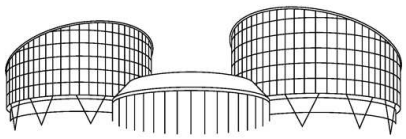

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF STRAND LOBBEN AND OTHERS v. NORWAY

(Application no. 37283/13)

JUDGMENT

STRASBOURG

10 September 2019

This judgment is final but it may be subject to editorial revision.

In the case of Strand Lobben and Others v. Norway,

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

Linos-Alexandre Sicilianos, *President,*
Guido Raimondi,
Robert Spano,
Vincent A. De Gaetano,
Jon Fridrik Kjølbro,
Ganna Yudkivska,
Egidijus Kūris,
Carlo Ranzoni,
Armen Harutyunyan,
Georges Ravarani,
Pere Pastor Vilanova,
Alena Poláčková,
Pauliine Koskelo,
Péter Paczolay,
Lado Chanturia,
Gilberto Felici, *judges,*
Dag Bugge Nordén, ad hoc *judge,*

and Søren Prebensen, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 17 October 2018 and 27 May 2019, Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 37283/13) 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 five Norwegian nationals, Ms Trude Strand Lobben, her children, X and Y, and her parents, Ms Sissel and Mr Leif Lobben, on 12 April 2013.

2. The first applicant, Ms Trude Strand Lobben, and the second applicant, X ("the applicants"), who had been granted legal aid, were ultimately represented by Mr G. Thuan Dit Dieudonné, a lawyer practising in Strasbourg. The Norwegian Government ("the Government") were represented by their Agents, Mr M. Emberland and Ms H.L. Busch, of the Attorney General's Office (Civil Matters).

3. The applicants alleged, in particular, that the domestic authorities' decisions not to lift the care order for X and instead withdraw the first applicant's parental responsibilities for him and authorise his adoption by

his foster parents, violated their rights to respect for family life under Article 8 of the Convention.

4. The application was allocated to the Fifth Section of the Court (Rule 52 § 1 of the Rules of Court). On 1 December 2015 the President of the Fifth Section decided to give notice of the applicants' complaint to the Government. On 30 November 2017 a Chamber of that Section, composed of Angelika Nußberger, Erik Møse, André Potocki, Yonko Grozev, Síofra O'Leary, Gabriele Kucsko-Stadlmayer, Lətif Hüseynov, judges, and Milan Blaško, Deputy Section Registrar, gave judgment. The Chamber unanimously declared the application by the first and second applicants admissible and the remainder inadmissible. It held, by a majority, that there had been no violation of Article 8 of the Convention. The joint dissenting opinion of Judges Grozev, O'Leary and Hüseynov was annexed to the judgment.

5. On 30 January 2018 the applicants requested the referral of the case to the Grand Chamber in accordance with Article 43 of the Convention. On 9 April 2018 the panel of the Grand Chamber granted that request.

6. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24 of the Rules of Court. At the final deliberations, Jon Fridrik Kjølbro, substitute judge, replaced Aleš Pejchal, who was unable to take part in the further consideration of the case (Rule 24 § 3).

7. The applicants and the Government each filed observations (Rule 59 § 1) on the merits of the case.

8. The President of the Grand Chamber granted leave to the Governments of Belgium, Bulgaria, the Czech Republic, Denmark, Italy, Slovakia and the United Kingdom, and Alliance Defending Freedom (ADF) International, the Associazione Italiana dei Magistrati per i Minorenni e per la Famiglia (AIMMF), the Aire Centre and X's adoptive parents, to intervene in the written procedure, in accordance with Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 17 October 2018.

There appeared before the Court:

(a) *for the respondent Government*

Mr F. SEJERSTED, Attorney General, Attorney General's Office,
Mr M. EMBERLAND, Agent, Attorney General's Office,
Ms H. LUND BUSCH, Agent, Attorney General's Office *Agents*,
Ms A. SYDNES EGELAND, Attorney, Attorney General's Office,
Mr H. VAALER, Attorney, Attorney General's Office,
Mr D.T. GISHOLT, Director, Ministry of Children and Equality,
Ms C. FIVE BERG, Senior Adviser, Ministry of Children and Equality,

Ms H. BAUTZ-HOLTER GEVING, Ministry of Children and Equality,
Ms L. WIDTH, Municipal Attorney, *Advisers*;

(b) *for the applicants*
Mr G. THUAN DIT DIEUDONNÉ, Lawyer, *Counsel*,
Ms T. STRAND LOBBEN, *First applicant*.

The Court heard addresses by Mr Thuan Dit Dieudonné and Mr Sejersted and their replies to questions put by the judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

10. In May 2008 the first applicant turned to the child welfare services because she was pregnant and was in a difficult situation: she did not have a permanent home and was temporarily staying with her parents.

11. On 10 June 2008 the first applicant and the putative future father, Z, visited a gynaecological polyclinic at the regional hospital. According to the medical notes recorded that day, the doctor was informed that the first applicant had had a late abortion in October 2007 and that she also wanted to abort this time. A chlamydia test and an ultrasonography were carried out, and the first applicant and Z informed that an abortion would not be possible.

12. On 23 June 2008 the hospital confirmed that the result of the chlamydia test taken on 10 June 2008 was positive. As one of the measures taken by the birth clinic to monitor the first applicant and her situation, the doctor noted that a social worker would make contact with the child welfare services, in agreement with the first applicant. A social worker, J.T., at the hospital noted the following day that the first applicant had expressed a strong wish for a place at a parent-child institution on the grounds that she was limited on account of a brain injury (*begrensninger på grunn av hjerneskade*) sustained following an epileptic seizure; she had no home, and a difficult relationship with the child's putative father and other family members; and that she wanted help to become as good a mother as possible. It was noted by the hospital that any stay at a parent-child institution would be voluntary and that the first applicant and her child could leave whenever they wished.

13. On 1 July 2008 the hospital notified the child welfare services that the first applicant was in need of guidance concerning the unborn child and monitoring with regard to motherhood. The hospital also indicated that she needed to stay at a parent-child institution. The child welfare services took on the case, with the first applicant's consent. She agreed to stay at a parent-child institution for three months after the child was born, so that her ability to give the child adequate care could be assessed.

14. On 16 July 2008 a meeting with the child welfare services took place. A psychologist, I.K.A., from the Office for Children, Youth and Family Affairs attended the meeting. According to the notes from the meeting, it was agreed that the first applicant should receive psychological counselling on a weekly basis in the social worker's absence during the summer, and that the psychologist would give subsequent reports to the child welfare services.

15. On 16 September 2008 a formal decision was taken to offer the first applicant and her child a place at a parent-child institution for three months. The decision stated that the child welfare services were concerned about the first applicant's mental health and her ability to understand the seriousness of taking responsibility for a child and the consequences.

16. Some days earlier, on 9 September 2008, the child welfare services and the first applicant had agreed on a plan for the stay. In the plan it was stated that the main purpose of the stay would be to examine, observe and guide the first applicant in order to equip her with sufficient childcare skills. A number of more specific aims were also included, involving observation of the mother and child and examination of the mother's mental health (*psyke*) and maturity, her ability to receive, understand and avail herself of advice in relation to her role as a mother, and her developmental possibilities. Working with the first applicant's network was also included as an aim in the plan.

17. On 25 September 2008 the first applicant gave birth to a son, X, the second applicant. The first applicant then refused to provide the name of X's father. Four days later, on 29 September 2008, the first applicant and X moved to the parent-child institution. For the first five days X's maternal grandmother also stayed there with them.

18. On 10 October 2008 the parent-child institution called the child welfare services and expressed concern on the part of their staff. According to the child welfare services' records, the staff at the institution stated that X was not gaining sufficient weight and lacked energy. With regard to nappy changes, the staff had to repeatedly (*gang på gang*) tell the first applicant that there were still traces of excrement, while she continued to focus on herself.

19. On 14 October 2008 the staff at the parent-child institution said that they were very concerned about X and the first applicant's caring skills. It had turned out that the first applicant had given an incorrect weight for the

baby and that X had, accordingly, lost more weight than previously assumed. Moreover, she showed no understanding of the boy's feelings (*viser ingen forståelse av gutten sine følelser*) and seemed unable to empathise with the baby (*sette seg inn i hvordan babyen har det*). The staff had decided to move the first applicant into an apartment on the main floor in order to get a better overview and to monitor her even more closely. The next meeting between the first applicant, the staff at the parent-child institution and the child welfare services had been scheduled for 24 October 2008, but the staff at the institution wanted to bring the meeting forward as they were of the view that the matter could not wait that long.

B. Proceedings to place X in emergency foster care

20. On 17 October 2008 a meeting between the parent-child institution, the first applicant and the child welfare services was held. The first applicant stated at the meeting that she wanted to move out of the institution together with her child, as she no longer wanted guidance. The staff at the institution stated that they were very concerned about the first applicant's caring skills. She did not wake up at night, and the boy had lost a lot of weight, lacked energy and appeared dehydrated. The health visitor was also very concerned, whereas the first applicant was not. The institution had established close 24-hour monitoring. Staff had stayed awake at night in order to wake the first applicant up to feed the child. They had monitored the first applicant every three hours round the clock in order to ensure that the boy received nourishment. They expressed the fear that the child would not have survived had they not established that close monitoring pattern. The child welfare services considered that it would create a risk if the first applicant removed the child from the institution. X was below critical normal weight (*kritisk normalvekt*) and in need of nutrition and monitoring.

21. In the decision taken on the same date it was also stated that the first applicant had given information about the child's father to the child welfare services, but that she had refused him permission to take a paternity test and to sign as father at the hospital. It was stated that the father wanted to take responsibility for the child, but that he did not yet have any rights as a party to the case.

22. It was decided to place X in an emergency foster home and that the first applicant and her mother should visit him for up to one and a half hours weekly. As to the boy's needs, it was stated that he had lost a lot of weight and accordingly needed close and proper monitoring. It was emphasised as very important that good feeding routines be developed. Further, according to the plan, the placement was to be continuously assessed by the first applicant, the emergency foster parents, a specialist team (*fagteam*) and the child welfare services. The municipality was to stay in contact with the emergency foster parents and be responsible for being in contact with and

following up on the first applicant. Preliminary approval of the decision was given by the chair of the County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*) on 21 October 2008.

23. On 22 October 2008 the first applicant appealed to the County Social Welfare Board against the emergency decision. She claimed that she and X could live together at her parents' house, arguing that her mother stayed at home and was willing to help care for X and that she and her mother were also willing to accept help from the child welfare services.

24. On 23 October 2008 a family consultant and a psychologist from the parent-child institution drew up a report of the first applicant's and her mother's stay there. The report referred to an intelligence test that had been carried out in which the first applicant had obtained a higher score than 67% of persons of her age on perceptual organisation (meaning organisation of visual material) and below 93% of persons her age on verbal understanding. On tasks that required working memory – the ability to take into account and process complex information – the first applicant had scored below 99% of persons her age. According to the report, the tests confirmed the clinical impression of the first applicant. Furthermore, the report stated that the institution's guidance had focused on teaching the first applicant how to meet the child's basic needs in terms of food, hygiene (*stell*) and safety. The first applicant had received verbal and hands-on guidance and had consistently (*gjennomgående*) needed repeated instructions and demonstration. In the staff's experience, the first applicant often did not understand what was told or explained to her, and rapidly forgot. In the conclusion the report stated, *inter alia*:

> "The mother does not care for her child in a satisfactory manner. During the time the mother and child have stayed [at the parent-child institution] ..., the staff here ... have been very concerned that the child's needs are not being met. In order to ensure that the child's primary needs for care and food are met, the staff have intervened and closely monitored the child day and night.
>
> The mother is not able to meet the boy's practical care needs. She has not taken responsibility for caring for the boy in a satisfactory manner. The mother has needed guidance at a very basic level, and she has needed advice to be repeated to her several times.
>
> Throughout the stay, the mother has made statements that we find very worrying. She has expressed a significant lack of empathy for her son, and has several times expressed disgust with the child. The mother has demonstrated very little understanding of what the boy understands and what behaviours he can control.
>
> The mother's mental functioning is inconsistent and she struggles considerably in several areas that are crucial to the ability to provide care. Her ability to provide practical care must be seen in the light of this. The mother's mental health is marked by difficult and painful feelings about who she herself is and how she perceives other people. The mother herself seems to have a considerable unmet care need.
>
> Our assessment is that the mother is incapable of providing care for the child. We are also of the opinion that the mother needs support and follow-up. As we have

verbally communicated to the child welfare services, we believe it to be important that especially close care is taken of the mother during the period following the emergency placement.

The mother is vulnerable. She should be offered a psychological assessment and treatment, and probably needs help in finding motivation for this. The mother should have an individual plan to ensure follow-up in several areas. The mother has resources (see the abilities tests) that she needs help to make good use of."

25. On 27 October 2008 the Board heard the appeal against the emergency placement decision (see paragraphs 22 and 23 above). The first applicant attended with her legal-aid counsel and gave evidence. Three witnesses were heard.

26. In a decision of the same day, signed by the Board's chairperson, the Board concluded that it had to rely on the descriptions given by the psychologist at the parent-child institution, who had drafted the institution's report, and the representative from the municipal child welfare services. According to those descriptions, the first applicant had been unable to care for X properly (*betryggende*) in entirely essential and crucial respects (*helt vesentlige og sentrale områder*). Furthermore, she had said that she wanted to leave the institution. It had been obvious that she could not be given care of X without creating a risk that he would suffer material harm. Afterwards, the first applicant's parents had said that they would be capable of ensuring that X was adequately looked after. However, the Board concluded that this would not provide X with sufficient security. The first applicant's mother had given evidence before the Board and had stated that during her stay at the parent-child institution she had not experienced anything that gave rise to concern with respect to the first applicant's care for X. This was in stark contrast to what had been reported by the psychologist. The Board also concluded that it was the first applicant who would be responsible for the daily care of X, not her mother.

27. On the same day, 27 October 2008, X was sent to a child psychiatry clinic for an assessment.

28. On 30 October 2008 the first applicant appealed against the Board's decision of 27 October 2008 (see paragraphs 25-26 above) to the City Court *(tingrett*).

29. On 13 November 2008 the first applicant visited X in the foster home; according to the notes taken by the supervisor, Z had received the result of a paternity test the day before which had shown that he was not the father. The first applicant stated that she did not know who the father could be. She could not remember having been with anyone else. The first applicant and the adviser from the child welfare services agreed that the first applicant would contact her doctor and ask for a referral to a psychologist.

30. On 21 November 2008 an adviser working with emergency placements (*beredskapshjemskonsulent*) at the Office for Children, Youth

and Family Affairs produced a report on the implementation of the emergency measure. In the conclusion she stated:

> "The boy arrived at the emergency foster home on 17/10 with little movement in his arms and legs, and making few sounds. He could not open his eyes because they were red, swollen and had a lot of discharge. He was undernourished, pale and weak [(*slapp*)]. After a few days he started to move, make sounds and develop skin colour. He ate well at all meals, and enjoyed bodily contact. He opened his eyes upon receiving the correct medication and gradually started to be in contact with his surroundings. Good routines were put in place and he was closely followed up with respect to nourishment and development.
>
> The boy has developed very well in all areas in the five weeks he has been living in the emergency foster home. The doctor and health visitors were satisfied with the boy's development and have monitored him closely. Bup [(*Barne- og ungdomspsykiatrisk poliklinikk* – the Children's and Young People's Psychiatric Out-Patient Clinic)] has also followed up on the boy and reported possible stress symptoms developed by the boy during the pregnancy or the first weeks of his life. The emergency foster parents have provided favourable conditions for the boy to work on his development, and this has worked well. The boy needs stable adults who can give him good care, appropriate to his age [(*aldersadekvat omsorg*)], and satisfy his needs in future."

31. On 28 November 2008 the municipality applied to the County Social Welfare Board for a care order, submitting that the first applicant lacked caring skills with respect to a child's various needs. They considered that X would rapidly end up in a situation in which he would be subjected to serious neglect if he were returned to the first applicant. As to contact rights, the municipality submitted that they assumed that it would be a matter of a long-term placement and that X would probably grow up in foster care. They stated that the first applicant was young, but that it was assumed that her capacity as a mother would be limited, at least in relation to X (*[m]or er ung, men det antas at hennes kapasitet som mor vil være begrenset, i hvert fall i forhold til dette barnet*).

32. On 5 December 2008 the team at the child psychiatry clinic, who had carried out six different observations between 3 and 24 November 2008, in accordance with the instructions of 27 October 2008 (see paragraph 27 above), set out their results in a report, which read, *inter alia*, as follows:

> "[X] was a child with significantly delayed development when he was sent to us for assessment and observation. Today he is functioning as a normal two-month-old baby, and has the possibility of a good normal development. He has, from what can be observed, been a child at high risk. For vulnerable children the lack of response and confirmation, or other interferences in interaction, can lead to more or less serious psychological and developmental disturbances if they do not receive other corrective relationship experiences. The quality of the earliest interaction between a child and the closest caregiver is therefore of great importance for psychosocial and cognitive development. [X] bears the mark of good psychosocial and cognitive development now."

33. The City Court, composed of one professional judge, one psychologist and one lay person, pursuant to section 36-4 of the Dispute Act

(see paragraph 133 below), heard the appeal against the Board's decision in the emergency case (see paragraphs 25-26 and 28 above) on 12 January 2009. In its judgment of 26 January 2009 it stated first that an interim decision pursuant to the second paragraph of section 4-6 of the Child Welfare Act (see paragraph 122 below) could only be made if the risk of harm was acute and the child would suffer material harm if not moved immediately. It went on to state that the case concerned a child who had been practically newborn when the interim care order had been made, and that the placement had since been reconsidered several times following appeals on the part of the mother.

34. In its conclusion the City Court stated that it was in no doubt that X's situation had been serious when the interim care order had been issued. He had shown clear signs of neglect, both psychologically and physically. The City Court found that the "material" harm requirement (*vesentlighetskravet*) in the second paragraph of section 4-6 of the Child Welfare Act (see paragraph 122 below) had been met. X was at the time of its judgment in better health and showed normal development. This was due to the emergency foster parents' efforts and follow-up. The City Court did not consider that the first applicant's ability to provide care had changed and feared that X would suffer material harm if he were now returned to her. This was still the case even if the first applicant lived with her parents and they supported her. It was her ability to provide care that was the matter of assessment.

