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La Corte EDU sull'affidamento di emergenza e il diritto al rispetto della vita familiare nel delicato bilanciamento tra interessi del genitore e del minore
(CEDU, sez. V, sent. 22 dicembre 2020, ric. n. 64639/16)

La Corte EDU si è pronunciata sul ricorso presentato da una cittadina norvegese contro il Regno di Norvegia, lamentando l'indebita interferenza nel diritto al rispetto della sua vita familiare ai sensi dell'art. 8 CEDU per essere stata privata delle sue prerogative genitoriali nei confronti della figlia e per averne disposto, l'autorità nazionale, l'adozione.
Sullo sfondo della questione viene in rilievo, anzitutto, il quadro clinico della ricorrente che già in altra e precedente occasione era stata sottoposta a cure psichiatriche per depressione postpartum oltre ad essere affetta da disturbi della personalità e da un lieve ritardo mentale. Alla luce di ciò veniva ravvisata, pertanto, l'inettitudine della ricorrente a svolgere il ruolo genitoriale e, quindi, disposto il trasferimento in un centro di assistenza per bambini e famiglie. Il personale medico del centro durante il periodo di soggiorno aveva potuto osservare il comportamento della ricorrente e, in considerazione dei preoccupanti esiti, aveva proposto di interrompere la permanenza, rimettendo alle autorità competenti la decisione di valutare il ricorso all'affidamento di emergenza della minore, sul quale decideva, in senso affermativo, il County Social Welfare Board.
Contro tale provvedimento la ricorrente presentava ricorso al Tribunale distrettuale, chiedendo che le sue capacità di assistenza e di cura fossero rivalutate, ma la sua domanda veniva respinta e nel 2016 la Corte Suprema disponeva definitivamente l'adozione della minore.
Nel ricorso presentato innanzi alla Corte EDU la ricorrente sosteneva che le ragioni addotte per giustificare l'adozione non erano pertinenti e sufficienti e non erano suffragate da considerazioni valide e ponderate. A suo avviso, il Governo non aveva realisticamente considerato altre opzioni di là dall'interruzione permanente dei legami tra lei e sua figlia e non aveva cercato alternative all'adozione né aveva effettuato un plausibile bilanciamento degli interessi in gioco. Per conseguenza, riteneva l'interferenza subita nel diritto al rispetto della sua vita familiare non necessaria e, perciò, in contrasto con l'art. 8, par. 2 CEDU.
Nel valutare il caso concreto la Corte EDU ha ribadito preliminarmente che in tutte le decisioni riguardanti i bambini e, in specie, quelle concernenti le restrizioni di contatto con i genitori, deve prevalere su ogni altro interesse quello del minore (cfr. Strand Lobben). Per costante giurisprudenza il rispetto per l'unità e per il ricongiungimento familiare in caso di separazione ricadono nell'ambito dell'articolo 8 della Convenzione pertanto, in caso di imposizione di un ordine di assistenza pubblica che limiti la vita familiare, spetta alle autorità un dovere positivo di adottare misure volte a favorire il ricongiungimento familiare. In questa ottica, infatti, qualsiasi misura concernente l'assistenza temporanea del minore deve mirare a quest'ultimo obiettivo, posto che i legami familiari possono essere recisi solo in "circostanze molto eccezionali".

Alla luce di tutto quanto premesso, i giudici di Strasburgo hanno applicato le suddette considerazioni al caso in esame e hanno considerato eccessivamente severe e restrittive le misure di contatto previste tra madre e figlia, sì da impedire l'instaurarsi di qualsiasi tipo di relazione genitoriale-filiale. Per conseguenza, la Corte - pur non dubitando che tali misure possano ridurre le conseguenze negative, fattuali ed emotive, dell'adozione, sia per il minore che per il genitore - ha ritenuto come, nel caso di specie, le autorità nazionali non abbiano avuto in debita considerazione l'obiettivo di perseguire e favorire il ricongiungimento familiare né di aver adottato misure utili ed idonee a preservare i legami familiari nella misura ragionevolmente possibile, violando perciò l'art. 8 CEDU.

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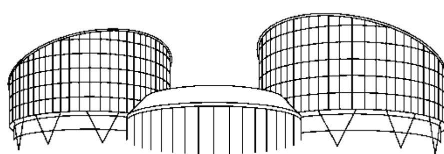

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF M.L. v. NORWAY

(Application no. 64639/16)

JUDGMENT

STRASBOURG

22 December 2020

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 M.L. v. Norway,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Síofra O'Leary, President,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Jovan Ilievski,
Lado Chanturia,
Arnfinn Bårdsen,
Mattias Guyomar, judges,
and Victor Soloveytchik, Section Registrar,

Having regard to:

the application (no. 64639/16) 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 Norwegian national, Ms M.L. ("the applicant"), on 27 October 2016;

the decision to give notice to the Norwegian Government ("the Government") of the complaint concerning Article 8 of the Convention;
the decision not to have the applicant's name disclosed;
the observations submitted by the respondent Government and the observations in reply submitted by the applicant;
the comments submitted by the Government of the Slovak Republic and Ordo Iuris Institute of Legal Culture, who were granted leave to intervene by the President of the Section;
Having deliberated in private on 15 December 2020,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns a decision to deprive the applicant of her parental responsibilities in respect of her daughter, who had been in foster care, and authorise the daughter's adoption by her foster parents. The applicant complained that those measures had given rise to a violation of her right to respect for her family life under Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1975 and lives in H. Before the Court she was represented by Ms R. Arnesen, a lawyer practising in Bergen.
3. The Government were represented by their Agent, Mr M. Emberland of the Attorney General's Office (Civil Matters) as their Agent, assisted by Ms L.-M. Jünge, advocate at the same office.
4. The facts of the case, as submitted by the parties, may be summarised as follows.
Birth of the applicant's daughter and the emergency placement decision
5. The applicant became pregnant while on holiday abroad in 2010. On 7 December 2010 the child welfare services received a notification of concern from the midwife who was attending the applicant. According to the notification the applicant had had a son from a previous relationship, born in 2000, and after giving birth to him she had suffered from postnatal depression, which had been treated at a hospital. The midwife moreover informed the authorities that the son lived with his father, and that the applicant had been subject to voluntary as well compulsory mental health care on a number of occasions.
6. The child welfare services contacted the applicant prior to the birth of her daughter, but she did not want their assistance. Accordingly, other public authorities were asked to notify the child welfare services in the event that they had any concerns. The hospital in which the applicant was to give birth was asked to inform the child welfare services as soon as the child had been born.
7. On 15 March 2011 the applicant's general practitioner informed the child welfare services that the applicant had been diagnosed with emotionally unstable personality disorder (F60.3) and mild mental retardation (F70). In addition, on 8 April 2011, the municipal mental health services submitted information to the effect that the applicant lived in a home provided by those services, but that she refused assistance and aid from the staff. Reference was also made to medical assessments that had been made in connection with the applicant's first pregnancy. It concluded

that there was a high risk that the applicant would use violence in conflicts and that it was unrealistic that she should have the daily care of children.

8. The applicant gave birth to her daughter on 5 April 2011. She was informed by the child welfare services that her daughter would be subject to an emergency placement decision unless the applicant consented to a stay at a child and family centre ("the centre"), where her caring skills would be assessed and where it would be ensured that the daughter received appropriate care. The applicant and her daughter moved into the centre on 8 April 2011.

