the County Social Welfare Board in its decision of 18 September 2012 and the City Court in its judgment of 25 February 2013, already at that time had taken the position that the placement would be long-term (see paragraphs 8 and 9 above), thereby cementing the situation already at the very outset, in particular through a very strict visiting regime (see Strand Lobben and Others, cited above, §§ 148 and 208). The City Court's judgment at that time had not reflected the special nature of conclusions that a placement in care would be long-term, where a conclusion to that effect entails consequences as stated above (see paragraph 62). That having been the case, it was particularly incumbent on the Board and the City Court to carry out a thorough assessment in 2014 and 2015, respectively, in the course of the proceedings on the applicant's request to have the care order lifted.

64. In respect of those proceedings, the Court observes that the City Court, whose bench comprised one professional judge, one psychologist and one lay person, heard the case over two days before giving the impugned judgment of 27 March 2015 (see paragraph 12 above). The applicant was present during this hearing and was represented by a lawyer at no personal cost. She gave evidence herself and could present other evidence. Fourteen witnesses were heard, including the applicant's general practitioner (GP), her psychiatrist, a psychologist who had counselled her and two psychologists whom she had engaged as private experts in the case. Before the County Social Welfare Board, similarly extensive proceedings had been carried out (see paragraph 11 above).

65. In its judgment, the City Court began by making it clear that it would review all the aspects of the case on the basis of the situation as it was at the time of the court's judgment. It went on to examine a number of specific issues, including X's functioning at the time he had been placed in public care, how this had developed in subsequent years, and his future needs. As to X's development, it relied largely on his foster mother's reports (see paragraphs 15-16 above). It also examined the applicant's ability to care, and whether this had improved. In that respect it referred to the applicant's information about the steps she had taken to improve her situation, which included several courses, working in a kindergarten, and assessments by a psychiatrist and two psychologists (see paragraph 21 above). In reply, it noted that the applicant had "spent a great deal of resources" for the purpose of preparing her claim and strengthening her competences, but that measures such as "courses and a work placement in a kindergarten" had little impact on her caring skills, since her challenges related to intuitive parental skills, which could not be improved by way of such measures (see paragraph 22 above). Furthermore, the City Court examined the applicant's

assertions that she had support in her family network, but found that her situation was in that respect no different from her situation as it had been when the care order was issued. It also provided an analysis of the contact sessions that had taken place since the care order had been issued in 2012, and X's negative reactions to those sessions as they had been reported by his foster mother (see paragraphs 24-25 above). In that regard, the City Court reiterated the arguments from the psychologists engaged by the applicant, but did not agree with them (see paragraph 26 above). Also, the question of whether further assistance measures could remedy the shortcomings in the applicant's care skills was briefly answered in the negative, by reference to the applicant's shortcomings relating to fundamental and intuitive parental skills (see paragraph 27 above). Lastly, X's vulnerability and attachment to his foster home were examined (see paragraphs 28-30 above). The City Court concluded that the applicant lacked sufficient skills to care for X, and that X had become so attached to his foster home that in any event he could not be returned at that time (see paragraphs 13 and 30, respectively). The City Court found that returning him would entail a great risk of serious harm to his mental health (ibid.).

66. While the Court has no grounds to second-guess the above-mentioned assessments by the City Court, it notes that cases where the placement order is based on the general conclusion that the natural parent, due to his or her personality and not any psychological suffering, has shortcomings related to basic and intuitive parental skills, are particularly challenging, since such a conclusion to a notable degree will have to rest on vague and subjective criteria. Moreover, the Court emphasises the importance of having a sufficiently broad and updated factual basis for far- reaching decisions such as the one taken by the City Court, effectively representing the end-point for the family life between X and the applicant. This is in particular so when a parent, as in this case, submits that there have been positive developments as to his or her parental abilities, warranting a new assessment of the placement order.

67. In its judgment of 27 March 2015, the City Court did address a number of relevant issues, including the applicant's submissions that circumstances had changed since the City Court's assessment in the judgment of 25 February 2013 confirming the initial case order. However, it is striking that the City Court on that point rejected all evidence in the applicant's favour with limited or no reasoning, including the evaluation by S.C., the private psychiatrist and the assessment by psychologists E.S. and S.H.G. The fact that the applicant after the City Court's judgment of 25 February 2013 on her own account had, for example, attended a parenting course and a course for kindergarten assistants, and had actually also worked in a kindergarten for six months, was essentially briefly dismissed as irrelevant (see paragraphs 21-22 above). Furthermore, no account was taken of the fact that the applicant's contact rights in the period from February 2013 to November 2014 had been limited to one hour twice a year, and fully refused after that (see paragraphs 9 and 11 above). Although the City Court concluded that assistance measures would be futile, there is no reference whatsoever as to the nature and intensity of any attempts in respect of such measures in the period after the City Court's judgment 25 February 2013.