35. Based on the above, the City Court did not find grounds to revoke the emergency care order pending a decision by the County Social Welfare Board on the question of permanent care.

36. The first applicant did not appeal to the High Court (*lagmannsrett*).

C. Proceedings for a care order

1. Proceedings before the County Social Welfare Board

37. The Board, composed of an administrator qualified to act as a professional judge, a psychologist and a lay person, in accordance with section 7-5 of the Child Welfare Act (see paragraph 122 below), held a hearing on the child welfare services' request for a care order (see paragraph 31 above) on 17 and 18 February 2009. The first applicant attended and gave evidence. Seven witnesses were heard, including experts and the first applicant's parents, their neighbour and a friend of the family. At the hearing the child welfare services requested that X be taken into local authority care, placed in a foster home and that the first applicant be granted contact rights for two hours, four times per year, under supervision. The first applicant sought to have the request for a care order rejected and X

returned to her. In the alternative, she asked for contact rights of a minimum of once per month, or according to the Board's discretion.

38. In a decision of 2 March 2009 the Board stated at the outset that, independently of the parties' arguments and claims, its task was to decide whether X was to be taken into care by the child welfare services. If a care order were issued, the Board would also choose a suitable placement and determine the contact arrangements.

39. The Board concluded that the fundamental condition set out in letter (a) of the first paragraph of section 4-12 of the Child Welfare Act had been met (see paragraph 122 below). In its opinion, a situation involving serious deficiencies in both psychological and practical care would arise if X were returned to live with the first applicant.

40. The Board emphasised that it had assessed the first applicant's ability as a caregiver and changes in her approach, not her condition or personality traits. However, the Board noted that the parent-child institution had considered the first applicant's inability to benefit from guidance to be linked to her cognitive limitations. Reference was made to conclusions drawn by the institution to the effect that the relevant test results were consistent with their daily observations (see paragraph 24 above). The tests carried out at the institution were also largely consistent with previous assessments of the first applicant, and also with the concerns reported by, *inter alia*, the psychologist at the Office for Children, Youth and Family Affairs in the summer of 2008 (see paragraph 14 above). In the Board's view, the above factors suggested that the first applicant's problems were of a fundamental nature and that her potential for change was limited (*sier noe om at mors problematikk er av en grunnleggende karakter og at endringspotensialet er begrenset*).

41. The Board stated that it had to conclude that a care order was necessary and in the best interests of X. As to a suitable placement, the Board stated that, having regard to his age and care needs, a foster home placement was clearly the best solution for X at the time. It issued a care order to that effect. Based on X's age and vulnerability, the Board also decided that he should be placed in enhanced foster care – an arrangement whereby the foster home was given extra assistance and support – at least for the first year.

42. Turning to the question of contact rights, the Board went on to state that, under section 4-19 of the Child Welfare Act (see paragraph 122 below), children and parents were entitled to contact with each other unless otherwise decided. When a care order was issued, the Board would determine the amount of contact and decisions regarding contact had to be in the child's best interests, as provided for by section 4-1 of the Child Welfare Act (ibid.). The purpose and duration of the placement also had to be taken into consideration when the amount of contact was determined.

43. On the grounds of the information available at the time of the Board's decision, the Board envisaged that X would grow up in the foster home. This was on account of (*har sammenheng med*) the first applicant's fundamental problems and limited potential for change (*mors grunnleggende problematikk og begrensede endringspotensial*) (see paragraph 40 above). This meant that the foster parents would become X's psychological parents, and that the amount of contact had to be determined in such a way as to ensure that the attachment process, which was already well under way, was not disrupted. X had to be given peace and stability in his everyday life, and he was assumed (*det legges til grunn*) to have special needs in that respect. In the Board's opinion, the purpose of contact had to be to ensure that he had knowledge of his mother.

44. Based on an overall assessment, including of the above factors, the amount of contact was set at two hours, six times per year. The Board stated that it had some misgivings as to whether this was too frequent, particularly considering X's reactions. However, it believed that contact could be somewhat improved by the child welfare services providing more guidance and adaptation and by a considerable reduction in the frequency of contact.

45. In the Board's opinion, it was necessary for the child welfare services to be authorised to supervise contact in order to ensure that X was properly cared for.

46. The Board's decision concluded with a statement to the effect that it would be for the child welfare services to decide on the time and place of the contact sessions.

2. Proceedings before the City Court

47. On 15 April 2009 the first applicant appealed to the City Court against the Board's decision that X should be taken into public care (see paragraphs 38-46 above). She submitted, in particular, that adequate conditions in the home could be achieved through the implementation of assistance measures and that the care order had been decided without sufficient assistance measures having first been implemented.

48. On 6 May 2009 the child welfare services sent the first applicant a letter in which she was invited to a meeting to discuss what sort of help they could offer her. The letter stated as follows:

> "The child welfare services are concerned that you receive help to process what you have been through in relation to the taking into care, etc. It is still an offer that the Child Welfare Service cover the costs of a psychologist, if you so wish."

49. On 14 May 2009 the first applicant attended a contact session together with two acquaintances. According to the report, a situation arose in which the supervisor from the child welfare services stated that the first applicant would have a calmer time with X if she were alone with him. The first applicant said that the supervisor had to understand that she wanted to

bring people with her because she was being badly treated. It was ultimately agreed that one of the acquaintances would accompany the first applicant. During the session the first applicant stated that she had received an unpleasant (*ukoselig*) letter from the child welfare services offering her an appointment to discuss any help that she might need (see paragraph 48 above). The first applicant stated that she did not want any help and that she certainly did not need psychological counselling.

50. On 19 August 2009 the City Court gave judgment on the question of the care order (see paragraph 47 above). At the outset the City Court stated that the case concerned judicial review of a care order issued pursuant to section 4-12 of the Child Welfare Act (see paragraph 122 below), which was to be considered pursuant to the rules in chapter 36 of the Dispute Act. When undertaking a judicial review of the County Social Welfare Board's decision, the court had power to review all aspects of the decision, both legal and factual, as well as the administrative discretion. It was well established in law that its review of the Board's decision should not be based on the circumstances at the time of the Board's decision, but on the circumstances at the time of its judgment. The court would not therefore normally go into more detail regarding the Board's assessment of the grounds for issuing a care order. However, the City Court went on to state that it nonetheless found that special reasons made it necessary to do so in the instant case.

51. Based on the evidence presented to it, the City Court ultimately concluded that it had not, either at the time of its judgment or previously, been sufficiently substantiated that there existed such deficiencies in the first applicant's ability to provide care that the conditions for the child welfare services maintaining care and control of X were met. It found*, inter alia*, that X's problems with weight gain could have been due to an eye infection. The Board's decision should therefore be revoked.

52. X was therefore to be returned to the first applicant and the City Court found that the parties understood that this had to be done in a way that would prevent X from facing further trauma. X had lived with his foster parents for ten months and had formed an attachment to them. Based on what had emerged during the proceedings, the City Court assumed that the child welfare services would give the first applicant and the foster parents the assistance they needed. The first applicant had said that she was willing to cooperate and, given that willingness, the City Court believed that it must be possible to establish the cooperative environment necessary for the child welfare services to be able to provide the help she might need.

53. In the days following the City Court's judgment there were a number of email exchanges between the first applicant's counsel and the child welfare services, and a meeting was held on 26 August 2009. The following day the first applicant, through her counsel, requested an appointment so that she could immediately (*omgående*) pick X up from the foster home and

bring him home with her. She also requested that this be on Saturday 29 August 2009. She stated that the foster mother could deliver X and stay as long as she wanted. The foster mother was also welcome to visit X when she wished, upon agreement with the first applicant. Representatives from the child welfare services were not welcome.

54. The applicant's request to have X immediately returned to her was not met by the child welfare services, but the amount of contact was increased. On 1, 3, 4 and 7 September 2009 contact sessions were held at the house of the first applicant's parents. The supervisor took detailed notes from each session as well as from conversations with the foster mother, and made a summary report of all the sessions. She noted, *inter alia*, that the foster mother had stated that the session on 1 September 2009 had "gone well [(*gikk greit*)] in many ways", but that X had become very tired afterwards. He had been uneasy and difficult to put to bed. At the end of the session on 3 September, the supervisor noted that X appeared completely exhausted and pale. X's apparent tiredness was noted also in relation to the sessions on 4 and 7 September. Furthermore, it emerges from the notes that the supervisor found it strange (*underlig*) that X had not been offered food, even though the family had been informed that it was his meal time. The supervisor had noted that the first applicant had taken note of this information on the first day, but then forgotten it again by the next day. The report stated that the supervisor was uncertain as to whether this had to do with the first applicant's insecurity and fear of asking. The report also contained details about X's reactions to the sessions, with respect to crying, sleeping, digestion and other behaviour.

3. Proceedings before the High Court

55. On 4 September 2009 the municipality sought leave to appeal against the City Court's judgment (see paragraphs 50-52 above), requested that the Board's decision of 2 March 2009 be upheld (see paragraphs 38-46 above), and concurrently applied for implementation of the City Court's judgment to be suspended. The municipality argued, firstly, that the City Court's judgment was seriously flawed. They claimed that it was unlikely that the eye infection could have been the reason for X's slow weight gain. Moreover, the first applicant had had visits with X, but they had not worked well even though she had been given advice on how to improve them. X had had strong reactions after those visits. Secondly, the municipality submitted that the case raised a question of general interest, namely relating to the first applicant's intellectual functioning (*kognitive ferdigheter*). They stated that she had general learning difficulties and that tests had shown that she had specific difficulties, with consequences for her daily functioning. Her abilities in verbal reasoning, relating to complex information and analysing and acting in situations that arose, were matters relevant to the provision of adequate care for a child. In that context the municipality referred to a

number of questions that, in their view, had to be answered, relating, *inter alia*, to what the first applicant was or was not capable of doing – and whether it was appropriate to leave a small child with her – and whether there were realistic assistance measures that could compensate for her shortcomings.

56. On 8 September 2009 the City Court decided to stay enforcement of its judgment until the High Court had adjudicated the case.

57. In her response of 11 September 2009 to the municipality's appeal, the first applicant, through her counsel, stated that the municipality had proceeded on the grounds that she was almost retarded (*nærmest er tilbakestående*) and therefore incapable of taking care of a child, which she found to be an insulting allegation (*grov beskyldning*). Nor were there, in her view, any flaws in the City Court's judgment.

58. On 9 October 2009 the child welfare services decided to appoint two experts – a psychologist, B.S., and a family therapist, E.W.A. – to assess X in relation to his strong reactions after the period in which there had been frequent contact sessions at the home of the first applicant's parents (see paragraph 54 above). In addition to examining the reasons for X's reactions, the experts were asked to provide advice and guidance to the foster mother as to how to handle the reactions and to the first applicant, if she agreed, with respect to the contact sessions.

59. On 12 October 2009 the High Court granted leave to appeal on the ground that the ruling of, or procedure in, the City Court had been seriously flawed (see paragraph 55 above and paragraph 133 below). It also upheld the City Court's decision to stay enforcement of the judgment (see paragraph 56 above).

60. On 4 November 2009 the first applicant's counsel asked the child welfare services whether the offer of counselling to the first applicant (see paragraph 48 above) was still valid. In their response, of 12 November 2009, the child welfare services stated that they were worried about the first applicant and that it was important that she obtained help. They confirmed that they would cover the costs of a psychologist or other counsellor of the first applicant's choice and that they would not ask the person chosen for any information or to act as a witness in the child welfare case.

61. On 15 November 2009 the High Court appointed an expert psychologist, M.S., to assess the case.

62. On 20 February 2010 the two experts appointed by the child welfare services to examine the contact sessions and the effects on X (see paragraph 58 above) delivered their report, which was over 18 pages long. In the report they stated that they had not observed any contact sessions, "as this [had been] done by the expert appointed by the High Court". They further stated that the first applicant had refused guidance with respect to the contact sessions. In the chapter entitled "Is it possible to hypothesise on

parents' competence in contact situations based on their competence as caregivers?", the following was stated:

> "When reviewing the various documents we find that [the parent-child institution] describes a severe lack of the abilities that are required in the mothering role, which is similar to the pattern we see during the contact sessions more than one year later. For example, the mother demonstrates a lack of ability in basic parental care during the contact sessions, as we have described above. Furthermore, her parental regulation during the contact sessions is insensitive. She seems to have significant problems with identifying X's affects by sharing joy and making him feel secure and guiding him through confirmation and putting names on things. This is very serious.
>
> We find that the mother has significant problems in all the contact sessions and that it is difficult not to say that these problems will also extend to her general competence as a caregiver. In a report dated 19 February 2008, i.e. two years ago, Dr Philos. [H.B.], a specialist in clinical neurology, states the following:
>
> 'There are no significant changes in the results of intelligence tests conducted before the operation and at the check-up two years after the operation. Her results in the intelligence tests have been very similar since she was 10.5 years old, i.e. her intelligence has been stable throughout all these years.'
>
> He says that her intellectual functioning is approximately two standard deviations below her peers and that she has problems with her long-term memory and with transferring information from one thing to another.
>
> We find that it is more problematic than usual for the mother to have supervised contact sessions because of her cognitive issues, because from time to time [(*fra gang til gang*)] she does not know what to do in relation to the boy and because she is very driven by impulses. [H.B.]'s report also states that she has problems understanding the content of what she is reading, and we also find that she cannot read and understand the situation when she is with her child. We find this to be an important and fundamental issue in shedding light on the mother's competence in contact situations and her competence as a caregiver. As regards the mother's competence as a caregiver in relation to the mother's cognitive skills, we assume that this will be further elucidated by [M.S.], the expert psychologist appointed by the Court of Appeal. This is considered to play a role in relation to the mother's behaviour vis-à-vis X during the contact sessions and her struggle to become emotionally attuned to his needs at different ages.
>
> On page 5 of its report [(judgment)] from 2009, the City Court summarises [the situation] as follows:
>
> 'It is generally known that many women, especially women who are giving birth for the first time, can have a psychological reaction after the birth which, in extreme situations, can take the form of serious postnatal depression. All reactions in the form of feelings of alienation and insecurity in relation to the newborn are within the normal range.'
>
> We find that the mother's difficulties during the contact sessions cannot be regarded as serious postnatal depression since the mother's difficulties during the contact sessions have shown a similar pattern for more than 1.5 years. This is more a sign of inadequate basic parenting skills and is not related to postnatal depression alone. We consider it crucial [(*avgjørende viktig*)] that the mother's difficulties during the contact sessions and her competence as a caregiver in general be understood in the light of more complex psychological explanatory models relating to both cognitive

issues and serious traumatic experiences both early in life and as an adult, which we know, based on research, affect a person's ability to function as a parent without considerable individual efforts and treatment. We assume that the expert psychologist will describe this in more detail."

63. On 3 March 2010 the expert psychologist appointed by the High Court, M.S. (see paragraph 61 above), delivered her report. She had observed two contact sessions, one attended by the first applicant alone and the other attended by the first applicant together with her mother and sister. The chapter entitled "Social and academic functioning" contained, *inter alia*, the following:

"Throughout the years SSE [(*Statens senter for epilepsi*)] has carried out repeated assessments of [the first applicant] using tests that measure the course of her illness and tests that focus more on describing her functioning. In this case, there has been a particular focus on the WISC-R test, which has been conducted both pre- and postoperatively. The results from this test are expressed as an IQ score which has been a topic of discussion in the child welfare case of which the present report is also a part. It is therefore relevant to make some comments on these test scores.

The WISC-R is a very well-known and frequently used test to measure intellectual abilities in children. Such abilities are associated with school performance. The test result provides useful information about a child's ability to learn and make use of learning. A functioning profile from a WISC-R test therefore forms the basis for targeted special education measures in school and can help when preparing individually adapted educational arrangements for children with special needs.

The end-product of an intelligence test is an IQ score, which is an operational definition of intelligence that provides a numeric expression of how abilities defined as intelligence are distributed among individuals in a population. The test is standardised, i.e. there is a statistical normal distribution with an average deviation on both sides. The WISC-R has a defined average of 100 with a standard deviation of +-15. A score within the range of distribution 85-115 is said to be within the normal range, where 68% of the population of comparison are situated, whereas 98% are within two standard deviations, i.e. 70-130 points. When conducting a diagnostic assessment of an IQ score, persons with IQ scores between 50 and 69 are defined as slightly mentally retarded. Intelligence test performance can be improved in the course of a person's developmental history if the fundamental cognitive resources are there. In this case, there is information that [the first applicant]'s IQ score has been stable throughout her childhood and adolescence, which means that she has not caught up intellectually after her brain surgery.

1.3. Summary

Anamnestic information from the school, the specialist health service and the family provides an overall picture of weak learning capacity and social functioning from early childhood into adulthood. [The first applicant] performed poorly at school despite good framework conditions, considerable extra resources and good efforts and motivation on her own part. It is therefore difficult to see any other explanation for her performance than general learning difficulties caused by a fundamental cognitive impairment. This is underlined by her consistently low IQ score – regardless of the epilepsy surgery.

She also had problems with socio-emotional functioning, which has also been a recurring topic in all the documents that deal with [the first applicant's] childhood and

adolescence. A lack of social skills and social adaptation is reported, primarily related to social behaviour that is not commensurate with her age [(*ikke-aldersadekvat sosial fremtreden*)] ('childish') and poor impulse control. It is also stated that [the first applicant] has been very reserved and had low self-confidence, which must be seen in conjunction with her problems."

In the chapter entitled "Assessment of care functioning, competence in contact situations and the effect of assistance measures", the report contained the following:

"5.1. Competence as a caregiver

As is clear from the above, I have placed particular emphasis on the consequences of [the first applicant's] condition in relation to her general functioning and whether she has what it takes to care for a child. It is important to note that neither [the first applicant] herself nor her parents believe that there is a connection between her history of illness, her adult functioning and her ability to provide care.

It is not the case that epilepsy deprives people of their ability to provide care, just as a low IQ score in itself is not a reason to take a child into care. However, a test result can help to elucidate why someone's functioning capacity is impaired, particularly if this is seen in conjunction with other observations and descriptions.