9. In a conversation between the staff at the centre and the child welfare services on 11 April 2011, the staff expressed concerns regarding the fact that they found it difficult to cooperate with the applicant, whom they perceived as paranoid. She was helpless and had major problems in taking care of the child's practical needs in respect of matters such as hygiene, care and safety. No interplay between the applicant and the child had been observed, either. In another conversation between the same parties on 13 April 2011, the staff furthermore stated that they were unable to give guidance to the applicant, as she did not understand why she was at the centre. She was perceived as unpredictable and, according to the staff, she did not shield the child from her anger and aggression. She had little focus on her daughter, and had not bonded and did not interact with her. The centre's staff proposed to discontinue the stay and advised that an emergency placement decision be adopted.

10. On the basis of the above, the child welfare services considered that assistance measures, although extensive, had been unsuccessful. It was not appropriate for the applicant's stay at the centre to be continued or for her to be allowed to return home with the child. On 14 April 2011 an emergency placement decision was adopted, pursuant to section 4-6 of the Child Welfare Act (see paragraph 51 below), to the effect that the child was to be placed in public care. On the following day, the chair of the County Social Welfare Board (fylkesnemnda for barnevern og sosiale saker) approved that decision.

11. On 28 April 2011 the applicant lodged an appeal against the emergency placement decision. She argued that she had only been allowed a few days in the centre and that she had been in a vulnerable situation owing to her having only just given birth. The case had been wrongly presented and she requested that her caring skills be reassessed. As to her earlier rounds of treatment, she emphasised the fact that she had not been subject to treatment since 2006, and that her last treatment had been administered within the context of stress caused by her having undergone an abortion. She had recently moved in with her mother, who had asked to be approved as a foster parent; moreover, the applicant's brother and sister could assist and support her and her mother.

12. On 2 May 2011 the Board, by its chair, held a meeting in order to hear the case. A representative from the child welfare services attended, as did the applicant and her mother and both gave testimony. It appears that the applicant on this occasion stated that she had not been subject to mental health treatment since 2008.

13. On 3 May 2011 the Board, in the person of its chairperson, decided to maintain the emergency decision. It took account of the applicant's history of hospitalisation. In addition to the above-mentioned medical assessments the Board mentioned, inter alia, an evaluation made following treatment given in 2002, according to which the applicant easily lost control and had expressed

aggression. She had asked her then boyfriend to kill a previous boyfriend of hers, and had at one occasion rammed a knife into a pillow next to that former boyfriend while he was sleeping. In 2006 the applicant had first been treated at a hospital after she had undergone an abortion. According to the summary of the medical assessments made at that time, she had destroyed items in the house and physically attacked her mother. At the hospital she had attributed her anger against her family to the fact that they had pressured her to abort her pregnancy. Later that same year, the applicant had again been hospitalised after having become aggressive towards her mother. On that occasion the applicant had stated that she would surely hit her mother again and that she had problems controlling her anger. According to medical observations recorded in 2007, the applicant had not been responsive to therapy and had not understood the necessity of taking medication in the manner prescribed. In 2008 she had been hospitalised after an episode in which, in the presence of her son, she had climbed out of a window and threatened to jump. Moreover, there had been incidents in which she had threatened to use a knife both on herself and on others.

14. The Board also reviewed a report prepared by staff at the centre. The report noted that the applicant did not secure her daughter, but instead left her alone, on the nappy-changing table. Moreover, the applicant had experienced certain problems in cleaning, dressing and undressing the child. The report also contained observations regarding the applicant's emotional care of the daughter and concluded by remarking that the applicant had appeared unstable in her mental functioning throughout the entire period of her stay at the centre.

15. In the light of the way the applicant's health had been described in medical assessments since 2001 and how she had functioned during her six day stay at the centre, the Board found that there had been a risk that the daughter could have suffered severe injury if she had moved home with the applicant. The nursing and emotional care of the girl would have been deficient, and the emotional development of the girl would have stagnated. This would have been very damaging to the girl, who was of an age at which continuous stimulation and "mirroring" (that is to say actions intended to assure the child having been heard and understood) was entirely decisive for her further development. The conditions for an emergency decision had thus been met on 14 April 2011, when the emergency decision had been adopted. The Board, moreover, considered that the conditions were also met as at the date of its own decision. As to the applicant's moving in with her mother, it stated that there was still a risk of substantial damage being caused to the child because of the fact that major conflict regularly arose between the applicant and her family, from the effects of which the applicant would probably not be able to protect her daughter. In addition, the applicant's mother had clearly expressed her opinion that her daughter would be capable of caring for the child without assistance, which indicated that deficiencies in the applicant's care for her daughter would be overlooked and not reported to the child welfare services. The emergency decision was therefore upheld.

16. The child welfare services had granted the applicant contact rights entitling her to have contact with her daughter once every third week. The Board noted that this constituted a "restrictive decision", as the case concerned an infant temporarily placed outside the home. It found nonetheless that it should be upheld, noting in that regard (i) strange remarks made by the applicant to the effect that the child must have been switched and (ii) the fact that the applicant had criticised the interim foster parents for feeding her daughter so much that she had been unable

to recognise her. The Board stated, however, that there was a possibility of the applicant being awarded more extensive contact rights if the applicant were to visit a doctor and start taking appropriate medicines to stabilise her mental functioning. On essentially the same grounds, the Board held that she should not be informed of the whereabouts of her daughter, in accordance with section 4-19 of the Child Welfare Act (see paragraph 51 below).

The proceedings concerning the placement of the applicant's daughter in public care

17. On 26 May 2011 the child welfare services lodged an application with the County Social Welfare Board for a care order to be issued in respect of the applicant's daughter, in accordance with section 4-12 of the Child Welfare Act (see paragraph 51 below). They also engaged a psychologist to assess the applicant's caring skills.

18. The psychologist delivered her written report on 16 August 2011; the report concluded that the applicant's mental functioning rendered her incapable of taking care of children.

19. The Board, which was composed of one jurist qualified to work as a professional judge, one psychologist and one lay person, heard the case on 1 and 2 September 2011. The parties and eight witnesses were heard.

20. In a decision dated 7 September 2011 the Board issued a care order in respect of the applicant's daughter and decided that the daughter would be placed in a foster home.

21. It can be seen from the wording of the decision that the applicant had resumed taking her prescribed medication in May 2011, and had also resumed psychological therapy. After the emergency placement there had been seven contact sessions arranged between the applicant and her daughter. During the sessions, the applicant's mother, a representative from the child welfare services and one external supervisor had been present. The interim foster mother had reported that the child had suffered reactions to the contact sessions in the form of vomiting, not making eye contact with anyone, "making new sounds" and feeling stiff. It had also been reported that she had experienced uneasiness, poor control over food intake, crying and a strong need for comfort and closeness.