68. The Court also has concerns as to whether the City Court had a sufficiently broad and updated basis for its judgment of 27 March 2015 for the following reasons. The applicant's request to have an independent expert appointed in order to assess her parental abilities was rejected by the City Court (see paragraph 12 above). The last independent assessment to that end was thus apparently that

from the outpatient clinic, dated 29 August 2012 – about two and a half years before the City Court gave its judgment (see paragraph 14 above). The applicant's request to allow psychologist S.H.G. to observe her with the child was refused as well (see paragraph 12 above). Instead, the City Court based its assessment primarily on the foster parents' account of the child's development in the period from 2013 to 2015, without a more thorough independent corroboration than that of the educational supervisor at X's kindergarten and S., a psychologist at an outpatient clinic who gave testimony before the City Court (see paragraph 16 above).

69. In addition, the Court observes that the decision to refuse the discontinuance of the foster placement was based to a large part on the assessment of X's reactions to the contact sessions (see paragraphs 24-26 above). As to this, the Court notes that the City Court's findings in respect of the nature of X's reactions were also first and foremost based on his foster parents' reports, since it was primarily they who had observed him during the periods between the contact visits, although the educational supervisor at the kindergarten had noted several of the "same reactions" (see paragraph 25 above). The Court also observes that, before the City Court, opinions differed on the reasons for X's reactions. The two psychologists engaged by the applicant, E.S. and S.H.G., took the view that the reactions could be due to X missing the applicant (see paragraph 26 above). The City Court, which had refused to appoint an independent expert or to allow the applicant's own expert S.H.G. to observe contact between her and X (see paragraphs 68 above), stated however – without any further explanation – that it "interpreted" the reactions differently; although it found that the reactions could be "somewhat complex", its own assessment was that the reactions were "mainly" an expression of the boy's insecure attachment to the applicant and the fact that the contact sessions had served to reawaken his trauma (see paragraph 26 above). In summary, the City Court provided limited grounds for its findings in respect of the nature and causes of X's reactions and the applicant herself had had few possibilities to present any weighty evidence in that regard, after her procedural requests relating to the appointment of an independent expert or S.H.G. being allowed to observe contact between her and X had been turned down by the City Court. Nor can it be inferred from its judgment that the City Court made any other efforts of its own motion to confirm the reports relating to X's reactions.

70. Against the above background, and 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 decline the applicant's request to have the care order in respect of X lifted, remove her contact rights and withhold information about X's whereabouts, was conducted so as to ensure that all views and interests of the applicant were duly taken into account. It accordingly concludes that there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. Article 41 of the Convention provides:

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

A. Damage

72. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage, and EUR 20,000 in respect of pecuniary damage, as she alleged that she had lost her job as a result of the proceedings complained of.
73. The Government stated in response that, in the event that the Court should find a violation of Article 8 of the Convention, they would not contest that there were grounds to award just satisfaction in respect of non-pecuniary damage, and they preferred to leave the decision on the amount to the Court's discretion. They contested that there was a causal link between the matters complained of and the alleged pecuniary damage, and noted that in any event the applicant had not submitted any material to support that claim.
74. The Court considers that the applicant must have suffered non-pecuniary damage through distress, in view of the violation found above. It awards her EUR 25,000 in respect of that damage. As concerns the claim in respect of pecuniary damage, the Court considers that the applicant has not demonstrated a causal link between the matters which have amounted to a violation of the Convention and the alleged loss of income, which is in any event unsubstantiated. It therefore dismisses that claim.

B. Costs and expenses

75. The applicant also claimed EUR 2,978 for the costs and expenses incurred before the Court. This related to her engagement of a lawyer and some translation work.
76. The Government maintained that they could not examine whether the applicant was entitled to recover the above costs, as she had only submitted documents in Polish in support of her claim, and these documents were inaccessible to the Government.
77. 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 (see, for example, Ramos Nunes de Carvalho e Sá v. Portugal [GC], nos. 55391/13 and 2 others, § 227, 6 November 2018). In the present case, the Court dismisses the applicant's claim, having regard to the decision to grant the applicant legal aid and the failure to submit evidence regarding the extent of the applicant's obligation to pay her lawyer or an itemised list of the hours worked on the case (for a similar example, see Nistas GmbH v. Moldova, no. 30303/03, §§ 57-62, 12 December 2006).

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Declares the application admissible;

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

3. Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. Dismisses, unanimously, the remainder of 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
Deputy Section Registrar

Robert Spano
President