[The first applicant] has had serious refractory epilepsy since she was an infant. This is an unstable form of epilepsy that changes the brain and affects the entire personality development. There is also the matter of the side effects of the strong medication she took throughout her childhood. Dr [R.B.L.] at SSE, who knows [the first applicant]'s history very well, talks about 'the burden of epilepsy', i.e. the socio-emotional problems that can be generated through a reduced ability to learn and social maladjustment. It is therefore completely reasonable to assume that the burden of the disease in itself has set her back somewhat. Objective measurements of her functioning made at different times during her upbringing confirm this. Seen in conjunction with clinical observations, an impression is formed of [the first applicant] as a young woman with significant cognitive impairment. In my opinion, this is what the public health services identified when [the first applicant] reported her pregnancy and that gave cause for concern. Terms such as 'immature' and 'childish' frequently occur in descriptions of her behaviour throughout her upbringing and are still used now that she is 24 years old. [The first applicant]'s appearance and behaviour largely qualify her for the use of such adjectives: she is small, delicate and looks much younger than her chronological age. She lives at home with her parents where her room has *Moomins* wallpaper and is filled with objects you would expect to see in a teenager's room.

I am concerned about [the first applicant]'s self-care. She seems young, insecure and partly helpless. Her relationship with men seems unclear. She had a romantic relationship with a man whom she also lived with for a short time, but the relationship was characterised by turbulence with episodes of sexual violence. She became pregnant with X while she was still together with her boyfriend, without [the first applicant] having been able to explain how it came about that her boyfriend is not the child's father. She has seemed confused about this and has told different stories. She has also contracted a sexually transmitted disease (chlamydia) without knowing the source of the infection. [The first applicant] has wanted a child, but has left things up to chance without considering the consequences of having sole responsibility for the child and what this requires. On 7 November 2007 she told the doctor at SSE that she was not using birth control and thought that she might be pregnant at that time. Later

that same day she said that she wanted to become pregnant. An abortion was carried out on the basis of social indications at [R. hospital] in November 2007 of a foetus in the 18th week of the pregnancy. [The first applicant] took a photograph of the foetus, which may seem like a bizarre action. She also received a hand and footprint of the foetus. [R. hospital] described [the first applicant] as immature with a limited network.

The circumstances surrounding both pregnancies say something about [the first applicant]'s awareness of her own choices and their consequences. This is important in the assessment of her ability to care for a child.

Furthermore, [the first applicant] has not completed an education and has not been in permanent employment. She has for the most part lived at home in her old room and has little experience of living as an independent adult with responsibility for creating structure in her life, ensuring an income and deciding on financial priorities. Her relationship with her parents is described as good at the moment, but there have been conflicts in the past. I perceive their relationship to be vulnerable. [The first applicant] herself expresses a great deal of ambivalence towards her mother, because, on the one hand, she thinks that her mother interferes too much with her life, while, on the other hand, she is very dependent on her, takes her opinions as her own and trusts her to be her guide. At the same time she is annoyed that her mother defines many things for her and wishes that her mother 'would get it into her thick head' that she needs a bit more privacy than at present. According to her mother, [the first applicant] just sat in her room after her son was taken into care. Her mother is very worried and says that she 'can hardly stand' seeing her daughter like that.

In my opinion, [the first applicant] has problems with emotional regulation, which makes interaction with other people difficult for her. Since the child was taken into care, [the first applicant] has been offended, hurt and angry. These emotions are fully understandable when you feel that you have been treated unfairly, but in this case they are expressed without censorship to such an extent that it seems conspicuous. Describing the County Social Welfare Board as 'a bunch of rotten women who are bought off by the child welfare services' and the staff at [the parent-child institution] as 'those psychotic people' does not help to create an impression of an adult person who is capable of socialising with other adults in a socially appropriate manner. [The first applicant]'s intense outbursts of crying, both at home with her parents when we are discussing the case and during contact sessions, is also unusual behaviour for an adult. Nor is sobbing into the lap of one's father or mother (as described in connection with the contact sessions) a sign that one is able to control one's emotions in a manner that is commensurate with one's age. Nor has [the first applicant] handled her son's behaviour very maturely, but has rather felt personally rejected and acted accordingly.

It is difficult to stick to the matter at hand with [the first applicant]. Her cognitive style is characterised by an inability to see connections, or to generalise. She demonstrates egocentric thinking when she keeps bringing up the evil child welfare services and when referring to how her parents and everyone else find it incomprehensible that the child was taken into care. I refer to the statement by the psychologist from [the parent-child institution] that 'the mother makes statements that are difficult to attach any meaning to.' The view that I have formed of [the first applicant] during our conversations is that she has a fragmented view of situations, meaning that different episodes are understood as individual episodes that have no connection. Accordingly, guidance is perceived as criticism, good advice as scolding etc. This inability to generalise is characteristic of [the first applicant]'s thinking. She also lacks the capability of abstract thinking and formal thought operations. It is difficult for her to think forwards and backwards in time. Hence, it is not easy to get

an answer as to what ideas she has regarding a possible return of the child. She makes some general statements, for example that she must ask what he likes to eat and whether he watches children's TV, whereas she does not offer any reflections on what special measures should be taken relating to the child's emotional stress if he were to be moved. When I ask what the foster mother should do to help during the process of returning the child, [the first applicant] has no constructive suggestions. What she wants, however, is 'that she (the foster mother) should feel as shitty as I have for the past year'. Such a statement, combined with the manifest hostility (*uttalt fiendtlighet*) during the contact sessions, does not bode well for co-operation with either the foster home or the child welfare services should the boy be returned.

[The first applicant] has used a lot of energy on her aggression and developing hostile opinions. This has contributed to cementing the stereotypes about the child welfare services and all other helpers as adversaries. [The first applicant]'s thinking is characterised by an 'if you're not with me, you're against me' attitude, and she is unable to see nuances. Such black-and-white thinking is characteristic of individuals with limited cognitive capacity. Furthermore, I perceive [the first applicant] as being depressed. I consider her intense aggression as a strategy for holding it together psychologically.

There is no reason to doubt [the first applicant]'s intense wish to become a good mother. She contacted the support services herself for this purpose. What ideas and expectations she had in that regard remain unclear, however. Her mother has indicated that they thought [the parent child-institution] was a sort of hotel where you could get practical help with child care. Despite all the preparatory work and thorough information provided beforehand, they did not understand that an assessment stay requires the parent to show their qualities, be observed and be placed in a learning situation. Consequently, [the first applicant] feels very betrayed and deceived – which is expressed as abusive language and threats.

The stay at [the parent-child institution] illustrates that [the first applicant] had problems handling and retaining information in such a manner that it could be used to guide her behaviour. It is not a question of a lack of willingness but of an inadequate ability to plan, organise and structure. Such manifestations of cognitive impairment will be invasive in relation to caring for the child and could result in neglect.

5.2. The effect of assistance measures

Weight is attributed to the fact that [the first applicant] is now living with her parents and can continue to do so for as long as is necessary. This is an assistance measure of sorts. This may become more problematic than it would seem, however: [the first applicant] is 24 years old and wishes to become autonomous, a desire which may conflict with her mother's desire to help. Neither her parents nor anyone else will be able to dictate how [the first applicant] should organise her life and her child's life. If [the first applicant] wants to move out, she can do this whenever she wishes. Her parents are not concerned about this. A decision must therefore be based on the fact that – should the child be returned – one cannot with a sufficient degree of certainty know where the child's care base will be in future. It must therefore primarily be based on [the first applicant]'s ability to provide care, not her network's ability to provide care.

The stay at the family centre was a strong assistance measure which had no effect. The child welfare services' follow-up of contact sessions has had a negative impact on the cooperation between the [applicant's] family and the child welfare services. Both the family and [the first applicant] have stated that they do not want follow-up or assistance in connection with returning the child.

5.3. Conclusions

In my assessment, there are grounds for claiming that there were serious deficiencies in the care the child received from the mother, and also serious deficiencies in terms of the personal contact and security he needed according to his age and development. [The first applicant]'s cognitive impairment, personality functioning and inadequate capacity for mentalisation make it impossible to have a normal conversation with her about the physical and psychological needs of small children. Her assessments of the consequences of having the child returned to her care and what it will demand of her as a parent are very limited and infantile, with her own immediate needs, there and then, as the most predominant feature. It is therefore found that there is a risk of such deficiencies (as mentioned above) continuing if the child were to live with his mother.

It is also found that satisfactory conditions for the child cannot be created with the mother by means of assistance measures pursuant to section 4-4 of the Child Welfare Act (e.g. relief measures in the home or other parental support measures) due to a lack of trust and a reluctance to accept interference from the authorities – taking the case history into consideration."

64. The High Court held a hearing from 23 to 25 March 2010. The first applicant attended with her legal-aid counsel. Eleven witnesses were heard and the court-appointed expert, psychologist M.S. (see paragraph 61 above), made a statement. The municipal child welfare services submitted, principally, that there should be no contact between the applicants. In the alternative, contact should take place only twice a year. The child welfare services maintained that it was a matter of a "long-term placement" (*langvarig plassering av barnet*).

65. In a judgment of 22 April 2010 the High Court upheld the Board's decision that X should be taken into compulsory care (see paragraphs 38-46 above). It also reduced the first applicant's contact rights to four two-hour visits per year.

66. The High Court had regard to the information in the report produced by the parent-child institution on 23 October 2008 (see paragraph 24 above). It also took account of the family consultant's testimony before the court, in which it had been stated that the first applicant's mother had lived with her at the institution for the first four nights (see, also, paragraph 17 above). It went on to state:

"It was particularly after this time that concerns grew about the practical care of the child. The agreement was that [the first applicant] was to report all nappy changes etc. and meals, but she did not. The child slept more than they were used to. [The family consultant] reacted to the child's breathing and that he was sleeping through meals. Due to weight loss, he was to be fed every three hours around the clock. Sometimes, the staff had to pressure the mother into feeding her son."

67. The High Court found that the parent-child institution had made a correct assessment and – contrary to the City Court (see paragraph 51 above) – considered it very unlikely that the assessment would have been different if X had not had an eye infection.

68. Furthermore, the High Court referred to the report of 5 December 2008 from the child psychiatry clinic (see paragraph 32 above). It also took into account the report of the court-appointed expert, M.S. (see paragraph 63 above).

69. As the stay at the parent-child institution had been short, the High Court found it appropriate to consider the first applicant's behaviour (*fungering*) during the contact sessions that had been organised subsequent to X's placement in foster care. Two people had been entrusted with the task of supervising the sessions, and both had written reports, neither of which had been positive. The High Court stated that one of the supervisors had given an "overall negative description of the contact sessions".

70. The High Court also referred to the report of the psychologist and the family therapist appointed by the child welfare services, who had assessed X in relation to the reactions that he had shown after visits from the first applicant (see paragraphs 58 and 62 above).

71. Furthermore, the High Court noted that the court-appointed psychologist, M.S. (see paragraphs 61 and 63 above), had stated in court that the contact sessions had appeared to be so negative that she was of the opinion that the mother should not have a right of contact with her son. The contact sessions were, in her view, "not constructive for the child". In conclusion to the question of the first applicant's competence as a carer, she stated in her report (see paragraph 63 above) that the stay at the parent-child institution had illustrated that the first applicant "had problems handling and retaining information in such a manner that it could be used to guide her behaviour". She went on to state:

> "It is not a question of a lack of willingness, but of an inadequate ability to plan, organise and structure. Such manifestations of cognitive impairment will be invasive in relation to caring for the child and could result in neglect" (ibid.).

72. The High Court agreed with the expert M.S.'s conclusion before proceeding to the question whether assistance measures could sufficiently remedy the shortcomings in the first applicant's parenting skills. In that respect, it noted that the reasons for the deficiencies in competence as a carer were crucial. The High Court referred at this point to the expert's description of the first applicant's medical history, namely how she had suffered from serious epilepsy since childhood and until brain surgery had been carried out in 2005, when the first applicant had been 19 years old.

73. The High Court noted that M.S. had also pointed out that the first applicant's medical history must necessarily have affected her childhood in several ways. It based its assessment on the description by M.S. of the first applicant's health problems and the impact they had had on her social skills and development. It further noted that placement at a parent-child institution had been attempted as an assistance measure (see paragraph 17 above). The stay had been supposed to last for three months, but had been interrupted after just under three weeks. As a condition for staying longer, the first

applicant had demanded a guarantee that she be allowed to take her son home with her after the stay. The child welfare services had been unable to give such a guarantee, and the first applicant had therefore returned home on 17 October 2008.

74. The High Court noted that relevant assistance measures were assumed to consist of a supervisor and further help and training in how to care for children. However, the High Court found that it would take so long to provide the first applicant with sufficient training that it was not a real alternative to continued foster-home placement. Furthermore, the result of such training was uncertain. In that connection the High Court attached weight to the fact that both the first applicant and her immediate family had said that they did not want follow-up or assistance if X were returned to them. It agreed with the conclusions of the court-appointed expert, M.S. (see paragraph 63 above).

75. The High Court's conclusion in its judgment of 22 April 2010 was that a care order was necessary and that assistance measures for the mother would not be sufficient to allow her son to stay with her. The conditions for issuing a care order under the second paragraph of section 4-12 of the Child Welfare Act were thus met (see paragraph 122 below). In that connection the High Court also gave weight to the attachment that X had formed to his foster parents, particularly the foster mother. As to contact rights, the High Court stated that exceptional and strong reasons were required to deprive a parent of the right of contact after a child had been taken into care, since contact was normally considered to be in the child's best interests, particularly in a long-term assessment. In the instant case, despite the negative information about the contact sessions and the expert psychologist M.S.'s recommendation that the first applicant should not be given any contact rights, the High Court found that exceptional and strong reasons for denying contact did not exist, but that contact sessions should not take place at too short intervals. It went on to state:

> "As regards the frequency of the contact sessions, the High Court is split into a majority and a minority.
>
> The majority ... have found that an appropriate amount of contact would be two hours four times a year.
>
> The majority find reason to emphasise that only the mother has a right of contact. The fact that she has rarely met with [X] alone has had some unfortunate consequences. The tense atmosphere between the adults present has intensified. The stress for the child must be assumed to increase when more people are present. Fewer participants will lead to a calmer atmosphere. This is also in line with the psychologist [M.S.]'s observations. The atmosphere between the adults may also become less tense when the case has been legally resolved and some time has passed. The fact that the contact sessions will become less frequent than under the previous arrangement will also reduce the stress for the child. It must be assumed that the child's subsequent reactions will then decrease. However, the most important factor will be whether the mother and, if relevant, any other family members manage to cooperate better and

preferably convey a positive attitude towards the foster mother, in particular during the contact sessions.

The majority's conclusion that the contact sessions cannot be more frequent than four times a year is related to what is discussed above. In addition, the placement will most likely be a long-term arrangement. The contact sessions may thus serve as a way of maintaining contact between the mother and son so that he is familiar with his roots. This is believed to be important to the development of identity. The purpose of the contact sessions is not to establish a relationship with a view to a future return of the child to the care of his biological mother.

The child welfare services must be authorised to supervise the exercise of the right of contact. This is necessary for several reasons, including to limit the number of participants during the sessions."

The minority of the High Court – one of the professional judges – was of the opinion that the contact rights should be fixed at twice a year.

76. The first applicant did not lodge an appeal against the judgment, which thus became legally binding.

D. The first applicant's complaint to the County Governor

77. In an undated letter the first applicant complained about the child welfare services to the County Governor (*fylkesmannen*). She alleged that the child welfare services had lied and said that she was retarded; the psychologist appointed by the High Court (see paragraph 61 above) had been partial and should never have been allowed to come into her home; in contact sessions, the first applicant was bullied and harassed by the supervisor and the foster mother if she came alone, and she was not allowed to bring her own parents any more. She stated that one could only wonder how retarded they were, or how low an IQ they had. The whole case, she maintained, had been based on lies. She also alleged that the child welfare services removed a person's capacities (*umyndiggjør*) and gladly made people retarded (*gjør gjerne folk evneveike*) in order to procure children for themselves or their friends.

78. The director (*barnevernleder*) of the municipal child welfare services replied on 22 July 2010 saying that the first applicant and her family were more interested in conflict with the child welfare services than in establishing good and positive contact with X. The first applicant had complained early on about the staff from the child welfare services, who, in return, had met her wish to be assigned a new supervisor, but nothing had changed in the first applicant's attitude. The amount of contact had been increased to three times a week in accordance with the City Court's judgment (see paragraph 54 above), and X had had strong reactions to this. The director of the child welfare services further stated that they understood that the situation was difficult for the first applicant and had offered her help (see, *inter alia*, paragraph 48 above). With respect to the contact sessions, they had tried several alternatives. They had at first carried out the sessions

in a meeting room at their offices, where the supervisor and foster mother could sit at a table some distance away from the first applicant and X, though in a manner that enabled them to intervene if supervision were necessary. The first applicant had complained about this solution. There had then been some sessions in the foster home, but the foster mother had found this difficult because the atmosphere was very bad and they wanted the foster home to be a secure environment for X. Thereafter they had borrowed an apartment designated for purposes such as contact sessions. This had also not suited the first applicant, who had again complained. They had then gone back to having visits at the child welfare services' offices, where a new room for such purposes had since been made available.

79. The director of the child welfare services also stated that the foster mother was still present during contact sessions. This had been considered as entirely necessary, as she was the secure carer for X. It had also been considered necessary to have a supervisor present to guide the first applicant. The supervisor's task was also to stop the contact sessions if the first applicant refused guidance. So far, sessions had not been stopped, but the supervisor had tried to tell the first applicant that it was important to focus on X and enjoy being with him, instead of yelling at the child welfare services and the foster mother.

80. In a letter to the first applicant, dated 26 July 2010, the County Governor, following the child welfare services' response to their inquiry, informed her that they had no objections to the work of the child welfare services in the case.

E. Proceedings to lift the care order or withdraw the first applicant's parental responsibilities for X and authorise his adoption

1. Proceedings before the County Social Welfare Board

(a) Introduction

81. On 29 April 2011 the first applicant applied to the child welfare services for termination of the care order or, in the alternative, extended contact rights with X.

82. On 13 July 2011 the municipal child welfare services forwarded the request to the County Social Welfare Board. The municipality proposed that it be rejected; that the first applicant's parental responsibilities for X be withdrawn (transferred to the authorities), and that X's foster parents, with whom he had resided since he was taken into care (see paragraph 22 above), be granted permission to adopt him. The identity of X's biological father was still unknown to the authorities. In the alternative, the municipality proposed that the first applicant's contact rights be removed.

83. During a contact session on 6 September 2011 the supervisor noticed that the first applicant was pregnant and asked when the baby was due, to

which the first applicant, according to the supervision notes, answered that she thought it was around New Year's Eve. According to the notes, the contact session went well.