22. The Board unanimously found that the applicant was capable of providing sufficient practical care. A majority of its members found, however, that the applicant was incapable of offering sufficient emotional care. The majority of the Board members noted that although the applicant had restarted medication that appeared to have a calming effect on her, it would not improve her fundamental deficiencies – namely, a lack of sensitivity towards the child and difficulties in seeing the child's needs rather than her own. The majority also considered that further assistance measures would not remedy those deficiencies. It noted in that respect that the applicant's lack of skills in providing appropriate care were rooted in the way that the applicant's personality functioned, which was not something that could be improved. Referring to their conclusion that the applicant's difficulties in providing emotional care were anchored in her personality traits, the majority of the Board members also noted their belief that the care order would be long-term. A minority of the Board (the lay member) considered that the applicant's situation had improved and that she would be capable of taking care of her daughter, with assistance.

23. The majority Board members found that the applicant should be granted contact rights amounting to two hours, four times yearly. They referred in that regard to their above-mentioned conclusion that the care order would be long-term, which meant that the applicant's daughter

would grow up in her foster home. The minority lay member considered that the contact rights should be considerably more extensive. The Board unanimously saw no reasons why the applicant should not be informed of the address of the foster home.

24. The applicant appealed against the Board's decision to the District Court (tingrett).

25. The District Court sitting as a bench composed of one professional judge, one psychologist and one lay person, held a hearing at which the parties and eight witnesses gave evidence. In its judgment of 31 January 2012, it stated that it essentially agreed with the Board's analysis of the situation, and added that developments subsequent to the Board's decision also supported the argument that that should be upheld. According to the evidence, the applicant had many positive caring skills and had, during contact sessions, demonstrated the ability to maintain intuitive, good interaction with the child. The problem was that that only lasted for a short while, before her behaviour changed into that was clearly incompatible with caring for children. It was likely that the placement would be long-term. Against that background, it delivered a decision that upheld that of the Board, except that it found that the applicant's contact rights during 2012 should be limited to one hour for each visit.

26. On 11 April 2012, following an application lodged by the applicant's lawyer, the High Court (lagmannsrett) refused the applicant leave to appeal against the District Court's judgment.

27. On 11 May 2012 the Supreme Court's Appeals Leave Committee (Høyesteretts ankeutvalg) dismissed an appeal lodged by the applicant against the High Court's decision.

The proceedings concerning the discontinuation of public care

28. On 4 October 2012 the applicant lodged a request with the Board for the care order to be lifted and her daughter returned to her. She submitted that new information had emerged regarding life situation and the state of her health.

29. In January 2013 the child welfare services engaged a psychologist to examine the applicant's caring skills and lodged an application with the Board for a decision on the question of whether the care order should be lifted. The psychologist delivered her written report on 14 March 2013 and the Board, which was again composed of a jurist qualified to be a professional judge, a psychologist and a lay person, held a hearing on 4 and 5 April 2013. The parties and eight witnesses were heard.

30. On 12 April 2013 the Board dismissed the applicant's application for the lifting of the care order. Although the applicant had continued with her medication and psychological therapy – and the psychologist treating her had stated that she had matured and now functioned considerably better than two years previously – the opinion of the psychologist (appointed in January 2013) had largely been in line with that of the psychologist who had been appointed during the first set of proceedings (see paragraphs 17-18 above). The Board agreed with the psychologist's opinion. The extent of the applicant's contact rights in respect of her daughter remained unaltered. The Board held in that respect that the applicant's daughter was to grow up in the foster home, either as a foster child or an adopted child, and stated that the contact rights had to reflect that state of affairs.

31. The applicant brought an action in the District Court, sitting as a bench composed of a different professional judge, psychologist and lay person. It heard the case on 16 and 17 June 2014.

32. The District Court delivered a judgment on 1 July 2014 in which it arrived at the same conclusions as had the Board, furthermore stating that it essentially agreed with the Board's

reasoning. It additionally noted, among other things, that the applicant's primary argument was that the placement in public care of her daughter had been due to the fact that she herself had previously been wrongly diagnosed with mild mental retardation, whereas it had later been clarified that she had been suffering from attention deficit hyperactivity disorder (ADHD) and thus, at the time of the District Court's judgment, finally had been receiving appropriate medication and therefore would function better than before, also when it came to providing care for her daughter. The District Court found that those circumstances had not, however, supported the conclusion that the applicant at the time had possessed normal care skills. It also pointed out that the applicant had not taken care of her daughter for three years, had had a small social network and had not properly arranged for her daughter to attend kindergarten or planned leisure activities for her. Similarly, she had similarly few or no plans in respect of her own education or work, and had been unemployed since 2000. She had recently started to have more contact with her son, but that had been at the son's initiative. In the District Court's view, that could not be viewed as an indication that the applicant had sufficient care skills. As regards the question of contact rights, the District Court stated that the placement in care of the applicant's daughter would be long-term and that the purpose of contact was not, therefore, to make a reunification of the family possible by building an attachment between the applicant and her daughter.

The proceedings concerning parental responsibilities and adoption

33. On 5 May 2015 the child welfare services lodged an application with the County Social Welfare Board for (i) an order that the applicant be deprived of her parental responsibilities in respect of her daughter, which would then be transferred to the authorities, and (ii) authorisation for the subsequent adoption of the daughter by her foster parents, in accordance with section 4-21 of the Child Welfare Act (see paragraph 51 below).

34. The Board, again composed of one jurist qualified to work as a professional judge, one psychologist and one lay person, held a hearing on 4 and 5 June 2015. The applicant attended with her legal-aid lawyer and gave evidence. Nine witnesses were heard.

35. On 15 June 2015 the Board delivered a decision; it noted that the applicant's daughter had been living at her foster home since she had been nine days old. She was four years when the Board had assessed the case. All her close attachment were to the foster home, and the foster parents acted in every way as her parents and primary caregivers. She had no close attachment to the applicant.

36. Additionally, the applicant's daughter was, in the Board's view, a very vulnerable child, having been diagnosed, inter alia, with an unspecified childhood emotional disorder (F93.9). In a summary report on an examination of the applicant's daughter at the Children's and Young People's Psychiatric Out-Patient Clinic (barne- og ungdomspsykiatrisk poliklinikk), dated 5 November 2011, it was noted that she was vulnerable to stress and that she had "angst/freeze" reactions in stressful situations –particularly after visits from the applicant.

37. Lastly, the Board referred to testimony from a psychologist who had carried out an expert assessment in 2013; the psychologist had stated that it was likely that the applicant's daughter would risk a "deviating development" if removed from the foster home, instead of the positive development that had at that time been experiencing.

38. In conclusion, the Board found it proven that removing the applicant's daughter from the foster home would be liable to lead to serious problems for her. Although it was not necessary for

the purpose of deciding the case, the Board noted that less than one year had passed since the District Court had found that the applicant was incapable of providing appropriate care for her daughter, and that new circumstances that might have led to a different evaluation of that question differently had not arisen.

39. Moreover, the Board found it to be in the best interests of the applicant's daughter that the foster parents adopt her. The daughter was of an age at which she had still no conception of her being a foster child. An adoption at that time would make her a full-fledged member of that family without her ever having to formulate such a conception. It furthermore noted that during the four years since the first placement order had been made, there had been two sets of proceedings concerning the care of the daughter – each before both the Board and the District Court. After hearing the applicant's statement during the hearing of 4-5 June 2015, the Board had been left with the impression that she did not understand the need for her daughter to remain in foster care; it noted that the applicant had stated that she was prepared to lodge further requests for her daughter to be returned to her. In the Board's view, further proceedings would not be in the daughter's best interests.

40. The Board concluded that the applicant was to be deprived of her parental responsibilities in respect of her daughter, and that the adoption of her daughter was to be authorised.

41. The applicant lodged an appeal against the Board's decision with the District Court, which appointed a psychologist to examine the case. She delivered her written report on 30 November 2015.

42. The District Court, sitting as a bench again composed of one professional judge, one psychologist and one lay person, held a hearing on 14 and 15 December 2015. The applicant attended with her legal-aid lawyer; seven witnesses, in addition to the applicant herself and the court-appointed expert (see paragraph 41 above), were heard.

43. In its judgment of 22 December 2015, the District Court stated at the outset that it essentially agreed with the grounds provided by the Board. It found that the applicant would be unable to provide her daughter with the appropriate care. It took account of the applicant's weak cognitive functioning (which had been indicated by the court-appointed expert). The court noted that the applicant had previously been diagnosed with mild intellectual disabilities, but that it had been found that there was no longer any reason to uphold that diagnosis. Instead she had been diagnosed with ADHD, for which she was receiving medication. The District Court did not deem those changes in diagnoses to be decisive. Instead, it referred to the examination by the expert that it had appointed; according to that examination, the applicant had problems with accepting and taking account of information that did not accord with her views. The applicant's testimony and appearance during the hearing had borne out the assessments made by the expert.

44. Moreover, the District Court found that the applicant's daughter had become so attached to the foster home that removing her now could lead to serious problems for her. She had lived in the foster home for four and half years (ever since she had been nine days old), and the foster parents were her "psychological parents". She was, moreover, a sensitive and vulnerable child and displayed strong reactions to visits from the applicant. The court-appointed expert had concluded that returning the girl to the applicant would trigger a risk of her development being seriously

arrested – both in the light of the applicant's weak caring skills and because of the risk of moving such a vulnerable child from her current "care base", to which she was strongly attached.
45. On the topic of whether adoption would be in the best interests of the applicant's daughter, the District Court stated that it had to be determined whether it would be better for the applicant's daughter to be adopted than to grow up as a foster child. The District Court was of the view that the daughter had a strong need for her care situation to be clarified. She understood the foster parents to be her parents and she was well integrated into their family, enjoying a good and close relationship with both her foster brothers and her extended foster family. As to the applicant, she did not seem to accept that she would never be able to assume the care of her daughter. There were therefore reasons to believe that there would be future proceedings seeking the reunification of the applicant with her daughter or extended contact rights, unless adoption was at that time authorised. While the biological principle should be given considerable weight, the attachment between the applicant and her daughter was nevertheless very limited. As the foster parents had not consented to post-adoption contact visits (under an "open adoption" arrangement), that issue could not be decided. The District Court assumed, however, that the foster parents would facilitate contact between the applicant and her daughter, should the daughter at a later point in time so wish.
46. On the basis of an overall assessment, the District Court concluded that the adoption should be authorised. It accordingly decided to deprive the applicant of her parental responsibilities in respect of her daughter and to authorise the adoption of the child by her foster parents.
47. On 8 March 2016 the High Court refused the applicant leave to appeal against the District Court's judgment.
48. On 4 May 2016 the Supreme Court's Appeals Leave Committee dismissed the applicant's appeal against the High Court's decision.
RELEVANT LEGAL FRAMEWORK AND PRACTICE
49. 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 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 the protection of their personal integrity. The authorities of the State shall create conditions that facilitate a child's development – including ensuring that that child is provided with the necessary economic, social and health-related 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-2015-93)), paragraphs 57 and 67) – that the above provisions are to be interpreted and applied in the light of relevant models derived from international law, such as the United Nations Convention on the Rights of the Child, the European Convention on Human Rights and the case-law of this Court.

50. Furthermore, sections 2 and 3 of the Human Rights Act of 21 May 1999 (menneskerettsloven) read, in so far as relevant:

Section 2

"The following Conventions shall have the force of Norwegian law in so far as they are binding for Norway:

1. The Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 of 11 May 1994 to the Convention, together with the following Protocols: ...

4. The Convention of 20 November 1989 on the Rights of the Child, together with the following protocols: ..."

Section 3

"The provisions of the Conventions and Protocols mentioned in section 2 shall take precedence over any other legislative provisions that conflict with them."

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

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 services shall implement such assistance as is immediately required. Such measures shall 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 has not been sent to the county social welfare board within the time-limits mentioned in the fourth paragraph, the order shall lapse."

Section 4-12. Care orders

"A care order may be issued

(a) if there are serious deficiencies in the daily care received by the child, or serious deficiencies in terms of the personal contact and security needed by a child of his or her age and development,

(b) if the parents fail to ensure that a child who is ill, disabled or in special need of assistance receives the treatment and training required,

(c) if the child is mistreated or subjected to other serious abuse at home, or

(d) if it is highly probable that the child's health or development may be seriously harmed because the parents are unable to take adequate responsibility for the child.

An order may only be made under the first paragraph when necessary due to the child's current situation. Hence, such an order may not be made if satisfactory conditions can be created for the child by assistance measures under section 4-4 or by measures under section 4-10 or section 4-11.
An order under the first paragraph shall be made by the county social welfare board under the provisions of Chapter 7."
Section 4-19. Contact rights. Secret address
"Unless otherwise provided, children and parents are entitled to have 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 should be no contact. The county social welfare board may also decide that the parents should not be entitled to know the child's whereabouts. ...
The private parties cannot request that a case regarding contact 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 care orders
"The county social welfare board shall revoke a care order where 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 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. Before a care order is revoked, the child's foster parents shall be entitled to state their opinion.
The parties may not request 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 request for revocation of the previous order or judgment was not upheld with reference to section 4-21, first paragraph, second sentence, new proceedings may only be requested where documentary evidence is provided to show that significant changes have taken place in the child's situation."
52. Other relevant material relating to domestic and international law is referred to in the Court's judgment in the case of Strand Lobben and Others v. Norway [GC], no. 37283/13, §§ 122-139, 10 September 2019. Furthermore, on 27 March 2020, the Supreme Court, sitting in a Grand Chamber formation, delivered a judgment and decisions in three childcare-related cases (HR-2020-661-S, HR-2020-662-S and HR-2020 663-S) in order to formulate guidelines for the application of the Child Welfare Act in the light of judgments given by this Court in respect of the case of Strand Lobben and Others and other subsequent cases concerning childcare-related measures adopted in the respondent State.
53. One of the three cases before the Supreme Court (HR-2020-661-S) concerned an appeal against the High Court's refusal to grant leave to appeal against a judgment depriving parents of parental responsibilities and authorising the adoption of the child in question. In the decision delivered in respect of that case, the Supreme Court carried out an in-depth examination of this Court's case-law, and of domestic case-law and practice, in order to clarify the Convention requirements and identify and resolve possible inconsistencies with a view to ensuring compliance with the Convention.