84. On 13 September 2011 the first applicant's counsel engaged a specialist in clinical neurology to test her abilities and to map her cognitive capacities.

85. In letters of 14 September and 28 October 2011, in the course of the proceedings before the Board, the municipality asked for further information about the first applicant's husband, in order to be able to make contact with him and talk to him about his future role in the first applicant's life.

86. Meanwhile, on 18 October 2011, the first applicant gave birth to Y. She had married the father of Y in the summer of that year. The new family had moved to a different municipality. When the child welfare services in the first applicant's former municipality became aware that she had given birth to another child, they sent a letter expressing concern to the new municipality, which started an investigation into her parenting abilities.

87. Also on 18 October 2011, the specialist in clinical neurology engaged by the first applicant's counsel (see paragraph 84 above) produced his report. His conclusion read as follows:

> "Wechsler Adult Intelligence Scale III (WAIS-III) shows an IQ of 86. Standard errors in measurements indicate that, with a 95% probability, she has an IQ of between 82 and 90. The normal range is between 85 and 115. Ability-wise, [the applicant] is within the lower part of the normal range. In addition she shows considerable learning difficulties that are ... [greater] than what her IQ should indicate [(*betydelige lærevansker som er svakere enn hva hennes IQ skulle tilsi*)]. These difficulties are considered to be consistent with a cognitive impairment."

In response to a request for follow-up, he wrote to the first applicant's counsel on 27 October 2011 stating as follows:

> "A general IQ of between 82 and 90 is not in itself a disqualifying factor with respect to having care for children. Care abilities should to a greater extent be examined through observation of the care person and the child, and anamnestic information about other circumstances. Not being an expert in this field, I think that an assessment of crucial factors would include, among other things, the care person's ability for empathy and meeting the child, understanding of the child's needs, ability to interpret signals from the child, and ability to set aside [(*utsette*)] their own wishes for the benefit of the child's needs.
>
> Such an assessment should be made by a qualified psychologist with experience in the field."

88. On 8 November 2011 the first applicant's counsel sent a copy of a medical journal dated 2 November 2011 to the Board. It appeared from the copy that a doctor had agreed to give evidence by telephone during the upcoming case and that the doctor could not see that there was anything connected with the first applicant's epilepsy or cognition that would indicate that she was not capable of taking care of her child.

89. On 28, 29 and 30 November 2011 the County Social Welfare Board, composed of a lawyer, a psychologist and a lay person, held a hearing at which the first applicant was present together with her legal representative. Twenty-one witnesses were heard.

(b) The Board's decision

90. On 8 December 2011 the Board decided that the first applicant's parental responsibilities for X should be withdrawn and that X's foster parents should be allowed to adopt him. The Board found that there was nothing in the case to indicate that the first applicant's parenting abilities had improved since the High Court's judgment of 22 April 2010 (see paragraphs 65-75 above). Therefore she was still considered incapable of giving X adequate care. Moreover, the Board stated:

> "In her statement before the County Social Welfare Board, the mother maintained her view that the care order was a conspiracy between the child welfare services, [the parent-child institution] and the foster parents for the purpose of 'helping a woman who is unable to have children'. In the mother's words, it was a question of 'an advance order for a child'. The mother had not realised that she had neglected [X], and stated that she spent most of her time and energy on 'the case'.
>
> The reports from the contact sessions between the mother and [X] consistently [(*gjennomgående*)] show that she is still unable to focus on [X] and what is best for him, but is influenced by her very negative view of the foster mother and of the child welfare services.
>
> [The first applicant] has married and had another child this autumn. The psychologist [K.M.] has stated before the Board that he observed good interaction between the mother and child and that the mother takes good care of the child. The Board takes note of this information. In the County Social Welfare Board's opinion, this observation cannot in any case be used as a basis for concluding that the mother has competence as a caregiver for [X].
>
> The County Social Welfare Board finds it reasonable to assume that [X] is a particularly vulnerable child. He experienced serious and life-threatening neglect during the first three weeks of his life. Reference is also made to the fact that there have been many contact sessions with the mother, some of which have been very stressful for [X]. All in all, he has been through a lot. He has lived in the foster home for three years and does not know his biological mother. If [X] were to be returned to the care of his mother, this would require, among other things, a great capacity to empathise with and understand [X] and the problems he would experience, not least in the form of mourning and missing his foster parents. The mother and her family appeared to be completely devoid of any such empathy and understanding. Both the mother and grandmother stated that it would not be a problem, 'he just had to be distracted', and thus gave the impression of not having sympathy with the boy and therefore also being incapable of providing the psychological care he would need in the event of a return."

91. In addition, the Board had especially noted the conclusions of the expert M.S. (see paragraph 63 above). They had been quoted by the High Court in its judgment of 22 April 2010 (see paragraphs 65-75 above). The Board found that this description of the first applicant was still accurate. In

any event, it was decisive that X had established such a connection to his foster family that removing him would result in serious and permanent problems for him.

92. The Board further stated:

"[X] has lived in the foster home as an equal member of the family for three years. These three years are the boy's whole life. We find it to be substantiated that his primary source of security and sense of belonging is his foster family. He sees the foster parents as his psychological parents. In addition to his foster family, [X] receives good follow-up in kindergarten and from the rest of the foster parents' family. We have no doubt that removing [X] from this environment and returning him to his biological mother would lead to considerable and serious problems. Reference is made to the fact that he had already developed considerable problems after one year, when the amount of contact was increased significantly. In our assessment, it is of crucial importance to the boy's development and welfare that he continue to live in the foster home.

On this basis the County Social Welfare Board must determine the question of withdrawal of parental responsibilities and, if relevant, consent to adoption.

The first and second paragraphs of section 4-20 of the Child Welfare Act state that a decision to withdraw parental responsibilities from the parents can be made, and is a precondition for granting consent to adoption. The condition is that the County Social Welfare Board has made a care order for the child.

The Board bases its decision on established case-law allowing for parental responsibilities to be withdrawn from biological parents in order to make an adoption possible. This is the primary objective of the child welfare services' proposal to withdraw the mother's parental responsibilities in the present case.

The wording of section 4-20 of the Child Welfare Act specifies far stricter conditions for granting consent to adoption than for withdrawing the parents' parental responsibilities. However, when the purpose of a decision pursuant to the first paragraph is to open up the possibility for adoption, the grounds that indicate adoption will also constitute the grounds for withdrawal of parental responsibilities.

The matter to be determined in this case is thus whether the conditions for granting consent to adoption are met. The third paragraph of section 4-20 of the Child Welfare Act reads as follows:

'Consent may be given if

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

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

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

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

The County Social Welfare Board will start by observing that there are good grounds for withdrawing the mother's parental responsibilities for [X], regardless of the issue of adoption. Reference is made to the fact that [X] has lived in the foster home for practically his whole life, and it is therefore most natural that the foster

parents make the decisions on his behalf that come with parental responsibilities. The mother's insensitive behaviour, not least online, also indicates that she could cause many problems for him [(*ramme ham hardt*)] when he becomes old enough to understand.

The County Social Welfare Board considers [(*legger til grunn*)] that the mother will be permanently unable to provide [X] with proper care, and that [X] has become so attached to his foster parents, foster brother and the rest of the family that moving him would lead to serious problems for him. Reference is made to the above discussion. The condition in letter (a) of [the third paragraph of] section 4-20 of the Child Welfare Act is met.

Adoption is a particularly invasive measure in relation to the biological parents and the child. Therefore, particularly weighty reasons are required. Pursuant to Supreme Court case-law, the decision must be based on a concrete assessment, but must also build on general experience from child psychology or child psychiatry. Reference is made in particular to the Supreme Court decision in Rt. 2007 page 561 ff., which refers to a court-appointed expert who had stated that general experience indicated that a foster-home relationship was not the preferable option for long-term placement of children who had come to the foster home before establishing an attachment to their biological parents. In such cases, adoption would be most conducive to the child's development. The judgment stated that considerable importance must be attached to such general, but nuanced experience.

The County Social Welfare Board bases its decision [(*legger til grunn*)] on the mother not consenting to [X] being adopted. As shown above, she has a strong, if inappropriate [(*uhensiktsmessig*)], commitment to having him returned to her care.

In the County Social Welfare Board's assessment, consent to an adoption will clearly be in [X]'s best interests. The County Social Welfare Board does not believe that returning [X] to his mother's care is an option. This foster-home placement is considered permanent. [X] sees his foster parents as his psychological parents, and they are the only parents he knows. An adoption would give [X] further assurance that he is his foster parents' son."

93. The Board went on to make another reference to the Supreme Court's (*Høyesteretts*) decision in *Norsk Retstidende* (*Rt.*) 2007, page 561 (see, also, paragraph 125 below) and found that the reasoning underlying the following passage from that judgment – reiterated in *Aune v. Norway* (no. 52502/07, § 37, 28 October 2010) – was also pertinent in the present case:

"A decision that he should remain a foster child would tell him that the people with whom he has always lived and who are his parents and with whom he established his earliest ties and sense of belonging should remain under the control of the child welfare services – the public authorities – and that they are not viewed by society as his true parents but rather as foster parents under an agreement that can be terminated. ..."

The Board considered these general reflections to be an accurate description of X's situation as well. An adoption would be in X's best interests. The condition in letter (b) of the third paragraph of section 4-20 of the Child Welfare Act (see paragraph 122 below) was deemed to be met.

94. Furthermore, the foster parents had been X's emergency foster parents and later his foster parents since his emergency placement when he was three weeks old. The Board stated that it had been documented that they had provided X with excellent care and that the attachment between them and X was good and close. The foster parents had a strong wish to adopt X. In the Board's opinion, the foster parents had demonstrated that they were suited to raise X as their own child. The conditions set out in letter (c) of the third paragraph of section 4-20 of the Child Welfare Act Section 4-20 (see paragraph 122 below) were deemed to be met.

95. In conclusion, the adoption would be in X's best interests. The Board took Article 8 of the Convention into consideration when making its decision.

2. Proceedings before the City Court

(a) Introduction

96. On 19 December 2011 the first applicant appealed against the decision, claiming that the Board had made an incorrect evaluation of the evidence when deciding that she was unable to give X adequate care. She considered that it would be in X's best interests to be returned to her and argued that her situation and her caring skills had changed. She was now married and the couple had a baby. She submitted that the child welfare services in their new municipality assisted them in taking care of the baby. Moreover, in her view, removing X from the foster home would cause him problems only in the short term; no long-term problems could be expected. X had only stayed in the foster home for a short time, and it had not been the foster parents who had expressed a wish to adopt the child but the child welfare services who had taken that initiative. The first applicant also claimed that the visits between her and X had worked satisfactorily; if the child welfare services considered the contact sessions to be inadequate it was for them, as the stronger party, to take action to ensure that they be made satisfactory.

97. The municipality opposed the appeal and submitted in their response that X, who was then three years and four months old and had lived in the foster home since he was three weeks old, had become attached to the foster home. They maintained that it would cause serious and long-lasting problems for him if he were returned at the present time. He had no recollection of the period when he had been in his mother's care. In the municipality's view, the first applicant's ability to care for X had not changed since the High Court's judgment of 22 April 2010. The visits between X and the first applicant had not worked well. She had had outbursts during the visits and had left before the time was up. Afterwards X had reacted negatively. The first applicant and her mother had manifested a very negative attitude towards the child welfare services. The first

applicant had claimed that the child welfare services assisted them in taking care of the baby, whereas the truth was that they had denied the child welfare services access to their home and, accordingly, no assistance measures had been implemented. It had, admittedly, been the child welfare services that had taken the initiative to petition for adoption, but this was their duty in a case such as the present. It was better for X to be offered the firm attachment to the foster home that an adoption would give him. The municipality stressed that it was not the first applicant's epilepsy or her IQ that gave reason to take measures, but her immaturity and actual lack of caring skills. The psychologist, K.M., engaged by the first applicant (see paragraph 98 below) should not be allowed to give evidence. He had videotaped a contact session without the parties' agreement; refused to send the video to the child welfare services; had never provided anything in writing, nor anything that had been quality-checked such as was the ordinary procedure for expert reports; the municipality had already reported him to the health supervision authorities and the Ethics Council of the Psychologists' Association.

98. On 22 February 2012 the City Court, composed of one professional judge, one psychologist and one lay person, in accordance with section 36-4 of the Dispute Act (see paragraph 133 below), upheld the decision after having held a hearing which lasted from 13 to 15 February 2012 and during which twenty-one witnesses were heard. Among the witnesses called by the child welfare services were the persons responsible for supervision of the foster home and the contact sessions, S.H. from the Children's and Young People's Psychiatric Out-Patient Clinic, expert psychologists B.S. and M.S. (see, *inter alia*, paragraphs 58, 61, 62 and 63 above) and the family consultant from the parent-child institution (see, for example, paragraph 24 above). Among the witnesses called by the first applicant were members of her family, her husband and members of his family, the medical director at the hospital where the first applicant had undergone surgery in 2005 (see paragraph 72 above) and specialist in psychology K.M. (see paragraph 97 above). The first applicant was present together with her legal aid counsel.

(b) The City Court's reasoning regarding whether X's public care could be discontinued

99. As a preliminary point in its judgment the City Court stated that during the hearing some time had been spent shedding light on the circumstances existing prior to the decision ordering X to be taken into care. The City Court stated that it would only examine the situation prior to the placement decision in so far as necessary to assess the situation at the time of its judgment appropriately.

100. The City Court went on to note that the first applicant's situation in some areas had improved during the last year. She had married in August 2011, her husband had a permanent job and they had a daughter, Y. It also

noted that the child welfare services in the couple's current municipality were conducting an ongoing inquiry concerning the mother's ability to care for Y. A staff member of the child welfare services in that new municipality had testified at the oral hearing, stating that they had not received any reports of concern other than the one from the child welfare services in the first applicant's former municipality. As part of their inquiry they had made observations at the first applicant's home. They had observed many good aspects but also that the parents might need some help with routines and structure. The City Court found that this indicated that the child welfare services in the municipality to which the first applicant had moved considered that the parents could give Y adequate care if assisted by the child welfare services. Y was not a child with any special care needs.

101. However, on the basis of the evidence the situation was different with regard to X, whom several experts had described as a vulnerable child. The City Court referred in particular to a statement from a professional at the Children's and Young People's Psychiatric Out-Patient Clinic explaining that, as late as December 2011, X was easily stressed and needed a lot of quiet, security and support. If his emotional development in the future were to be sound, the carer would have to be aware of that and take it into account. When the first applicant gave evidence in court, she had clearly shown that she did not realise what challenges she would face if X were to be moved from the foster home. She could not see his vulnerability, her primary concern being that he should grow up "where he belonged". The first applicant believed that returning him would be unproblematic and still did not understand why the child welfare services had had to intervene when he was placed in the emergency foster home. She had not wished to say anything about how she thought X was developing in the foster home. In the City Court's view, the first applicant would not be sufficiently able to see or understand X's special care needs, and if those needs were not met, there would be a considerable risk of abnormal development.

102. The City Court also took account of how the foster parents and supervisor had described X's emotional reactions after contact sessions with his mother, namely, his inconsolable crying and need for a lot of sleep. During the contact sessions X had repeatedly resisted contact with the first applicant and, as the sessions had progressed, reacted with what had been described as resignation. The City Court considered that a possible reason for that was that the boy was vulnerable to inexpedient interaction and information that was not adapted to his age and functioning. The first applicant's emotional outbursts in situations during the contact sessions, for example when X had sought out his foster mother and called her "Mummy", were seen as potentially frightening (*skremmende*) and not conducive to X's sound development.

103. The City Court held that the presentation of evidence had "clearly shown" that the "fundamental limitations" (*grunnleggende begrensningene*)

that had existed at the time of the High Court's judgment still existed. Nothing had emerged during the City Court's consideration of the case to indicate that the first applicant had developed a more positive attitude to the child welfare services or to the foster mother, beyond a statement made by her to the extent that she was willing to cooperate. She had snubbed the foster mother when she had said hello during the contact sessions and had never asked for information about X. The first applicant had left in frustration forty minutes before the last visit had been scheduled to end. Everyone who had been present during the contact sessions had described the atmosphere as unpleasant. The City Court considered that one possible reason why the first applicant's competence at contact sessions had not improved was that she struggled so much with her own feelings and with missing X that it made her incapable of considering the child's perspective and protecting him from her own emotional outbursts. An improvement was contingent upon her understanding X and his needs and on her being willing to work on herself and her own weaknesses. The first applicant had not shown any positive developments in her competence in contact situations throughout the three years she had had rights of contact. The fact that her parents had a remarkably negative attitude to the municipal child welfare services did not make it any easier for her.

104. The first applicant had claimed in court that she was a victim of injustice and that she would fight until X was returned to her. To shed light on her own situation, she had chosen to post her story on the Internet in June 2011 with a photograph of herself and X. In that article and several comments posted during the autumn of 2011, she had made serious accusations against the child welfare services and the foster parents – accusations which she had admitted in court were untrue. The first applicant did not consider that public exposure and repeated legal proceedings could be harmful for the child in the long term.

105. The City Court noted that the psychologist K.M. (see paragraphs 97-98 above), who had examined and treated the first applicant, had testified that she did not meet the criteria for any psychiatric diagnosis. He had counselled her in connection with the trauma inflicted on her by having her child taken away. The goal of the treatment had been to make the first applicant feel like a good mother. He believed that the previous assessments of the first applicant's ability to provide care had at that time been incorrect, and argued before the City Court that the best outcome for X would be to be returned to his biological mother. However, the City Court stated that the psychologist K.M.'s arguments had been based on research conducted in the 1960s, and found them to be incompatible with recent infant research. It noted that the other experts who had testified in court, including the psychologists B.S. and M.S., had advised against returning X to his mother, as this would be very harmful for him.

106. In conclusion thus far, the City Court agreed with the County Social Welfare Board that the first applicant had not changed in such a way as to indicate that it was highly probable that she would be able to provide X with proper care. It endorsed the Board's grounds, holding that the first applicant's clear limitations as a carer could not be mitigated by an adapted transitional scheme, assistance measures or support from her network. It did not find reason to consider other arguments regarding her ability to provide care in more detail, as returning X to her was in any case not an option owing to the serious problems it would cause him to be moved from the foster home. The City Court agreed at this point with the Board in its finding that X had developed such an attachment to his foster parents, his foster brother and the general foster home environment that it would lead to serious problems if he had to move. X's primary security and sense of belonging were in the foster home and he perceived the foster parents as his psychological parents. On those grounds the care order could not be revoked.