54. As to cases involving the replacement of foster care by adoption, the Supreme Court concluded that the general legal conditions (as they were expressed in the Child Welfare Act and the Supreme Court's case-law) were compliant with the Convention and the case-law of this Court and could thus be maintained, but that adjustments were still necessary in the application of these legal conditions in the practice of the child welfare authorities. Under the heading "Summarising remarks on reunification", the Supreme Court judge who delivered the judgment stated the following:
"(142) On the basis of the presentation of the Child Welfare Act, as interpreted in the case-law and judgments of the European Court of Human Rights, the status of the law may in my opinion be summarised as follows:
(143) Under both Norwegian law and the European Convention on Human Rights, the overall goal [in each case] is to have a care order revoked and the family reunited. A care order is therefore always temporary as a starting point. The authorities have a positive duty to actively strive to maintain the relationship between the child and the parents and to facilitate reunification. This implies that the authorities must monitor the development closely. Contact rights and assistance measures are crucial here. As long as reunification is the goal, the contact must be arranged to make this possible. The authorities are to ensure, to the extent possible, that the contact sessions are of a good quality. If the sessions do not work well, one must try out adjustments or alternatives – for instance arranging them elsewhere, or under guidance.
(144) As long as family reunification is the goal, the purpose of access is not only to ensure that the child knows who his or her parents are, but also to preserve the possibility of reunification. This requires a thorough assessment of the frequency and quality of the contact sessions. And even when reunification is not possible, it has an intrinsic value to maintain family bonds as long as it does not harm the child.
(145) In my opinion, and depending on the situation, the child welfare services should in principle not be prevented early in the process – when choosing where to place a child (section 4-14 of the Child Welfare Act) and preparing a care plan (section 4-15) – from assuming that the placement will be long-term. If siblings are involved, an individual assessment must be made with regard to each child. However, the extent of contact must in any event be determined with a view to the future return of the child to his or her biological parents. This applies until a thorough and individual assessment at a later stage demonstrates that this goal should be given up, despite the authorities' duty to facilitate reunification. At any rate, the frequency of the contact sessions cannot be determined according to a standard, and it must be borne in mind that a strict visiting regime may render reunification more difficult.
(146) It is crucial that the authorities do their utmost to facilitate family reunification. However, this goal may be abandoned if the biological parents have proved particularly unfit (see, for instance, Strand Lobben, paragraph 207). Such a situation may also affect which measures the child welfare authorities need to apply. The interests of the child are also in this assessment of paramount importance. However, this does not automatically preclude contact altogether while the child is in foster care. The parents may be competent in contact situations, but lack the caring

skills necessary for reunification. Maintaining the family ties, even if the goal of reunification has been given up, still has a value in itself.

(147) Secondly, the parents cannot request measures that may harm the child's health and development (see Strand Lobben, paragraph 207). Adoption may therefore take place if it can be established that continued placement will harm the child's health or development. In addition, reunification may – without such damaging effects – be ruled out when a considerable amount of time has passed since the child was originally taken into care, so that the child's need for stability overrides the interests of the parents (see Strand Lobben, paragraph 208). At any rate, the child welfare authorities and the courts must, before possibly deciding on adoption, make an individual assessment based on a solid factual basis and thorough proceedings.

(148) Accordingly, in these three situations, one must bear in mind the fact that it is in the very nature of adoption that no real prospects for family reunification exist and that it is instead in the child's best interests to be placed permanently in a new family, (see Strand Lobben, paragraph 209)."

55. In this Grand Chamber decision, the Supreme Court also stated that judgments by this Court had demonstrated that the decision-making process, the balancing exercise or the reasoning had not always been adequate. In particular, this Court had found violations in respect of the authorities' duty to work towards the reunification of the child and the parents. As to the dilemmas represented by the choice of perspective when making an assessment of possible errors or shortcomings, the Supreme Court stated the following:

"(114) When Norwegian courts, and ultimately the Supreme Court, review orders issued by the child welfare authorities, they apply the Child Welfare Act in line with the principle of the best interests of the child (see the second paragraph of Article 104 of the Constitution, Articles 3 and 9 of the Convention on the Rights of the Child and section 4-1 of the Child Welfare Act, which I have already mentioned). At the same time, case-law must be in accordance with the European Convention on Human Rights, and the Supreme Court has adjusted its interpretation of the Child Welfare Act to reflect the Court's case-law.

(115) If errors have been committed by the child welfare services or the County Social Welfare Board at an earlier stage of the proceedings, the court may, depending on the circumstances, seek to remedy such errors by setting aside a care order or an adoption order – for instance, owing to inadequate relief measures, or because the basis for the decision or its reasoning is unsatisfactory. In other cases, the court may change a previous decision – for example by extending the access granted. However, if no such options are available, the court will, depending on the situation, have to choose foster care or adoption if it is clear at the time of the judgment that this is in the best interests of the child, despite previous mistakes having been made during the consideration of the case. Accordingly, the extent to which not just the error, but also the final Norwegian ruling, must be regarded as a violation of Article 8 (if the Court finds a violation at a later stage) depends on how the Court's judgment is interpreted.

(116) Moreover, to prevent the occurrence of such a situation at the review-stage instances, it is important that the child welfare services and the County Social Welfare Board – in their work towards finding the measures that best serve the child – from the very outset consider all relevant

requirements laid down in the second paragraph of Article 104 of the Constitution, Article 8 of the Convention, the Convention on the Rights of the Child and chapter 4 of the Child Welfare Act."

56. The Supreme Court delivered a further decision on 11 June 2020 (HR-2020-1229-U) in which it also stressed the temporariness of care orders and the aim of reunification in the light of the case-law of this Court. Furthermore, on 15 September 2020 it decided on two cases that concerned the conditions necessary under domestic law for the lifting of care orders (HR-2020-1788-A and HR-2020-1788-A). With reference to its decisions of 27 March 2020, it reiterated on 15 September 2020 that the general conditions set out in the Child Welfare Act and the relevant domestic case-law – including the "threshold" for issuing care orders – could be maintained, but that the practice in respect of its application to actual cases needed some adjustments in the light of the relevant judgments of this Court.

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

57. The applicant complained that the deprivation of her parental responsibilities in respect of her daughter, X, and the authorisation given to X's foster parents to adopt her, had violated her right to respect for her family life, as provided by 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."

Admissibility

58. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

Merits

The parties' and third-party submissions

(a) The applicant

59. The applicant maintained that the reasons adduced to justify the adoption of her child had not been relevant and sufficient, and not supported by sufficiently sound and weighty considerations. In her view, the Government had not realistically considered any options other than a permanent severance of the ties between her and her child and had not sought any alternatives to adoption.

60. Furthermore, the applicant submitted that the domestic authorities had not made a thorough assessment of the case comprising a comprehensive balancing of the opposing interests. Nor had they shown any understanding of the fact that the case concerned far-reaching intrusions into family and private life.

61. The foster mother had been hostile to the applicant throughout the proceedings and the adoption had been authorised in order to ease the foster parents' situation and stop the applicant's rights to have the case tried judicially. The hearing in the domestic courts had not been fair.

62. In sum, the applicant maintained that the domestic authorities had not performed an adequate balancing of interests, as mandated by the Court in its case-law; the domestic authorities had failed in their positive duties under Article 8 of the Convention; the applicant had not been given a fair trial; and the interference had not been necessary (as required by the second paragraph of Article 8).

(b) The Government

63. The Government did not dispute that there had been an "interference" with the applicant's right to respect for her family life, as guaranteed by Article 8 § 1 of the Convention. They asserted that the interference had pursued a legitimate aim and been in accordance with the law, under the second paragraph of that provision.

64. In the Government's view, the decision to allow X's foster parents to adopt her had been "necessary in a democratic society" and proportionate under Article 8 § 2 of the Convention. The Government broadly agreed with the general principles set out in the Grand Chamber's judgment in the case of Strand Lobben and Others v. Norway ([GC], no. 37283/13, §§ 202-13, 10 September 2019), but argued that the considerations relating to the best interests of the child, as outlined in that judgment, should be developed further. Among other things, the Government invited the Court to develop its view as to how to reconcile the positive duty to adopt measures to facilitate family reunification with the duty to ensure that a child is protected against harm being inflicted by his or her parents.

65. The Government also argued that the Grand Chamber in the case of Strand Lobben and Others (cited above) had adopted a balancing approach between conflicting interests of the child in question and those of the parents that had not taken sufficient account of the supremacy of the child's interest in being protected. Moreover, such a balancing approach might also, the Government maintained, not readily correspond with the respondent State's obligations pursuant to the United Nations Convention on the Rights of the Child.

66. In the instant case, the reasons given for the impugned measures – in particular the combination of the applicant's weak abilities in respect of providing emotional care and the child's particular vulnerability and sensibility – had clearly been relevant and sufficient. The measures had pertained to the child's best interests and the criterion prescribed by the Court's case-law of "very exceptional circumstances" for acceptance of a definite severance of family ties had been met. It had been in the child's best interests to ensure stability, and only adoption could provide the requisite stability in her particular case. The Government recognised that the ultimate goal of reunification had been given less consideration in the early stages of the instant case, but setting that goal aside had at that point undeniably been in the best interests of the child.

67. The Government also maintained that the decision-making process had been fair and had afforded due respect to the applicant's rights. They emphasised, inter alia, in that regard that experts had been involved in the case at its different stages and that an updated report by a specialist psychologist, which had taken into account any developments in respect of the applicant's circumstances, had been delivered one month before the District Court's judgment.

68. In sum, the impugned interference had corresponded to a "pressing social need" and been "proportionate to the legitimate aim pursued".

(c) Third-parties

(i) The Government of the Slovak Republic

69. The Government of the Slovak Republic emphasised the broad consensus in international law to the effect that where children were involved, their best interests had to be taken into account; they also reiterated the Court's principles that arose from judgments relating to childcare measures. They furthermore stated that they welcomed the judgment of the Grand Chamber in the case of Strand Lobben and Others (cited above) and that the approach taken in that judgment fully corresponded to their position with regard to measures such as those that had been at issue in that case.

70. The Government of the Slovak Republic submitted that the removal of a child from the care of his or her biological family had to be viewed as an extreme measure, applicable in the event that no other form of supportive intervention by the authorities in the family was possible and the child was at risk. Furthermore, any such removal had to be regarded as a temporary measure, to be discontinued as soon as circumstances permitted, and any measure of implementation had to be consistent with the ultimate aim of reuniting the biological parents with their child. Therefore, it was necessary to take measures to ensure that, after the improvement of the parents' situation, it would be possible to return the child to the family.

71. The Slovak Government added that if the situation so allowed, it was important to support the development of ties between parents and children by allowing contact of an appropriate degree of frequency, as restrictions on contact could be the starting point for the child's alienation from his or her biological family and, thus, render it impossible for the family to reunite. At the same time parents should be provided with help to improve their caring skills. Furthermore, when placing a child in public care, priority should be given to placements with family or relatives where possible; and where that was not possible, the child's cultural and religious roots should be taken into account. The separation of siblings should also be avoided.

(ii) Ordo Iuris

72. Ordo Iuris Institute of Legal Culture, a non-governmental organisation, submitted that as far as the family life of a child was concerned, its best interests were of paramount importance. Family ties could only be severed in "very exceptional circumstances"; as had been pointed out by the Council of Europe's Committee of Experts on Family Law, such circumstances could include not only criminal offences committed by the parent against the child (such as sexual or physical abuse) but also, for example, a situation whereby a parent was suffering from mental illness and the physical and moral welfare of the child was consequently in danger.

73. Ordo Iuris also drew up certain fundamental procedural rules that in their view should be respected during proceedings regarding parental responsibilities, including the rule that any temporary placement of a child in alternative care should be used as an ultima ratio measure.

74. In its conclusions, Ordo Iuris emphasised, inter alia, that public authorities should always rely on the presumption that a child's interests were best served by that child remaining with his or her biological family, and that any doubt should therefore be resolved in favour of the parents. Moreover, Article 8 of the Convention could in its view be interpreted as conferring the "right to a second chance", meaning that parents should be given opportunities to change their behaviour and improve caring skills in order to prepare for reunification with their child.

The Court's assessment

75. The Court firstly observes that the application concerns the decision to deprive the applicant of her parental responsibilities in respect of her daughter, and to authorise her daughter's adoption by her foster parents, which became final when the Supreme Court dismissed the applicant's appeal in its decision of 4 May 2016 (see paragraph 48 above). Accordingly, the original proceedings – in which a care order in respect of X was issued, and which formed the basis for her placement with the foster parents who subsequently became her adoptive parents – do not as such form part of the case before the Court (see paragraphs 17-27 above). Nor are the subsequent proceedings concerning the applicant's claim to have the care order lifted the object of the application (see paragraphs 28-32 above). Nonetheless, in so far as the applicant may be understood as claiming that the actions or inactions of the authorities during the period between her daughter's placement in foster care and their decision to deprive the applicant of her parental responsibilities pre-determined or were otherwise closely linked to the latter decision, the Court may have regard to events dating from that period as well.

76. As to applicant being deprived of her parental responsibilities in respect of her daughter and the latter's adoption, which for the purpose of the present analysis may be treated jointly, the parties agreed that those measures had amounted to an interference in the applicant's right to respect for her family life, that they had been in accordance with the law (namely the 1992 Child Welfare Act – see paragraph 51 above), and had pursued the legitimate aims of protecting the girl's "health or morals" and her "rights". The Court considers that there has been indeed such an interference, that it was in accordance with the law and that it pursued a legitimate aim. It must examine, therefore whether the measures were necessary in a democratic society under Article 8 § 2 of the Convention.

(a) General principles

77. 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 extensively set out in the case of Strand Lobben and Others (cited above), to which reference is made. The principles have since been reiterated and applied in, inter alia, the cases of K.O. and V.M. v. Norway, no. 64808/16, §§ 59-60, 19 November 2019; A.S. v. Norway, no. 60371/15, §§ 59-61, 17 December 2019; Pedersen and Others v. Norway, no. 39710/15, § 60-62, 10 March 2020; and Hernehult v. Norway, no. 14652/16, § 61-63, 10 March 2020.

78. For the purpose of the present analysis, the Court reiterates that, in so far as the family life of a child is concerned, there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance. Indeed, the Court has emphasised that in cases involving the care of children and contact restrictions, the child's interests must come before all other considerations (see Strand Lobben and Others, cited above, § 204).

79. The Court reiterates, moreover, that regard for 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 event of the imposition of a public care order that restricts 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 relevant authorities with progressively increasing force 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. 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). It is crucial that the contact regime, without exposing the child to any undue hardship, effectively supports the goal of reunification until – after careful consideration, and taking account of the authorities' positive duty to take measures to facilitate family reunification – the authorities are justified in concluding that the ultimate aim of reunification is no longer compatible with the best interests of the child. Family reunification cannot normally be expected to be sufficiently supported if there are intervals of weeks, or even months, between each contact session (see K.O. and V.M. v. Norway, cited above § 69).