(c) The City Court's reasoning regarding whether parental responsibilities for X should be withdrawn and consent to his adoption given

107. Turning to the issues of withdrawal of parental responsibilities and consent to adoption, the City Court stated at the outset that where a care order had been issued, it was in principle sufficient for removal of parental responsibilities that this be in the child's best interests. At the same time, it had been emphasised in several Supreme Court judgments that removal of parental responsibilities was a very invasive decision and that therefore strong reasons were required for making such a decision (see, *inter alia*, paragraph 125 below). The requirements in respect of adoption were even more stringent. However, the questions of withdrawal of parental responsibilities and consent to adoption had to be seen in conjunction, since the primary reason for withdrawing parental responsibilities would be to facilitate adoption. The court also took into consideration that if the first applicant retained her parental responsibilities, she might engage in conflicts in the future about the rights that such responsibility entailed, such as exposing the child on the Internet.

108. The City Court went on to declare that adoption could only be granted if the four conditions in the third paragraph of section 4-20 of the Child Welfare Act were met (see paragraph 122 below), and endorsed the Board's grounds for finding that such was the case regarding the criteria in letters (a), namely that it had to be regarded as probable that the first applicant would be permanently unable to provide X with proper care or that X had become so attached to his foster home and the environment there that, on the basis of an overall assessment, removing him could lead to serious problems for him; (c), namely that the persons applying for adoption had been X's foster parents and had shown themselves fit to bring him up as

their own child; and (d), namely that the conditions for granting an adoption under the Adoption Act (see paragraph 132 below) were satisfied; as to letter (d), further documents had also been submitted to the court. In the present case the decisive factor was therefore whether adoption was in X's best interests under letter (b), and whether consent for adoption should be given on the basis of an overall assessment. Regarding that assessment, several Supreme Court judgments had stated that strong reasons must exist for consenting to adoption against the will of a biological parent. There must be a high degree of certainty that adoption would be in the child's best interests. It was also clear that the decision must be based not only on a concrete assessment, but also on general experience from child-psychology research. Reference was made to the Supreme Court's judgment in *Rt.* 2007, page 561 (see paragraph 125 below).

109. Applying the general principles to the instant case, the City Court first noted that X was at that time three and a half years old and had lived in his foster home since he was three weeks old. His fundamental attachment in the social and psychological sense was to his foster parents, and it would in any event be a long-term placement. X was moreover a vulnerable child, and adoption would help to strengthen his sense of belonging with his foster parents, whom he regarded as his parents. It was particularly important to a child's development to experience a secure and sound attachment to its psychological parents. Adoption would give X a sense of belonging and security in the years ahead for longer than the period a foster-home relationship would last. Practical considerations also indicated that persons who had care and control of a child and who in reality functioned as its parents should carry out the functions that derived from parental responsibilities.

110. The City Court noted that adoption meant that the legal ties to the biological family were severed. In its opinion, X, despite spending the first three weeks of his life with his mother and having many contact sessions, had not bonded psychologically with her. That had remained the case even though he had been told at a later stage that the first applicant had given birth to him.

111. Furthermore, the court took account of the fact that even if no further contact sessions were organised, the foster parents had taken a positive view of letting X contact his biological parent if he so wished.

112. Based on an overall assessment, the City Court found that it would be in X's best interests for the first applicant's parental responsibilities to be withdrawn and for the foster parents to be allowed to adopt him. The court believed that particularly weighty reasons existed for consenting to adoption in the present case.

113. The City Court stated, lastly, that since it had decided that X should be adopted, it was unable to decide on contact rights for the first applicant, since that question would be up to the foster parents to decide. It mentioned

that section 4-20a of the Child Welfare Act provided a legal basis for determining rights to contact subsequent to adoption (see paragraph 122 below, where that provision is reiterated, and paragraph 128 below, on the "open adoption" system). The City Court was not competent, however, to examine or determine such rights since its competence was dependent on a party to the case having made a request to that effect. In the instant case, neither of the parties had done so.

3. Proceedings before the High Court and the Supreme Court

114. On 14 March 2012 the first applicant, through her counsel, appealed against the judgment, claiming that the City Court had evaluated the evidence incorrectly when concluding that the first applicant was permanently unable to care for X. Counsel stated that the High Court should appoint an expert to assess the first applicant's husband's help to mother and child, and the first applicant's caring skills at the time. In response to a letter from the High Court, dated 16 March 2012, counsel also argued that the City Court should have obtained an assessment by an expert witness concerning her and her husband's ability to provide adequate care.

115. In their response, dated 26 April 2012, to the first applicant's arguments that an expert assessment was necessary in the light of her new situation, the municipality stated, *inter alia*, that they had made several requests to be allowed to get to know the first applicant's husband (see, for example, paragraph 85 above), and that the first applicant had consistently chosen to disregard those requests. Since the child welfare services responsible for X did not have any insights into the family's situation in their new municipality, they could only rely on the information they had received from the child welfare services in that municipality, from which they could not infer that the first applicant could take care of X.

116. On 12 June 2012 the first applicant, who had then instructed new counsel, submitted to the High Court a statement from the child welfare services in her new municipality. It emerged from the statement, dated 21 March 2012, that those child welfare services had visited the family five times, each time for one and a half hours. They considered that the family needed assistance in the form of guidance with respect to interaction with their baby, which they could obtain from the local "baby team" (*spedbarnsteamet*) as well as a social worker (*miljøterapeut*) in the home, who could help with routines, structure and cleanliness. The first applicant's counsel also argued that the foster mother's presence during the contact sessions had disturbed (*virket forstyrrende på*) their implementation.

117. On 23 August 2012 counsel for the first applicant submitted a report from the child welfare services in the first applicant's new municipality, dated 5 June 2012. In the report it was stated, *inter alia*, that the parents had stated early on that they would accept advice and guidance if the child welfare services so recommended. The mother had stated that

she had had a bad experience with the "baby team", but that she could accept help from them if another person on the team was appointed to be her contact. In the report it was further stated that the child welfare services considered that it had observed two parents who showed that they wanted the best for their child. The first applicant played with the child, talked to her and engaged actively with her. On the basis of all the information contained in the observations, the child welfare services considered that the parents had to work on routines, cleanliness and involvement with the child. The parents accepted that a social worker be assigned to help them in the home.

118. In the meantime, on 22 August 2012, the High Court had decided not to grant leave to appeal because the conditions in section 36-10 of the Dispute Act (see paragraph 133 below) had not been met. The High Court stated that the case did not raise any new legal issues of importance for the uniform application of the law. With regard to whether new information had emerged, the court noted that the assessment dated 21 March 2012 had been made by, *inter alia*, a person who had testified before the City Court and that the document would not change the outcome of the case. The first applicant's caring skills had been thoroughly examined in connection with the Board's processing of the case and no new information had emerged that indicated changes in that respect. Moreover, the City Court's reasons were convincing and the High Court observed that the first applicant had not asked for an expert witness to be heard in the City Court and had not given any reasons as to why it was necessary to appoint an expert before the High Court. As had just been mentioned, there was no new information that indicated any changes in her caring skills. Thus there were no serious flaws in the City Court's judgment or procedure and no reasons for granting leave to appeal.

119. On 24 September 2012 the first applicant appealed against the decision to the Supreme Court. She submitted an assessment concerning the experience of the social worker in respect of her work with the family and their care for Y (see paragraph 117 above), dated 14 August 2012. In that document it was concluded that a positive development had started and that the social worker should continue to assist the family. The first applicant argued that the City Court had relied more on older documents than on the circumstances at the time of its judgment and had disregarded the fact that its judgment would have the effect of depriving Y of contact with X. She further repeated her argument that the foster mother's presence had disturbed the contact sessions (see paragraph 116 above) and maintained that the child welfare services had not properly organised the sessions.

120. In its reply of 4 October 2012 the municipality stated, *inter alia*, that it was positive that the first applicant and her husband had managed to avail themselves of the guidance received from the social worker, but that X was a vulnerable child whereas Y did not face similar challenges. As to the

first applicant's argument that the City Court had not based its decision on the circumstances at the time of its judgment, the municipality pointed to the fact that five out of the eight witnesses they had called, and all the witnesses called by the first applicant, had given evidence before the City Court on the circumstances as they were at that time. They further stated that Y would not be deprived of contact with X as long as the first applicant accepted X's foster home and contributed to making it a good experience for the children. As to Y's father, it was argued that it had emerged from his testimony before the Board and City Court that he knew little about X's placement in care and about the challenges surrounding the contact sessions. The municipality also submitted that they would argue before the Supreme Court that X's right to respect for his family life was also protected by Article 8 of the Convention and that his need for stability in the foster home and good care would be best ensured if he were adopted.

121. On 15 October 2012 the Supreme Court Appeals Board (*Høyesteretts ankeutvalg*) dismissed the first applicant's appeal against the High Court's decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Child Welfare Act

122. The relevant sections of the Child Welfare Act of 17 July 1992 (*barnevernloven*) provide:

Section 4-1. Consideration of the child's best interests

"When applying the provisions of this chapter, decisive importance shall be attached to finding measures which are in the child's best interests.

This includes attaching importance to giving the child stable and good contact with adults and continuity in the care provided."

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 4-20. Withdrawal of parental responsibilities. Adoption

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

Where an order has been made withdrawing parental responsibilities, the county social welfare board may give its consent for a child to be adopted by persons other than the parents.

Consent may be given if

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

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

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

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

Where the county social welfare board consents to adoption, the Ministry [of Children and Equality] shall issue an adoption order."

Section 4-20a. Contact between the child and his or her biological parents after adoption [added in 2010]

"Where the county social welfare board issues an adoption order under section 4-20, it shall, if any of the parties have requested it, at the same time consider whether there shall be contact between the child and his or her biological parents after the adoption has been carried out. If limited contact after adoption in such cases is in the child's best interests, and the persons applying for adoption consent to such contact, the county social welfare board shall make an order for such contact. In such case, the county social welfare board must at the same time determine the amount of contact.

...

A contact order may only be reviewed if special reasons justify doing so. Special reasons may include the child's opposition to contact or the biological parents' failure to comply with the contact order.

..."

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."

Section 7-5. The board's composition in individual cases

"In individual cases, the county social welfare board shall consist of a chairman/chairwoman, one member of the ordinary committee and one member of the expert committee. When necessary due to the complexity of the case, the chairman/chairwoman may decide that the board, in addition to the

chairman/chairwoman, shall consist of two members of the ordinary committee and two members of the expert committee.

If the parties consent thereto, the chairman/chairwoman may decide cases as mentioned in the first paragraph alone unless this is precluded by due regard for the satisfactory hearing of the case.

Where the case concerns a request for an alteration in a previous decision/order or judgment, the chairman/chairwoman may decide the case alone if this is unobjectionable with due regard for the subject of the case, its complexity, the need for professional expertise, and a proper hearing of the case.

Where the case concerns an extension of a placement order made by the county social welfare board under section 4-29, the chairman/chairwoman shall decide the case alone."

B. Case-law under the Child Welfare Act

123. The Supreme Court has delivered several judgments on the Child Welfare Act. Of relevance in the present context is its judgment of 23 May 1991 (*Rt.* 1991, page 557), in which the Supreme Court stated that since withdrawal of parental responsibilities with a view to adoption involves permanently severing the legal ties between the child and its biological parents and other relatives, strong reasons have to be present in order for a decision of that sort to be taken. It emphasised, moreover, that a decision to withdraw parental responsibilities must not be taken without first having carried out a thorough examination and consideration of the long-term consequences of alternative measures, based on the concrete circumstances of each case.

124. In a later judgment, of 10 January 2001 (*Rt.* 2001, page 14), the Supreme Court considered that the legal criterion "strong reasons" in this context should be interpreted in line with the Court's case-law, in particular *Johansen v. Norway*, no. 17383/90, § 78, 7 August 1996. This meant, according to the Supreme Court, that consent to adoption contrary to the wish of the biological parents could only be given in "extraordinary circumstances".

125. The above case-law was developed further, *inter alia*, in the Supreme Court's judgment of 20 April 2007 (*Rt.* 2007, page 561), after the Court had declared a second application by the applicant in the above-mentioned case of *Johansen v. Norway* inadmissible (see *Johansen v. Norway* (dec.), 12750/02, 10 October 2002). The Supreme Court reiterated that the requirement that adoption be in the child's best interests, as set out in section 4-20 of the Child Welfare Act (see paragraph 122 above), meant that "strong reasons" (*sterke grunner*) must be present in order for consent to adoption to be given contrary to the wish of the biological parents. In addition, the Supreme Court emphasised that a decision of this kind had to be based on the concrete circumstances of each case, but also take account of general experience, including experience from

research into child psychology or child psychiatry. The Supreme Court examined the general principles in the case-law of the Strasbourg Court and concluded that the domestic law was in conformity with those principles: an adoption could only be authorised where "particularly weighty reasons" were present. That case was subsequently brought before the Court, which found no violation of Article 8 of the Convention (see *Aune*, cited above, § 37, for a recapitulation of the Supreme Court's analysis of the general principles developed in the case-law of the Supreme Court and the Court).

126. The Supreme Court again set out the general principles applicable to adoption cases in a judgment of 30 January 2015 (*Rt.* 2015, page 110). It reiterated that forced adoptions had a severe impact and generally inflicted profound emotional pain on the parents. Family ties were protected by Article 8 of the Convention and Article 102 of the Constitution. Adoption was also an intrusive measure for the child and could, under Article 21 of the Convention on the Rights of the Child (see paragraph 134 below), accordingly only be decided when in his or her best interests. However, where there were decisive factors from the child's point of view in favour of adoption, the parents' interests would have to yield, as had been provided for in Article 104 of the Constitution and Article 3 § 1 of the Convention on the Rights of the Child (ibid.). Reference was made to *Aune*, cited above, § 66, where the Court had stated that an adoption could only be authorised where justified by "an overriding requirement pertaining to the child's best interests", which corresponded to the standard of "particularly weighty reasons" as established by the Supreme Court in the judgment that had been scrutinised by the European Court of Human Rights in *Aune* (see paragraph 125 above).

127. Parliament had examined, and a majority had supported, a proposal from the Government (*Ot.prp.* no. 69 (2008-2009)) discussing the issue of a considerable decline in adoptions in Norway. In the proposal it had been suggested that the child welfare services had developed a reluctance to propose adoptions in the aftermath of the Court's finding of a violation in *Johansen*, cited above, even though research had shown that it was in a child's best interests to be adopted rather than experience a continuous life in foster care until reaching their majority. The Supreme Court interpreted the proposal as emphasising that the child welfare services should ensure that adoption would actually be proposed where appropriate, but that the proposal did not imply that the legal threshold, under Article 8 of the Convention, had changed. The Supreme Court added that the general information obtained from research on adoption was relevant to the concrete assessment of whether an adoption should be authorised in an individual case.

128. The Supreme Court also examined the implication of amendments of the rules concerning contact between the child and the biological parents, which had been coined as an "open adoption" in the above proposal. The

rules had been incorporated into section 4-20a of the Child Welfare Act, which had been in force since 2010. They required that an "open adoption" be in the child's best interests and that the adoptive parents consent (see paragraph 122 above). It observed that the legislature's reasons for introducing the system of "open adoptions" had been to secure the child stable and predictable surroundings in which to grow up, while at the same time ensuring some contact with its biological parents where this would be in the child's best interests. The child would thus have all the benefits of the adoption, while still having contact with its biological parents. The Supreme Court found that the introduction of the system of "open adoptions" had not meant that the legal threshold for authorising adoptions had been lowered. However, in some cases further contact between the child and the biological parents could mitigate some of the arguments against adoption. Reference was made to *Aune*, cited above, § 78.

129. The Supreme Court considered anew the general principles concerning adoption in a judgment of 11 September 2018. The Supreme Court observed, *inter alia*, that the European Court of Human Rights, in the case of *Mohamed Hasan v. Norway*, no. 27496/15, § 148, 26 April 2018, had stressed the strict procedural requirements that must be met by the domestic decision-making authorities in cases concerning adoption. When summarising the subject of its review, the Supreme Court stated that the best interests of the child were the most important and weighty concerns when deciding the adoption issue. As adoption was such a radical and irreversible measure, it could only be justified – from the child's point of view – by particularly weighty reasons. These grounds had to be balanced against the consequences of adoption for the child's contact with its biological parents in the individual case. Where there had been little or no contact between the parents and the child, the concern for protection of their family life would be given less weight than in cases where a more normal family life had existed.

130. The current position in respect of knowledge and research on adopted children had been studied by a court-appointed expert and presented in an appendix to his statement to the Supreme Court. The expert believed that the summary in the Supreme Court's judgment of 20 April 2007 (*Rt.* 2007, page 561; see paragraph 125 above) was still accurate. Based on an updated study of relevant research and professional experience as a psychologist, the expert had stated the following in the case at hand:

> "Children in long-term foster care who are adopted undergo better psychosocial development than children in a similar situation who are not adopted. It is the durability of the child's sense of belonging that seems to be essential."

131. The expert had specified in his statement before the Supreme Court that this was a difficult area of research, one of the reasons being that few forced adoptions were carried out annually in Norway. And, as had been

emphasised in the Supreme Court's judgment of 20 April 2007 (*Rt.* 2007 page 561; see paragraph 125 above), a specific, individual assessment had to be made in each case. But, as emphasised in the same judgment, such a research- and experienced-based perception of what was generally best for the child, had to be given particular weight. Also, the abovementioned (see paragraph 127) proposal from the Government (*Ot.prp.* no. 69 (2008-2009)) had stressed that research showed that "... for some children, adoption may give a safer and more predictable upbringing than long-term foster care".

C. The Adoption Act

132. The Adoption Act of 28 February 1986, in force at the relevant time, contained the following relevant provisions:

Section 2

"An adoption order must only be issued where it can be assumed that the adoption will be to the benefit of the child [(*til gagn for barnet*)]. It is further required that the person applying for adoption either wishes to foster or has fostered the child, or that there is another special reason for the adoption."

Section 12

"Adoptive parents shall, as soon as is advisable, tell the adopted child that he or she is adopted.

When the child has reached 18 years of age, he or she is entitled to be informed by the Ministry [of Children and Equality] of the identity of his or her biological parents."