80. Furthermore, the Court reiterates 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" (see Strand Lobben and Others, cited above, §§ 206 and 207).

81. The Court also reiterates that the margin of appreciation to be accorded to the competent national authorities will vary according to 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 that 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 respect of any further limitations, such as restrictions placed by the authorities on parental rights of access, and of any legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between the parents and a young child will effectively be curtailed (ibid., § 211).

(b) Application of those principles to the facts of the instant case

82. Starting with the decision-making process, the Court observes that the municipality's application for the applicant's parental responsibilities in respect of her daughter to be removed and the foster parents' application for adoption approved was first considered by the County Social Welfare Board, which held a meeting over two days that was attended by the applicant and her legal-aid lawyer, who gave testimony and presented other evidence. Several witnesses were heard by the Board, which was again composed of a jurist qualified to function as a professional judge, an expert and a lay person (see paragraph 34 above). Its decision contained lengthy and detailed reasoning (see paragraphs 35-40 above). The District Court, sitting as a bench of a similar composition, carried out a fresh examination of the case as a whole upon another meeting over several days, during which the applicant was given the same opportunity to present her case (see paragraph 42 above). The District Court also appointed an expert, who presented a report and evidence during the hearing (see paragraphs 41-42 above); the District Court then delivered a

lengthy and detailed judgment (see paragraphs 43-46 above). That judgment was subsequently reviewed during leave-to-appeal proceedings, which were in turn briefly reviewed in the course of appeal proceedings before the Supreme Court (see paragraphs 47 and 48 above).

83. In the light of the above, the Court considers that the domestic decision-making process was comprehensive and that the applicant was afforded the requisite protection of her interests and was fully able to present her case. It is also satisfied that the authorities conducted an in-depth examination of the factors relevant to the case.

84. Turning to the question of whether the domestic authorities provided relevant and sufficient reasons for the impugned measures, the Court firstly notes that although the matter before it relates to the proceedings in which the domestic authorities decided to replace foster care with adoption (see paragraph 75 above), it is nonetheless incumbent on the Court to place those proceedings into context, which inevitably means that it must to some degree have regard to the earlier proceedings and decisions (see Strand Lobben and Others, cited above, § 148). The Court's consideration of the reasons cited for the measures brought before it must also be conducted in the light of the case as a whole (ibid., § 203). Furthermore, the Court observes that the District Court's judgment of 22 December 2015 became the final judgment on the merits after the applicant's attempts to lodge a further appeal had proved fruitless. While also taking into account the reasons cited by the County Social Welfare Board (with which the District Court expressly concurred – see paragraphs 35-40 and 43 above), the Court will therefore centre its examination on that judgment.

85. In its judgment, the District Court stated that it found it likely that the applicant, on the basis, inter alia, of her poor cognitive functioning, would be permanently incapable of providing her daughter with adequate care. Her poor cognitive functioning was also deemed to be coupled with other shortcomings (see paragraph 43 above). In addition, the District Court found that the applicant's daughter had become so attached to her foster home and foster parents that removing her from them could lead to serious problems for her. Moreover, the girl was considered to be a sensitive and vulnerable child who had displayed strong reactions to visits from the applicant. The applicant's poor caring skills were also noted in the part of the judgment that addressed the difficulties that would likely arise if her daughter were to be removed from her foster parents (see paragraph 44 above).

86. As to the child's best interests, the District Court stated that the issue was whether it was better for the applicant's daughter to be adopted than to grow up as a foster child. In its view, the girl had a strong need for her care situation to be clarified. She was sensitive and vulnerable and had displayed strong reactions to visits from the applicant (see paragraphs 44-45 above). The District Court also attached importance to (i) the applicant being unable to accept that she would be unable to regain the care for her daughter and (ii) the fact that there were grounds to believe that, were the girl not adopted, the applicant would institute further proceedings to have her returned or her contact rights extended. Moreover, although the District Court noted the importance of the "biological principle", the bonds between the applicant and her daughter were already very limited. It was also assumed that the adoptive parents, while resisting an open adoption, would be open to contact between the applicant and her daughter if and when the daughter should so wish (see paragraph 45 above).

87. In the Court's view, the above reasons advanced by the District Court to justify the adoption were relevant to the question of necessity, according to its case-law (see, for example, Pedersen and Others, cited above, § 64, with further references to Johansen v. Norway (dec.), no. 12750/02, 10 October 2002, and Aune v. Norway, no. 52502/07, §§ 76-78, 28 October 2010).

88. As to whether the reasons provided by the District Court were also sufficient to justify the impugned measures, the Court firstly reiterates that it has previously refrained from attempting to untangle the opposing considerations inherent in questions concerning whether adoption or long-term foster care may be in the best interests of a child in a specific case (see, in particular, P., C. and S. v. the United Kingdom, no. 56547/00, § 136, ECHR 2002-VI; and Pedersen and Others, cited above, § 65), and is not inclined to take a different approach in respect of the instant case.

89. The Court finds reasons to stress, however, that an adoption will as a rule entail the severance of family ties to a degree that according to the Court's case-law is only allowed in very exceptional circumstances (see paragraph 80 above). That is so since it is in the very nature of adoption that no real prospects of rehabilitation or family reunification exist and that it is instead in the child's best interests that he or she be placed permanently in a new family (see, for example, R. and H. v. the United Kingdom, no. 35348/06, § 88, 31 May 2011). This is why stricter scrutiny is necessarily required in respect of such decisions (see paragraph 81 above). By contrast, domestic authorities are given a wide margin of appreciation in respect of care orders (see paragraph 81 above), as they are in principle temporary measures and do not in themselves entail a complete deprivation of family life. The Court observes that an essentially corresponding distinction is maintained in domestic law (see the Supreme Court's judgment of 15 September 2020 cited in paragraph 56 above). It is another matter that care orders may also be supplemented by other measures, such as extensive restrictions on contact between the parent and the child, or measures that completely deprive the biological family of their family life and are inconsistent with the aim of reuniting them to the effect that stricter standards must apply to them (see, for example, A.S. v. Norway, cited above, § 62; and Johansen v. Norway, 7 August 1996, § 78, Reports of Judgments and Decisions 1996-III).

90. In the instant case, a complete severance of family ties de jure and de facto was at issue; proceeding to the question of whether the authorities proved that the circumstances had been so exceptional that measures with that effect had been justified, the Court notes, firstly, that it has no basis for calling into question the District Court's evidentiary assessments that the applicant's daughter was vulnerable or that she had settled well into the foster home. The Court considers, however, that the District Court provided no indications that those factors, while clearly relevant to the case, amounted to anything exceptional that could justify severing all ties between the applicant and her daughter in the instant case.

91. Furthermore, the Court observes that the District Court noted that importance should be attached to "the biological principle" in general terms, but stated that the attachment between the applicant and her daughter was, however, very limited (see paragraph 45 above). In the Court's view, in so far as the applicant's daughter was placed in care when only nine days old and that very severe restrictions were placed on the applicant's contact rights when her daughter was in foster care, it could nonetheless not be overlooked that the applicant and her daughter were never given the opportunity to develop any real attachment.

92. In that regard the Court notes in particular that when the Board first issued a care order, it only granted the applicant the right to contact with her child four times yearly – each time for a period of only two hours (see paragraph 23 above). The extent of the contact rights was further reduced by the District Court on appeal (see paragraph 25 above). The very limited extent of the contact rights was due to the Board having deemed – owing to its consideration that the applicant's difficulties in providing emotional care were anchored in her mental functioning and personality traits – that the care order would be long-term, and the District Court also proceeded on that assumption (see paragraphs 22-23 and 25 above).

93. Neither has any indication been given to the Court that the domestic authorities took any real steps towards reconsidering that very restrictive contact regime during the time when the applicant's daughter was in foster care. The Court notes that when the applicant applied to have the contact regime reassessed, both the Board and the District Court continued to proceed on the basis that it was a matter that related to a long-term care order (see paragraphs 30 and 32 above). Nor are there any signs that the domestic authorities, at any point in time after the issuance of the care order, attempted in other ways to take positive measures in order to prevent the applicant and her daughter ending up permanently and completely estranged from each other. The Court acknowledges that domestic authorities, after careful consideration and also taking account of their positive duty to take measures to facilitate family reunification, may be justified in concluding that the ultimate aim of reunification is no longer compatible with the best interests of the child. However, in the instant case that goal appears effectively to have already been abandoned when the County Social Welfare Board first issued the care order in 2011 (see paragraphs 20-23 above). The level of contact was – apparently as a pure reflection of the overall conclusion that the placement would be long-term – kept at a minimum, and it transpires that the authorities did not make any genuine efforts to increase it by way of an attempt to seek the development of a family relationship between the applicant and her daughter. Indeed, the limited nature of the contact arrangements in the present case rendered impossible the development of any meaningful relationship whatsoever between the applicant and her daughter (compare Pedersen and Others, cited above, § 70).

94. The Court reiterates in connection with the above that, in addition to the general observation that the ties between members of a family and the prospects 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 (see paragraph 79 above), it has emphasised more specifically that arrangements in which weeks – and even months – pass between the times that the parent and the child are allowed to meet cannot generally be considered to support the aim of reunification (see paragraph 79 above). In the instant case, the applicant and her daughter were – in contrast to the general starting point for the assessment of contact rights under Article 8 of the Convention – for several years allowed to meet for only two hours – in 2012 for only one hour – every three months (see paragraphs 23, 25 and 92 above).

95. Furthermore, the Court also has reservations regarding the emphasis placed by the District Court on the need to pre-empt the applicant from resorting in future to legal remedies by which to have the care order re-examined, or even merely to have the contact rights schedule revised (see paragraph 45 above), given the restrictions on contact that had been imposed until then. Although

there might indeed be instances when repeated legal proceedings, owing to the particular circumstances of a case, may harm the child concerned and therefore be taken into account, a biological parent's exercise of judicial remedies cannot automatically count as a factor in favour of adoption (see Strand Lobben and Others, cited above, §§ 212 and 223). The Court notes in this regard that biological parents' procedural rights, including their right to have access to proceedings in order to have a care order lifted or restrictions on contact with their child relaxed, form an integral part of their right to respect for their family life afforded by Article 8 of the Convention. It also observes that any need to limit biological parents' futile or damaging use of legal remedies may be dealt with as a procedural issue. That is, for example, already demonstrated by domestic law in respect of applications for care orders to be lifted, where there are particular procedural conditions regarding the use of such remedies (see paragraph 51 above).

96. In its assessment of the above, the Court bears in mind the fact that the adoption decision brought before it was essentially grounded in an assessment of what would be in the best interests of the applicant's daughter in the future; it was therefore the fact that ties between the applicant and her daughter were minimal at the time of the adoption application – and not the reason for those limited ties – that formed the basis of the District Court's argument in favour of authorising the adoption. It has in this context also noted the Supreme Court's considerations in the order (HR-2020-661-S) of 27 March 2020, referred to above (see paragraph 55), and reiterates, moreover, that the proceedings complained of did not concern a claim to have the care order lifted. The issue to be decided by the District Court was thus limited to whether the girl's foster care should be replaced by adoption.

97. Within that context, the Court has no basis for casting doubt on the validity of the general observation that the lack of any real ties between the child and his or her biological parent may often reduce the negative factual and emotional consequences of adoption, both for the child and the parent. However, in the light of the very limited contact rights that were granted and the complete absence of any other attempts over the years of foster care to counter the risk that the biological family would end up permanently broken, the Court nonetheless does not consider in the instant case that the domestic authorities could – in the sense that the respondent State nevertheless acted in accordance with its positive obligations under Article 8 to take measures to preserve family bonds to the extent reasonably feasible – have based the adoption decision on the absence of bonds between the parents and the child (see, mutatis mutandis, Pontes v. Portugal, no. 19554/09, §§ 92 and 99, 10 April 2012). It notes in that respect that the option of an "open adoption" – one in which post-adoption contact visits could be provided for – was not on offer, as the foster parents had not consented to it (see paragraph 45 above).

98. The Court is mindful that its approach to cases such as the instant one – namely its practice of considering each case within its own context, in the light of the case as a whole and in retrospect (see paragraph 84 above) – may systemically differ from the approach followed by domestic child care services and authorities (including the domestic courts), which have to decide what to do with the child (and his or her family) on the basis of the child's and the family's situation at the time at which the decision in question is taken and with an eye primarily on the future (see, for example, Hernehult, cited above, §§ 75-76). This is a consequence of the distinctive perspectives attached to each respective role – the role of the Court being to assess, within the scope of the application

lodged with it, whether the organs of the respondent State acted in accordance with the State's obligations under the Convention. The Court therefore also fully concurs with the emphasis placed by the Supreme Court in its decision cited above (see paragraph 55) on the crucial importance, from the very outset, of the child welfare services, the County Social Welfare Board and, thereafter, the domestic courts, considering all the relevant requirements under Article 8 of the Convention, in order to avoid errors and shortcomings that cannot readily be repaired at a later stage.

99. On the basis of the above, the Court considers that the proceedings through which the adoption of the applicant's daughter was ultimately authorised and the reasons advanced for the measures decided in those proceedings reflected the fact that (i) insufficient importance was attached to the aim that placement in care be temporary and an affected family be reunited, and (ii) insufficient regard was paid to the positive duty to take measures to preserve family bonds to the extent reasonably feasible.

100. For those reasons, the Court concludes that there has been a violation of Article 8 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. 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."

Damage

102. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

103. The Government stated in response that the applicant's claim was in line with the Court's recent case-law.

104. The Court considers that the applicant must have suffered non-pecuniary damage in the form of distress, in view of the violation found above. It awards her EUR 25,000 in respect of that damage.

Costs and expenses

105. The applicant also claimed EUR 14,682.12 for the costs and expenses incurred before the Court.

106. The Government asked the Court to consider whether the itemisation of the applicant's claim confirmed that the amount was necessary and reasonable as to quantum.

107. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 9,500, covering costs for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

Default interest

108. 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,

Declares the application admissible;
Holds that there has been a violation of Article 8 of the Convention;
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, the following amounts, to be converted into Norwegian kroner (NOK) at the rate applicable at the date of settlement:
(i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 9,500 (nine thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
Dismisses, the remainder of the applicant's claim for just satisfaction.
Done in English, and notified in writing on 22 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar
Síofra O'Leary President