Section 13

"On adoption, the adopted child and his or her heirs shall have the same legal status as if the adopted child had been the adoptive parents' biological child, unless otherwise provided by section 14 or another statute. At the same time, the child's legal relationship to his or her original family shall cease, unless otherwise provided by special statute.

Where one spouse has adopted a child of the other spouse or cohabitant, the said child shall have the same legal status in relation to both spouses as if he or she were their joint child. The same applies to children adopted pursuant to section 5 b, second, third and fourth paragraphs."

Section 14 a. Contact after adoption

"In the case of adoptions carried out as a result of decisions pursuant to section 4-20 of the Child Welfare Act, the effects of the adoption that follow from section 13 of the present Act shall apply, subject to any limitations that may have been imposed by a decision pursuant to section 4-20 a of the Child Welfare Act regarding contact between the child and his or her biological parents."

D. The Dispute Act

133. The first paragraph of section 36-4 and the third paragraph of section 36-10 of the Dispute Act of 17 June 2005 (*tvisteloven*) read:

Section 36-4 The composition of the court. Expert panel

"(1) The district court shall sit with two lay judges, one of whom shall be an ordinary lay judge and the other an expert. In special cases, the court may sit with two professional judges and three lay judges, one or two of whom shall be experts."

Section 36-10 Appeal

"(3) An appeal against the judgment of the district court in cases concerning the County Board's decisions pursuant to the Child Welfare Act requires the leave of the court of appeal.

Leave can only be granted if

a) the appeal concerns issues whose significance extends beyond the scope of the current case,

b) there are grounds to rehear the case because new information has emerged,

c) the ruling of the district court or the procedure in the district court is seriously flawed [(*vesentlige svakheter ved tingrettens avgjørelse eller saksbehandling*)], or

d) the judgment provides for coercive measures that were not approved by the County Board."

III. RELEVANT INTERNATIONAL LAW MATERIALS

A. The United Nations

134. The United Nations Convention on the Rights of the Child, concluded in New York on 20 November 1989, contains, *inter alia*, the following provisions:

Article 3

"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Article 9

"1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned."

Article 18

"1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible."

Article 20

"1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, *inter alia*, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."

Article 21

"States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the

child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

..."

135. In its General Comment no. 7 (2005) on implementing child rights in early childhood, the United Nations Committee on the Rights of the Child sought to encourage the States Parties to recognise that young children were holders of all rights enshrined in the Convention on the Rights of the Child and that early childhood was a critical period for the realisation of those rights. In particular, the Committee referred to the best interests of the child:

"13. Article 3 sets out the principle that the best interests of the child are a primary consideration in all actions concerning children. By virtue of their relative immaturity, young children are reliant on responsible authorities to assess and represent their rights and best interests in relation to decisions and actions that affect their well-being, while taking account of their views and evolving capacities. The principle of best interests appears repeatedly within the Convention (including in articles 9, 18, 20 and 21, which are most relevant to early childhood). The principle of best interests applies to all actions concerning children and requires active measures to protect their rights and promote their survival, growth, and well-being, as well as measures to support and assist parents and others who have day-to-day responsibility for realizing children's rights:

(a) Best interests of individual children. All decision-making concerning a child's care, health, education, etc. must take account of the best interests principle, including decisions by parents, professionals and others responsible for children. States parties are urged to make provisions for young children to be represented independently in all legal proceedings by someone who acts for the child's interests, and for children to be heard in all cases where they are capable of expressing their opinions or preferences."

136. The United Nations Committee on the Rights of the Child General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, mentions the following as elements "to be taken into account when assessing the child's best interests":

"(a) The child's views

...

(b) The child's identity

...

(c) Preservation of the family environment and maintaining relations

...

(d) Care, protection and safety of the child

...

(e) Situation of vulnerability

...

(f) The child's right to health

...

(g) The child's right to education

..."

Under the headings "Balancing the elements in the best-interests assessment" and "Procedural safeguards to guarantee the implementation of the child's best interests", *inter alia*, the following is included:

"84. In the best-interests assessment, one has to consider that the capacities of the child will evolve. Decision-makers should therefore consider measures that can be revised or adjusted accordingly, instead of making definitive and irreversible decisions. To do this, they should not only assess the physical, emotional, educational and other needs at the specific moment of the decision, but should also consider the possible scenarios of the child's development, and analyse them in the short and long term. In this context, decisions should assess continuity and stability of the child's present and future situation.

...

85. To ensure the correct implementation of the child's right to have his or her best interests taken as a primary consideration, some child-friendly procedural safeguards must be put in place and followed. As such, the concept of the child's best interests is a rule of procedure ... .

...

87. States must put in place formal processes, with strict procedural safeguards, designed to assess and determine the child's best interests for decisions affecting the child, including mechanisms for evaluating the results. States must develop transparent and objective processes for all decisions made by legislators, judges or administrative authorities, especially in areas which directly affect the child or children."

B. The Council of Europe

137. The Council of Europe's Revised Convention on the Adoption of Children of 27 November 2008 contains, *inter alia*, the following provisions:

Article 3 – Validity of an adoption

"An adoption shall be valid only if it is granted by a court or an administrative authority (hereinafter the 'competent authority')."

Article 4 – Granting of an adoption

"1. The competent authority shall not grant an adoption unless it is satisfied that the adoption will be in the best interests of the child.

2. In each case the competent authority shall pay particular attention to the importance of the adoption providing the child with a stable and harmonious home."

Article 5 – Consents to an adoption

"1. Subject to paragraphs 2 to 5 of this article, an adoption shall not be granted unless at least the following consents to the adoption have been given and not withdrawn:

a the consent of the mother and the father; or if there is neither father nor mother to consent, the consent of any person or body who is entitled to consent in their place;

b the consent of the child considered by law as having sufficient understanding; a child shall be considered as having sufficient understanding on attaining an age which shall be prescribed by law and shall not be more than 14 years;

c the consent of the spouse or registered partner of the adopter.

2. The persons whose consent is required for adoption must have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin. The consent must have been given freely, in the required legal form, and expressed or evidenced in writing.

3. The competent authority shall not dispense with the consent or overrule the refusal to consent of any person or body mentioned in paragraph 1 save on exceptional grounds determined by law. However, the consent of a child who suffers from a disability preventing the expression of a valid consent may be dispensed with.

4. If the father or mother is not a holder of parental responsibility in respect of the child, or at least of the right to consent to an adoption, the law may provide that it shall not be necessary to obtain his or her consent.

5. A mother's consent to the adoption of her child shall be valid when it is given at such time after the birth of the child, not being less than six weeks, as may be prescribed by law, or, if no such time has been prescribed, at such time as, in the opinion of the competent authority, will have enabled her to recover sufficiently from the effects of giving birth to the child.

6. For the purposes of this Convention 'father' and 'mother' mean the persons who according to law are the parents of the child."

138. The Council of Europe's Parliamentary Assembly adopted Resolution 2049 on 22 April 2015. The Resolution includes, *inter alia*, the following:

"5. Financial and material poverty should never be the only justification for the removal of a child from parental care, but should be seen as a sign for the need to provide appropriate support to the family. Moreover, showing that a child could be placed in a more beneficial environment for his or her upbringing is not enough to remove a child from his or her parents, and even less of a reason to sever family ties completely.

...

8. The Assembly thus recommends that member States:

...

8.2. put into place laws, regulations and procedures which truly put the best interest of the child first in removal, placement and reunification decisions;

8.3. continue and strengthen their efforts to ensure that all relevant procedures are conducted in a child-friendly manner, and that the children concerned have their views taken into account according to their age and level of maturity;

8.4. make visible and root out the influence of prejudice and discrimination in removal decisions, including by appropriately training all professionals involved;

8.5. support families with the necessary means (including financially, materially, socially and psychologically) in order to avoid unwarranted removal decisions in the first place, and in order to increase the percentage of successful family reunifications after care;

8.6. ensure that any (temporary) placement of a child in alternative care, where it has become necessary as a measure of last resort, be accompanied by measures aimed at the child's subsequent reintegration into the family, including the facilitation of appropriate contact between the child and his or her family, and be subject to periodic review;

8.7. avoid, except in exceptional circumstances provided for in law and subject to effective (timely and comprehensive) judicial review, severing family ties completely, removing children from parental care at birth, basing placement decisions on the effluxion of time, and having recourse to adoptions without parental consent;

8.8. ensure that the personnel involved in removal and placement decisions are guided by appropriate criteria and standards (if possible in a multidisciplinary way), are suitably qualified and regularly trained, have sufficient resources to take decisions in an appropriate time frame, and are not overburdened with too great a caseload;

...

8.10. ensure that, except in urgent cases, initial removal decisions are based only on court orders, in order to avoid unwarranted removal decisions and to prevent biased assessments."

139. The Council of Europe's Parliamentary Assembly adopted Resolution 2232 ("Striking a balance between the best interest of the child and the need to keep families together") on 28 June 2018. The Resolution states, *inter alia*:

"4. The Assembly reaffirms that the best interest of the child should be a primary consideration in all actions concerning children, in accordance with the United Nations Convention on the Rights of the Child. However, the implementation of this principle in practice depends on the context and the specific circumstances. It is sometimes easier to say what is not in the best interests of children: coming to serious harm at the hands of their parents, or being removed from a family without good cause.

5. It is with this caveat in mind that the Assembly reiterates the recommendations it made in Resolution 2049 (2015) and recommends that Council of Europe member States focus on the process in order to achieve the best results for children and their families alike. Member States should:

...

5.2. give the necessary support to families in a timely and positive manner with a view to avoiding the necessity for removal decisions in the first place, and to facilitating family reunification when possible and in the child's best interest: this includes the need to build better collaboration with parents, with a view to avoiding

possible mistakes based on misunderstandings, stereotyping and discrimination, mistakes which can be difficult to correct later on once the trust has gone;

...

5.5. seek to keep at a minimum the practices of removing children from parental care at birth, basing placement decisions on the effluxion of time, and adoptions without parental consent, and only in extreme cases. Where in the child's best interests, efforts should be made to maintain family ties;

5.6. where the decision to remove a child from their family has been made, ensure that:

5.6.1. such decisions are a proportionate response to a credible and verified assessment by competent authorities subject to judicial review that there is a real risk of actual and serious harm to the children involved;

5.6.2. a detailed decision is provided to the parents and a copy of the decision is also retained, that the decision is explained in an age-appropriate way to the child or that the child is otherwise granted access to the decision, and that the determination outlines the circumstances that led to the decision and provides reasons for the removal;

5.6.3. removing children is a last resort and should be done only for the necessary period of time;

5.6.4. siblings are kept together in care in all cases where it is not against the best interest of the child;

5.6.5. as long as it is in the best interest of the child, children are cared for within the wider family unit so as to minimise the disruption of family bonds for the children involved;

5.6.6. regular consideration is given to family reunification and/or family access as is appropriate taking into account the best interests and views of the child;

5.6.7. visitation and contact arrangements facilitate the maintenance of the family bond and work towards reunification unless manifestly inappropriate;"

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

140. The applicants complained that the refusal to discontinue the public care of X and the deprivation of the first applicant's parental responsibilities for him and the authorisation granted to his foster parents to adopt him had violated their right to respect for family life as guaranteed by Article 8 of the Convention, which reads:

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society

in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

141. The Government contested that submission.

A. Preliminary issues before the Grand Chamber

1. Scope of the case before the Grand Chamber

(a) Temporal scope

(i) The parties' submissions

142. The Government maintained that it fell outside the Grand Chamber's jurisdiction to consider whether the domestic proceedings relating to the taking into care of X and the first applicant's contact rights – prior to those relating to the authorisation of adoption – had complied with Article 8 of the Convention. Contrary to the requirements in Article 35 § 1 of the Convention, the applicants had failed to exhaust domestic remedies and to comply with the six-month time-limit with respect to the emergency care order of 17 October 2008, the care order of 2 March 2009 and the decisions on contact rights. In any event, the application to the Court of 12 April 2013 had been directed only at the measures upheld by the Supreme Court decision of 15 October 2012, that is, the removal of parental responsibilities and authorisation of adoption. The Chamber minority had overstepped the Court's competence and disregarded the scope of the applicants' application in order to voice abstract criticism against an entire child welfare system. It was not open to the applicants to expand the case through their referral request to the Grand Chamber. While the latter could have regard to prior proceedings, this was only to the extent that they had been referred to and relied upon in the decision relating to the removal of parental responsibilities and the authorisation of adoption.

143. Disagreeing with the Government's position, the applicants submitted that the Grand Chamber had competence to examine not only the removal of parental responsibilities and the authorisation of adoption but also the initial emergency decisions, the decisions relating to X's being taken into public care and those relating to the first applicant's contact rights. Its jurisdiction comprised the entirety of the domestic proceedings – even if it were ultimately to find a violation only in respect of a part of these. The consent to adoption had to be considered as the final decision in a sequence of events that had started with the emergency decision. The decision to remove parental responsibilities and to authorise adoption had been a consequence of the lack of attachment between X and the first applicant, which in turn had been a direct result of the decisions of

2 March 2009 and 22 April 2010 on long-term public care, in which the first applicant's contact rights had been considerably and unjustifiably reduced.

(ii) The Court's considerations

144. The Court reiterates that the content and scope of the "case" referred to the Grand Chamber are delimited by the Chamber's decision on admissibility. This means that the Grand Chamber cannot examine those parts of the application which have been declared inadmissible by the Chamber (see, for example, *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 100, 4 December 2018). In the present case, the Grand Chamber notes that the Chamber declared admissible the complaint lodged by the applicants (see paragraph 2 above), which concerned the deprivation of parental responsibilities and authorisation of adoption first decided by the County Social Welfare Board on 8 December 2011 and then upheld on appeal (see, *inter alia*, paragraphs 3, 76, 93, 94 and 111 of the Chamber's judgment).

145. The Grand Chamber observes that X was taken into emergency foster care in 2008 (see paragraphs 20-22 above) and into ordinary foster care following the decision of the County Social Welfare Board of 2 March 2009 (see paragraphs 38-46 above). In the same decision the first applicant was granted limited contact rights (see paragraphs 42-46 above). She appealed against that decision, which was ultimately upheld by the High Court in its judgment of 22 April 2010 (see paragraphs 65-75 above), again granting the first applicant limited contact rights (see paragraph 75 above). As the applicant did not avail herself of the possibility of lodging an appeal, the High Court's judgment became final on the expiry of the time-limit for doing so.

146. In their request for referral to the Grand Chamber, the applicants sought to expand their complaints to encompass also the above proceedings from 2008 to 2010. These grievances did not, however, form part of their application as it was declared admissible by the Chamber. They were in any event filed for the first time before the Grand Chamber more than six months after the last domestic decisions taken in the proceedings in question and, as mentioned above (see paragraph 145), without domestic remedies having been exhausted in the most recent of these.

147. Consequently, the Court does not have jurisdiction to review the compatibility with Article 8 of the Convention of the proceedings, including those relating to the restrictions on contact rights, that predated or ended with the High Court's judgment of 22 April 2010 (see paragraph 76 above).

148. Nonetheless, in its review of the proceedings relating to the County Social Welfare Board's decision of 8 December 2011 and the decisions taken on appeal against that decision, notably the City Court's judgment of 22 February 2012, the Court will have to put those proceedings and decisions in context, which inevitably means that it must to some degree

have regard to the former proceedings and decisions (see, similarly, for example, *Jovanovic v. Sweden*, no. 10592/12, § 73, 22 October 2015, and *Mohamed Hasan*, cited above, § 151).

(b) Material scope

149. The Court observes that the applicants' application lodged with the Court on 12 April 2013 expressly targeted only the decision to withdraw the first applicant's parental responsibilities in respect of X and to authorise the latter's adoption by his foster parents (see the City Court's decision in paragraphs 107-12 above), not the concurrent conclusion reached on the same occasion that the conditions for lifting the care order concerning X had not been met (see paragraphs 99-106 above).

150. The Chamber considered that the decision not to lift the care order was nonetheless intrinsically related to the decision to deprive the first applicant of her parental responsibilities for X and to authorise the latter's adoption, and accordingly reviewed the former decision on the merits (see paragraphs 113-17 of the Chamber's judgment) regardless of the applicants' having focused expressly on the latter decision in their application and submissions before the Chamber.

151. The Grand Chamber notes that, while the respondent Government did not express disagreement with the Chamber's approach in this regard, the applicants made submissions before it indicating that their complaint also encompassed the decision not to lift the care order taken in the same proceedings.

152. The Grand Chamber observes that the refusal to lift the public care order is so closely related to and intertwined with the decision to remove the first applicant's parental responsibilities and to authorise adoption that it must be considered to be an aspect of her initial complaint to the Court. Indeed, as follows from the terms of section 4-20 of the Child Welfare Act (see paragraph 122 above), it was a prerequisite for application of that provision that public care continued to be justified. The Grand Chamber will therefore, as was done by the Chamber, include the decision not to lift the care order in its examination of whether the applicants' Article 8 rights have been violated.

2. The first applicant's standing to lodge a complaint on behalf of the second applicant

(a) The Chamber's judgment

153. The Chamber, emphasising that the complaint concerned the decision to deprive the first applicant of her parental responsibilities for X and to authorise his adoption – which resulted in the former losing legal guardianship over X – rather than facts subsequent to that decision,

concluded that the first applicant was competent to lodge a complaint on behalf of the second applicant, X.

(b) The parties' submissions

154. By way of preliminary objection before the Grand Chamber, the Government argued that the first applicant did not have standing to lodge an application on behalf of X. His adoptive parents would have had standing, but had not done so. The Court's acceptance of the mother's lodging of an application on her child's behalf in *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 138, ECHR 2000-VIII, had been due to the particular circumstances of that case. In the instant case X's interests were also represented by his adoptive parents, who had intervened before the Court.

155. The applicants submitted that, according to the Court's established case law, a biological parent whose parental responsibilities had been withdrawn could submit a complaint against that withdrawal on behalf of the child in question. The first applicant accordingly had an unquestionable right to represent X in the instant case.

(c) The Court's considerations

156. The Court observes that the disputed deprivation of parental responsibilities and the authorisation of adoption decided by the County Social Welfare Board on 8 December 2011 and upheld by the City Court on 22 February 2012, against which leave to appeal was refused by the appellate courts, undoubtedly led to the severance of the legal ties between the first and second applicants. The Court has held that this factor is not decisive for whether a parent may have *locus standi* to lodge an application on behalf of the child before the Court (see, for example, *A.K. and L. v. Croatia*, no. 37956/11, § 46, 8 January 2013). In that judgment, the Court further stated:

> "... The conditions governing the individual applications under the Convention are not necessarily the same as national criteria relating to *locus standi*. National rules in this respect may serve purposes different from those contemplated by Article 34 and, while those purposes may sometimes be analogous, they need not always be so (see, *mutatis mutandis*, *Norris v. Ireland*, 26 October 1988, § 31, Series A no. 142).
>
> 47. The Court would draw attention to the principle that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions, both procedural and substantive, be interpreted and applied so as to render its safeguards both practical and effective (see amongst other authorities, *Loizidou v. Turkey* (preliminary objections), 23 March 1995, §§ 70-72, Series A no. 310). The position of children under Article 34 calls for careful consideration, as children must generally rely on other persons to present their claims and represent their interests, and may not be of an age or capacity to authorise any steps to be taken on their behalf in any real sense (*P.C. and S. v. the United Kingdom* (dec.), no. 56547/00, 11 November 2001). The Court considers that a restrictive or technical approach in this area is to be avoided" (ibid., § 46-47).

157. Since X was adopted, his only representatives under national law in respect of any issues concerning facts that occurred after the adoption had become final would be his adoptive parents. However, in respect of the adoption proceedings, conducted at a time when the first applicant still had full responsibilities for X, according to the Court's case-law, it is in principle in a child's interests to preserve family ties, save where weighty reasons exist to justify severing those ties (see, for example, *A.K. and L. v. Croatia*, cited above, § 49). In addition, on several occasions the Court has accepted in the context of Article 8 of the Convention that parents who did not have parental rights could apply to it on behalf of their minor children (see *Scozzari and Giunta*, cited above, §§ 138-39), the key criterion for the Court in these cases being the risk that some of the children's interests might not be brought to its attention and that they would be denied effective protection of their Convention rights (see *mutatis mutandis*, *Lambert and Others v. France* [GC], no. 46043/14, § 94, ECHR 2015 (extracts)).

158. Where an application has been lodged before it by a biological parent on behalf of his or her child, the situation may nonetheless be that the Court identifies conflicting interests between parent and child. A conflict of interest is relevant to the question of whether an application lodged by one person on behalf of another is admissible (see, for example, *Kruškić v. Croatia* (dec.), no. 10140/13, §§ 101-02, 25 November 2014). The Government have objected on such grounds in the instant case.

159. The Court considers that the question of a possible conflict of interest between the first and second applicants overlaps and is closely intertwined with those which it is called upon to examine when dealing with the complaint, formulated by the first applicant on her own behalf and on behalf of the second applicant, of violations of their right to respect for family life under Article 8. It discerns no such conflict of interest in the present case as would require it to dismiss the first applicant's application on behalf of the second applicant. Accordingly, the Government's objection must be dismissed.

B. Merits

1. The Chamber's judgment

160. The Chamber was satisfied that the domestic proceedings complained of were in accordance with 1992 Child Welfare Act and pursued the legitimate aims of "the protection of health or morals" and the "rights and freedoms" of X in accordance with Article 8 § 2 of the Convention. As to the further question whether the disputed interference was also "necessary", the Chamber considered that the first applicant had been fully involved in the domestic proceedings, seen as a whole, and that

the domestic decision-making process had been fair and capable of safeguarding the applicants' rights under Article 8. The majority of the Chamber further observed that the City Court had been faced with the difficult and sensitive task of striking a fair balance between the relevant competing interests in a complex case. In the majority's view, the City Court had clearly been guided by the interests of X, notably his particular need for security in his foster-home environment, given his psychological vulnerability. Also taking into account the City Court's conclusion that there had been no positive development in the first applicant's competence in contact situations throughout the three years in which she had had contact rights and the fact that the domestic authorities had had the benefit of direct contact with all the persons concerned, the majority of the Chamber found that there were such exceptional circumstances in the present case as could justify the measures in question and that the domestic authorities had been motivated by an overriding requirement pertaining to X's best interests.

2. The parties' submissions

(a) The applicants

161. The applicants submitted that in its judgment the Chamber had failed to take account of the particular context concerning Norway, namely that there was widespread criticism both nationally and internationally of the Norwegian child welfare system, indicating a serious systemic problem.

162. Under the Court's case-law, the margin-of-appreciation concept was, in the applicants' opinion, characterised by its casuistic nature. The margin to be accorded to the competent national authorities would vary in the light of the nature of the issues and the seriousness of the interests at stake. It was well established that in cases relating to placement of children in public care and adoption, the domestic authorities enjoyed a wide margin of appreciation. However, the Court tended to hide behind the margin-of-appreciation concept in a way which could to some extent undermine its control and functions.

163. Given the nature and seriousness of the interference at stake, the margin of appreciation ought to have been particularly narrow even in regard to the first child-welfare measures that had been taken. The Chamber majority had, moreover, not addressed the grounds for the extremely limited contact rights that had been granted from the beginning.

164. It was clearly established in the Court's case-law that the protection of the biological family was a priority. The instant case concerned a very young child; in such cases the authorities could act only on extraordinarily compelling grounds. X's particular vulnerability referred to by the domestic authorities in their decisions had never been supported by concrete and tangible evidence. Nor had his special care needs ever been explained, as pointed out by the minority in the Chamber.

165. Contact rights in Norway were notably restrictive and had been denounced by the Court in several cases. Considering that limited contact rights had a particularly detrimental impact in the first weeks, months and years of an infant's life, the facts of the instant case were particularly shocking. The first applicant's contact rights had been drastically limited without objective reasons and over a very short space of time. The imposition of extremely restricted access rights had destroyed any chance of family reunification and had made it impossible for X to forge natural bonds with the first applicant. Since the domestic authorities were directly responsible for the family breakdown, the argument that X had had no psychological bonds with his mother was unacceptable.

166. There had been a conflict between the first applicant, the foster mother and the child welfare services; a conflict of that nature was hardly exceptional and was readily understandable. The authorities had done absolutely nothing to pacify the first applicant's relations with the authorities and the foster mother. On the contrary, the foster mother had been present during all contact sessions, even though this had not been ordered or permitted by any of the domestic decisions. The positive obligation incumbent on the authorities under Article 8 of the Convention required that they proposed altering the terms of the contact rights or took decisions to that effect. The County Social Welfare Board and the City Court had focused only on the short-term consequences of a separation of X from his foster parents and had failed to consider the long-term impact on him of a permanent separation from his biological mother. The domestic authorities should have resorted to less intrusive measures.

167. The domestic authorities had not dealt with the case in good faith, quite the contrary. The alleged lack of caring skills on the part of the first applicant was firmly contradicted by the case-material. She could not be blamed for having asked the same questions several times when at the parent-child institution, and the institution's staff had threatened her with taking X into public care. While the expert reports contained global formulas such as "a severe lack of the abilities that are required in the mothering role", "problems with emotional regulation" and "inadequate basic parent skills", these had not been substantiated. There had been no concrete and tangible evidence to justify the alleged fundamental limitations of the first applicant and her caring skills.

168. Old and new research on infant attachment suggested that the domestic authorities had failed to abide by basic and fundamental attachment principles to support reunification. They had not proved that returning X to the first applicant would cause him serious problems.

(b) The Government

169. Overall, the Government invited the Grand Chamber to follow the approach of the Chamber majority, which had been correct and exemplary

both in interpretation and application of Convention law. In contrast, they cautioned against the Chamber minority's attempt to carry out a "forensic examination of the facts": reassessing facts that had been established by the national courts many years ago risked making the review arbitrary and was contrary to the Court's fourth-instance doctrine.

170. The Government argued that the domestic decision-making process had been fair and capable of safeguarding the applicants' rights under Article 8 of the Convention. The case had been reviewed independently and impartially by several levels of court.

171. The child's best interests, which had changed over time, were paramount. The first applicant sought to assert her right to family life, but although she had submitted a claim that had to be assessed under Article 8 of the Convention, it was in essence not so much a claim for the protection of existing "family life", as an assertion of a biological right even under circumstances involving little or no actual attachment. The second applicant, X, also had a right under Article 8 to have his family life protected. The question therefore arose as to whether his "family life" consisted of his biological ties to the first applicant or of the only family life that he had known, namely with the persons who had assumed care for him since he was three weeks old and who, in his mind, were his actual parents.

172. The case involved competing interests, but there was no consensus among the Contracting States as to the extent to which public authorities could interfere with family life in the interests of the well-being of a child, which suggested that they should be accorded a wider margin of appreciation. In the case under consideration, the reasons given by the domestic authorities for the impugned decisions had been relevant and sufficient. X had been subjected to very serious neglect during the first weeks of his life. The first applicant had subsequently failed to show any development with regard to her approach to him. X was vulnerable to a repetition of the same pattern of disturbances and reactions. If his care needs were not met, there was a risk of retraumatisation and a reversal of positive development with regard to his functioning. The first applicant had continued to appear "completely devoid of any such empathy and understanding" that would be called for should X be returned to her.

173. The domestic authorities had complied with their positive obligations. The first applicant had not accepted help from the child welfare services. The authorities had also taken note of her recent marriage and second child, but those developments had not been sufficient to outweigh the necessity of the impugned measures. The Chamber minority had erroneously assumed that the inquiry made by the child welfare services in the municipality to which the first applicant had moved had disclosed "no shortcomings".

174. The Chamber minority had disregarded Article 35 § 1 of the Convention and had "reopened" earlier cases. In doing so, the minority had

wrongfully applied the standard of a "stricter scrutiny", not merely to the adoption decision, but also to the prior decisions relating to the taking into care of X. In addition, the minority had erred with respect to the facts. There had been a previous order awarding the minimum legal contact rights; further contact had not been precluded had this been in X's best interest. However, three experts had concluded that there had been no positive development whatsoever in the relationship between X and the first applicant. Rather than availing herself of the supportive measures, the first applicant had continued to use the contact sessions as an arena for cultivating her opinion that she had been a victim of injustice, instead of focusing on X. It had been primarily in the first applicant's and her family's view that there had been a "conflict" between the first applicant, the child welfare services and the foster mother.

175. In short, the circumstances had been exceptional and the impugned decisions had clearly been motivated by an overriding requirement pertaining to X's best interests. The City Court had succeeded in its difficult and sensitive task of striking a fair balance between the relevant competing interests in a complex case.

3. Third-party comments

(a) The Government of Belgium

176. The Government of Belgium stated that, while perceptions varied as to what manner of intervention with respect to child welfare was appropriate, Belgian legislation did not allow for adoption contrary to the biological parents' wishes. They further submitted that domestic authorities in cases such as the present one had to balance the best interests of the child against the interests of the biological parents. The Belgian Government went on to express a number of considerations as to the facts as they had been restated in the Chamber judgment, and highlighted that these differed from those in the case of *Aune*, cited above.

(b) The Government of Bulgaria

177. The Government of Bulgaria submitted that the child welfare case should be reviewed in its entirety because earlier decisions such as on placement in care and contact rights were intrinsically linked to the adoption proceedings. The Contracting Parties had a wide margin of appreciation when deciding on placement in public care, but a stricter scrutiny was called for in respect of any further limitations. When further limitations were involved, the Court was called upon not only to examine the procedural aspects of the decision-making process, but to go beyond the form, if necessary, and assess the substance of the case. Furthermore, the Bulgarian Government emphasised the positive duty to make concrete efforts to facilitate family reunification as soon as reasonably feasible and stressed

that it was not enough to show that a child could be placed in a more beneficial environment for his upbringing.

(c) The Government of the Czech Republic

178. The Government of the Czech Republic focused mainly on the approach of the respective authorities after emergency or permanent placements of children in foster care, since, they submitted, immediate active work with the biological families after the placement as well as the frequency of contact between the children and their biological parents appeared to be crucial factors in maintaining original family ties.

179. They further stressed that when assessing the compliance of authorities with their obligations under Article 8 of the Convention, the situation of all members of the family must be taken into account. There was a broad consensus, including in international law, that in all decisions concerning children, their best interests must be paramount. However, the "best interests" principle was not designed to be a kind of "trump card". Article 8 covered both the best interests of the child and the right of the parents to be assisted by the State in staying or being reunited with their children. The child welfare systems should not disregard the existence of the biological parents' rights, which should be duly taken into account and balanced against the best interests of the child, rather than minimised to the point of being ignored.

180. In addition, the Government of the Czech Republic emphasised the importance of contact between biological parents and their child in public care and other measures to reunite the family, *inter alia*, in order to ensure that a taking into care remained a temporary measure: restrictions on contact could be the starting point of the child's alienation from his or her biological family and, thus, of the impossibility for the family to reunite. In order for the effort to reunite the family to be serious, contact would have to occur several times a week, even under supervision or with assistance, and increase in time up to daily visits. If that were the case, it would be possible to talk about a slow establishment of a bond between the child and their biological parents. Speedy procedures were also required.

181. As to adoption, they maintained that the Court must strike a balance between the rights of the biological and the adoptive parents. The best interests of the child had to be assessed on an *ad hoc* basis that sometimes conflicted with other interests involved: there were other rights that had to be taken into account when determining whether or not a child should be considered adoptable.

(d) The Government of Denmark

182. The Government of Denmark argued that the domestic authorities had made a comprehensive and thorough evaluation of the matter, and the Court's assessment should be limited to an assessment of the decision-

making process. The Court should not, as had the Chamber minority, carry out a "forensic examination of the facts" and substitute its own assessment for that of the domestic courts, who had undertaken a balancing exercise in conformity with the criteria laid down in Article 8 of the Convention and the Court's jurisprudence.

183. The Chamber majority had made a correct assessment of the matter and there were no strong reasons why the Court should reassess the facts of the case as a fourth-instance tribunal several years after the incidents and based on documentary evidence presented to the Court. Reference was made to paragraph 28(c) of the Copenhagen Declaration. By expressing a dissenting opinion implying an entirely new assessment, the Chamber minority had attempted to don the mantle of a fourth-instance tribunal. The domestic authorities had clearly demonstrated that they had made a thorough assessment of the matter comprising a comprehensive balancing of opposing interests and had shown an understanding of the fact that the case concerned far-reaching intrusions into family and private life, and had also taken into account Article 8 of the Convention and loyally applied the criteria laid down in the Court's jurisprudence.

(e) The Government of Italy

184. The Government of Italy submitted that the first applicant's interests did not necessarily align with those of X. If the Court wanted to ensure that X's interests were looked after, it could indicate to the respondent Government that counsel should be appointed for him. Moreover, the Italian Government argued that the decisions taken prior to that concerning X's adoption had become final and if the Court were to re-examine them now in connection with the complaint against the adoption decision, this would run counter to Article 35 of the Convention. Those prior decisions were only facts and ought to be treated as such.

185. In addition, the Italian Government emphasised that there was no European consensus on the topic of protecting parents and children's rights to respect for their family life; the Contracting Parties had a wide margin of appreciation. There were examples in the Court's jurisprudence of cases that had been approached in contradiction to the general principles usually set out by the Court, cases where the Court had taken on a fourth-instance role and examined whether there existed circumstances justifying the removal of the child – which was linked to the idea of a "forensic examination of the facts" mentioned in the dissenting opinion in the Chamber judgment – as well as cases in which the Court had assumed that the best interests of the child coincided with those of his or her biological parents.

186. As to the best interests of the child, the Italian Government emphasised that in the relevant international materials a child was considered to be neglected when the parents did not maintain the necessary relations for his or her upbringing or development, or provide psychological

and material assistance. In that connection the Italian Government raised issues with long-term care; children in care lived in limbo between biological parents and substitute carers, with resulting problems such as loyalty conflicts. References were made to *Barnea and Caldararu v. Italy*, no. 37931/15, 22 June 2017 and *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, 24 January 2017. Specialists and experts had emphasised that it was not a rule that biological family ties should be preserved, and that should only be the case where it represented a benefit to the child in the specific case. Only the national decision-makers could carry out the necessary assessment of that individual question. The Court did not have the necessary tools to be a fourth-instance tribunal and carry out a "forensic examination of the facts".

(f) The Government of Slovakia

187. The Government of Slovakia submitted that the Court's case-law was perfectly clear in that it primarily protected the biological family. Placing a child in foster care was an extreme measure and domestic authorities were required to adopt other measures if such were able to achieve the pursued aim. In particular, where a decision had been explained in terms of a need to protect the child from danger, the existence of such a danger should be actually established. Simultaneously, taking a child into care should be regarded as a temporary measure, to be discontinued as soon as circumstances permitted, and any measure of implementation should be consistent with the ultimate aim of reuniting the natural parent with his or her child.

188. The Slovakian Government made further comments on a case in which Slovak citizens had been affected by child welfare measures and on international concern about child welfare measures adopted in the respondent State.

(g) The Government of the United Kingdom

189. The Government of the United Kingdom submitted that in cases such as the present the Court ought in principle to focus on the adequacy of the procedures and sufficiency of the reasons adopted by the domestic authorities, rather than undertake a *de novo* analysis of the facts.

190. The Court had enumerated a number of identifiable factors that were likely to be relevant in a case such as the present. The UK Government noted, in particular, that permanency was an inherent part of any adoption decision, and that a balancing of interests was required, but guided by the paramountcy of the best interests of the child. The child's bonds to his or her *de facto* family were therefore to be considered, and Article 8 of the Convention did not require that domestic authorities make endless attempts at family reunification.

191. With respect to subsidiarity, the UK Government pointed to paragraph 28 of the Copenhagen Declaration. In cases such as the present, account should be taken of the relative expertise and involvement of the domestic authorities compared with the Court, the level of participation of the parties affected by the domestic process, and the level of consensus amongst Contracting States. The seriousness of the intervention at issue was also relevant, but a closer scrutiny could not entail a fresh assessment of the facts and particularly not if considerable time had elapsed since the decision under review. The Chamber minority could be understood as seeking to establish that the Court should undertake its own assessment of the underlying facts, rather than reviewing the decisions, particularly by its reference to the need for "a forensic examination of the facts" and by indications that the dissenting judges envisaged that the Court itself should render a "substantive" decision. The Grand Chamber was invited to reject this approach; as had been stated by the Chamber majority, the Court was required to consider whether the domestic authorities had adduced relevant and sufficient reasons for their decisions, but only the domestic authorities were in a position to determine what was in the child's best interests.

(h) ADF International

192. ADF International submitted that family was internationally recognised as the fundamental group of society and of particular importance to children. According to the Court's case-law, the Contracting Parties were required to organise their child welfare services in a manner aimed at facilitating family reunification, unless there was clear evidence of danger to the child's welfare. Furthermore, ADF International emphasised the duty to maintain contact between parents and children and to provide practical assistance to families.

(i) The AIMMF

193. The AIMMF emphasised the importance of personal participation of the natural parent, with legal assistance, before the domestic authorities, as had been the case for the first applicant. In addition to making some comments on the emergency decision, the organisation also highlighted the need for the child to have legal assistance in order to ensure that his or her best interests be protected.

194. Furthermore, the AIMMF submitted that the multi-disciplinary composition of the County Social Welfare Board and the City Court was a particularly important aspect that had also been highlighted by the Court in *Paradiso and Campanelli*, cited above, § 212. Decision-makers with multi-disciplinary competences formed a crucial aspect of a justice system adapted for children.

195. Moreover, the organisation emphasised the importance of bearing in mind that this case concerned X specifically, and solutions had to be

found for him in the light of his vulnerability and history, including the experiences with contact sessions and his ties to the foster parents. Based on the Chamber judgment, the Chamber majority had shown a greater understanding of X's needs than what was reflected in the dissenting opinion. It was precisely on the basis of X's individual circumstances and history that the domestic authorities had arrived at the conclusion that it was in his best interests to strengthen his relations with the foster parents.

(j) The AIRE Centre

196. The AIRE Centre invited the Court to reiterate that the Convention was a "living instrument" and that the evolving nature of children's rights under the Convention on the Rights of the Child had to be taken into account.

197. As to the assessment of the child's best interests, the organisation emphasised the importance of family unity and the child's right to be heard, as protected by Article 12 of the Convention on the Rights of the Child. With respect to the thresholds for removal and adoption of a child, the organisation reiterated the principles relevant to the questions of necessity and proportionality. It further pointed to the need for both legal certainty and flexibility, and highlighted "*adoption simple*" or long-term fostering as alternatives to a "closed" adoption. While it could be that in very exceptional circumstances it would not be in a child's best interests to retain contact with the birth parents (for example, when those parents had been operating a paedophile ring or engaging in child trafficking or serial child abuse), this conclusion should not flow automatically from the decision that the child needed a stable, permanent home that was not with the birth parents.

198. The AIRE Centre further submitted that children of parents with intellectual disabilities were commonly taken away as infants, with neglect such as slow weight gain, general failure to thrive, and lack of understanding of children's needs, as the primary concern. Parents with intellectual disabilities had the right to support and, *inter alia*, General Comment No. 14 (2013) to the Convention on the Rights of the Child stressed this positive obligation.

(k) The adoptive parents

199. X's adoptive parents submitted that his representation before the Court raised a crucial question in the case. The principle of the best interests of the child had also to be applied to the procedural rules of representation. Under the Court's case-law, the rules relating to representation of children had been flexible and applied so as to ensure that all relevant interests would be brought to the Court's attention. Allowing the natural parents to represent a child who had a protected family life with foster or adoptive

parents did not ensure an effective protection of the child's rights under the Convention.

200. According to the Court's case-law, "family life" was essentially a question of fact. Striking a fair balance between the public interest and the many different private interests at play had been emphasised by the Court as particularly important in a case where the child had developed family ties with two different families. Reference was made to, *inter alia*, *Moretti and Benedetti v. Italy*, no. 16318/07, 27 April 2010. Due regard also had to be given to other ties that had formed, for instance with siblings.

201. Furthermore, the Court's case-law had established the principle of the best interests of the child as the paramount consideration and the decisive factor in cases relating to the placement in public care and adoption of children. The Grand Chamber should seek to combine the case-law concerning family life between the child and the foster parents and that concerning the paramountcy of the best interests of the child in the instant case.

4. The Court's considerations

(a) General principles

202. The first paragraph of Article 8 of the Convention guarantees to everyone the right to respect for his or her family life. As is well established in the Court's case-law, 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 this provision. Any such interference constitutes a violation of this Article unless it is "in accordance with the law", pursues an aim or aims that is or are legitimate under its second paragraph and can be regarded as "necessary in a democratic society" (see, among other authorities, *K. and T. v. Finland* [GC], no. 25702/94, § 151, ECHR 2001-VII; and *Johansen*, cited above, § 52).

203. In determining whether the latter condition was fulfilled, the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify that measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 (see, among many other authorities, *Paradiso and Campanelli*, cited above, § 179). The notion of necessity further implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued, regard being had to the fair balance which has to be struck between the relevant competing interests (ibid., § 181).

204. In so far as the family life of a child is concerned, the Court reiterates that 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 (see, among other authorities,

Neulinger and Shuruk v. Switzerland [GC], no. 41615/07, § 135, ECHR 2010). 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 *Jovanovic*, cited above, § 77, and *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX).

205. At the same time, it should be noted 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. 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 (*K. and T. v. Finland*, cited above, § 178).

206. 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 (see, for instance, *Sommerfeld v. Germany* [GC], no. 31871/96, § 64, ECHR 2003-VIII (extracts)), and the references therein).

207. Generally, the best interests of the child dictate, on the one hand, that the child's ties with its family must be maintained, except in cases where the family has proved particularly unfit, since severing those ties means cutting a child off from its roots. It follows that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family (see *Gnahoré*, cited above, § 59). On the other hand, it is clearly also in the child's interest to ensure its development in a sound environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see, among many other authorities, *Neulinger and Shuruk*, cited above, § 136; *Elsholz v. Germany* [GC], no. 25735/94, § 50, ECHR 2000-VIII; and *Maršálek v. the Czech Republic*, no. 8153/04, § 71, 4 April 2006). An important international consensus exists to the effect that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child (see Article 9 § 1 of the United Nations Convention on the Rights of the Child, recited in paragraph 134 above). In addition, it is incumbent on the Contracting States to put in place practical and effective procedural safeguards for the protection of the best interests of the child and to ensure their implementation (see the United Nations Committee on the Rights of the Child General Comment No. 14 (2013) on the right of the

child to have his or her best interests taken as a primary consideration, paragraphs 85 and 87, quoted at paragraph 136 above).

208. Another guiding principle is that a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child (see, for instance, *Olsson v. Sweden (no. 1)*, 24 March 1988, § 81, Series A no. 130). The above-mentioned 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 (see, for example, *K. and T. v. Finland*, cited above, § 178). In this type of case the adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between the child and the parent with whom it does not live (see, *inter alia*, *S.H. v. Italy*, no. 52557/14, § 42, 13 October 2015). Thus, where the authorities are responsible for a situation of family breakdown because they have failed in their above-mentioned obligation, they may not base a decision to authorise adoption on the grounds of the absence of bonds between the parents and the child (see *Pontes v. Portugal*, no. 19554/09, §§ 92 and 99, 10 April 2012). Furthermore, 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 *Scozzari and Giunta*, cited above, § 174; and *Olsson (No. 1),* cited above, § 81). However, when a considerable period of time has passed since the child was originally taken into public care, the interest of a child not to have his or her *de facto* family situation changed again may override the interests of the parents to have their family reunited (see *K. and T. v. Finland*, cited above, § 155).

209. As regards replacing a foster home arrangement with a more far-reaching measure such as deprivation of parental responsibilities and authorisation of adoption, with the consequence that the applicants' legal ties with the child are definitively severed, it is to be reiterated that "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" (see, for example, *Johansen*, cited above, § 78, and *Aune*, cited above, § 66). It is in the very nature of adoption that no real prospects for 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 *R. and H. v. the United Kingdom*, no. 35348/06, § 88, 31 May 2011).

210. In determining whether the reasons for the impugned measures were relevant and sufficient for the purpose of paragraph 2 of Article 8 of

the Convention, the Court will have regard to the fact that perceptions as to the appropriateness of intervention by public authorities in the care of children vary from one Contracting State to another, depending on such factors as traditions relating to the role of the family and to State intervention in family affairs and the availability of resources for public measures in this particular area. However, consideration of what is in the best interests of the child is in every case of crucial importance. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned, often at the very stage when care measures are being envisaged or immediately after their implementation. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for the regulation of the care of children and the rights of parents whose children have been taken into public care, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see, for example, *K. and T. v. Finland*, cited above, § 154; and *Johansen*, cited above, § 64).

211. The margin of appreciation to be accorded to the competent national authorities will vary in the 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 (see, for example, *K. and T. v. Finland*, cited above, § 155; and *Johansen*, cited above, § 64). However, this margin is not unfettered. For example, the Court has in certain instances attached weight to whether the authorities, before taking a child into public care, had first attempted to take less drastic measures, such as supportive or preventive ones, and whether these had proved unsuccessful (see, for example, *Olsson (no. 1)*, cited above, §§ 72-74; *R.M.S. v. Spain*, no. 28775/12, § 86, 18 June 2013, § 86; and *Kutzner v. Germany*, no. 46544/99, § 75, ECHR 2002-I). 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 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 (see *K. and T. v. Finland*, cited above, ibid., and *Johansen*, cited above, ibid.).

212. In cases relating to public-care measures, the Court will further have regard to the authorities' decision-making process, to determine whether it has been conducted such as to secure that the views and interests of the natural parents are made known to and duly taken into account by the

authorities and that they are able to exercise in due time any remedies available to them (see, for instance, *W. v. the United Kingdom*, 8 July 1987, § 63, Series A no. 121, and *Elsholz*, cited above, § 52). What has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests and have been able fully to present their case (see, for example, *W. v. the United Kingdom*, cited above, § 64; *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 72, ECHR 2001-V (extracts); *Neulinger and Shuruk*, cited above, § 139; and *Y.C. v. the United Kingdom*, no. 4547/10, § 138, 13 March 2012). From the foregoing considerations it follows that natural parents' exercise of judicial remedies with a view to obtaining family reunification with their child cannot as such be held against them. In addition, in cases of this kind there is always the danger that any procedural delay will result in the *de facto* determination of the issue submitted to the court before it has held its hearing. Equally, effective respect for family life requires that future relations between parent and child be determined solely in the light of all relevant considerations and not by the mere effluxion of time (see *W. v. the United Kingdom.*, cited above, § 65).

213. Whether the decision-making process sufficiently protected a parent's interests depends on the particular circumstances of each case (see, for example, *Sommerfeld*, cited above, § 68). With a view to its examination of the present instance, the Court observes that in the aforementioned case it was called upon to examine the issue of ordering a psychological report on the possibilities of establishing contact between the child and the applicant. It observed that as a general rule it was for the national courts to assess the evidence before them, including the means to ascertain the relevant facts (see *Vidal v. Belgium*, 22 April 1992, § 33, Series A no. 235-B). It would be going too far to say that domestic courts are always required to involve a psychological expert on the issue of awarding contact to a parent not having custody, but this issue depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned (see *Sommerfeld*, cited above, § 71).

(b) Application of those principles to the present case

214. It is common ground between the parties, and the Court finds it unequivocally established, that the impugned decisions taken in the proceedings instituted by the first applicant on 29 April 2011 (see paragraph 81 above), starting with the Board's decision of 8 December 2011 and ending with the Supreme Court Appeals Board's decision of 15 October 2012, entailed an interference with the applicants' right to respect for their family life under the first paragraph of Article 8. It is

further undisputed that they were taken in accordance with the law, namely the Child Welfare Act (see paragraph 122 above), and pursued legitimate aims, namely the "protection of health or morals" and "rights and freedoms" of X. The Court sees no reason to hold otherwise. The interference thus fulfilled two of the three conditions of justification envisaged by the second paragraph of Article 8. The dispute in the present case relates to the third condition: whether the interference was "necessary in a democratic society".

215. Bearing in mind the limitations on the scope of its examination as described in paragraphs 147 to 148 above, the Court will centre its examination on the City Court's review as reflected in its judgment of 22 February 2012, which ultimately gained legal force on 15 October 2012 when the Supreme Court Appeals Board dismissed the first applicant's appeal (see paragraphs 98-113, 118 and 121 above).

216. At the outset the Court notes that the City Court's bench was composed of a professional judge, a lay person and a psychologist. It held a three-day hearing that the first applicant attended together with her legal-aid counsel and in which twenty-one witnesses, including experts, gave testimony (see paragraph 98 above). In addition, the Court notes that the City Court acted as an appeal instance and that proceedings similar to those before that court had previously been conducted, and similarly extensive reasons given, by the County Social Welfare Board, which had also had a composition similar to that of the City Court (see paragraphs 89-95 above). The City Court's judgment was subject to review in leave-to-appeal proceedings before the High Court (see paragraphs 114-18 above), which were in turn examined by the Supreme Court Appeals Board (see paragraphs 119-21 above).

217. In its judgment the City Court decided not to lift the care order for X, to deprive the first applicant of her parental responsibilities for him and to authorise his adoption by his foster parents, in accordance with sections 4-21 and 4-20 of the Child Welfare Act respectively (see paragraph 122 above). While observing that the City Court relied on several grounds in order to justify its decisions, the Court notes that under the aforementioned provisions a central condition for the imposition of the impugned measures related to the natural parent's ability to assume care. Thus, pursuant to section 4-21, a precondition for revoking the care order was the high probability that the parent would be able to provide the child with proper care. Under section 4-20, consent to adoption could be given if it had to be regarded as probable that the parent would be permanently unable to provide the child with proper care.

218. The City Court assessed that issue primarily in the part of its reasoning devoted to the applicant's request to have the care order lifted, which can be summarised as follows. Her situation had improved in some areas (see paragraph 100 above). However, X was a vulnerable child who had shown emotional reactions in connection with the contact sessions (see

paragraphs 101-02 above). The evidence adduced had clearly shown that the first applicant's fundamental limitations at the time of the High Court's judgment in the previous set of proceedings still persisted. She had not improved her ability to handle contact situations; she had affirmed that she would fight until the child was returned to her; and she had stated that she did not consider that public exposure and repeated legal proceedings could be harmful for the child in the long term (see paragraphs 103-04 above). Moreover, the experts who had testified in court, other than K.M., had advised against returning X to his mother (see paragraph 105 above). There was no reason to consider in further detail any other arguments regarding the first applicant's ability to provide care, since returning X to her was in any event not an option owing to the serious problems it would cause him to be moved from the foster home (see paragraph 106 above).

219. In deciding on the child welfare services' application for removal of the first applicant's parental responsibilities in respect of X and authorisation of the latter's adoption, the City Court endorsed the Board's reasoning regarding the alternative criteria in letter (a) of section 4-20 of the Child Welfare Act, namely that it had to be regarded as probable that the first applicant would be permanently unable to provide X with proper care or that X had become so attached to his foster home and the environment there that, on the basis of an overall assessment, removing him could cause him serious problems (see paragraph 108 above). In so far as the question of caring skills is concerned, the following findings of the Board are noteworthy in this context. There was nothing to indicate that the first applicant's caring skills had improved since the High Court's judgment of 22 April 2010. She had not realised that she had neglected X and was unable to focus on the child and what was best for him. Whilst note had been taken of the information that the first applicant had married and had had a second child, this was not decisive in respect of her capacity to care for X. He was a particularly vulnerable child and had experienced serious and life-threatening neglect during the first three weeks of his life. The Board had also taken account of the experience during the contact sessions. Moreover, since X had lived in the foster home for three years and did not know the first applicant, returning him to her would require a great capacity to empathise with and understand him and the problems that he would experience. Yet the first applicant and her family were completely devoid of any such empathy and understanding (see paragraph 90 above).

220. The Court is fully conscious of the primordial interest of the child in the decision-making process. However, the process leading to the withdrawal of parental responsibilities and consent to adoption shows that the domestic authorities did not attempt to perform a genuine balancing exercise between the interests of the child and his biological family (see paragraphs 207 and 208 above), but focused on the child's interests instead of trying to combine both sets of interests, and moreover did not seriously

contemplate any possibility of the child's reunification with his biological family. In this context, the Court, in particular, is not persuaded that the competent domestic authorities duly considered the potential significance of the fact that at the time when the first applicant applied to have the care order lifted or, in the alternative, to be granted extended contact rights she was going through substantial changes in her life: in the same summer and autumn as the impugned proceedings commenced she married and had a second child. In this regard, as the City Court's decision was largely premised on an assessment of the first applicant's lack of capacity to provide care, the factual basis on which it relied in making that assessment appears to disclose several shortcomings in the decision-making process.

221. The Court notes that the decisions under consideration had been taken in a context where there had only been very limited contact between the first applicant and X. The Board, in its decision of 2 March 2009, and the High Court, in its judgment of 22 April 2010 (overturning the City Court's judgment of 19 August 2009), had relied on the consideration that it was most likely that the foster care arrangement would be a long-term one, and that X would grow up in the foster home (see paragraphs 31, 43 and 75 above). The High Court stated that contact sessions could thus serve as a means of maintaining contact between the mother and son, so that he would be familiar with his roots. The purpose was not to establish a relationship with a view to the child's future return to the care of his biological mother (ibid.). As regards the implementation of the contact arrangements, the Court also notes that these had not been particularly conducive to letting the first applicant freely bond with X, for example with regard to where the sessions had been held and who had been present. Although the contact sessions had often not worked well, it appears that little was done to try out alternative arrangements for implementing contact. In short, the Court considers that the sparse contact that had taken place between the applicants since X was taken into foster care had provided limited evidence from which to draw clear conclusions with respect to the first applicant's caring skills.

222. Furthermore, the Court regards it as significant that there were no updated expert reports since those that had been ordered during the previous proceedings between 2009 and 2010 relating to the taking into public care. Those were the report by psychologist B.S. and family therapist E.W.A, ordered by the child welfare services and concerning X's reactions to the contact sessions in the beginning of September 2009 (see paragraph 58 above), and the report by psychologist M.S., who had been appointed by the High Court on 15 November 2009 (see paragraph 61 above). The former dated back to 20 February 2010 and the latter to 3 March 2010 (see paragraphs 62 and 63 above respectively). When the City Court delivered its judgment on 22 February 2012, both reports were two years old. Indeed, alongside other witnesses such as family members, psychologists B.S. and

M.S. also gave evidence during the hearing held by the City Court in 2012 (see paragraph 98 above). However, the two psychologists had not carried out any examinations since those prior to their reports dating back to early 2010 and only one of the reports, the one by psychologist M.S., had been based on observations of the interplay between the applicants, and then only on two occasions (see paragraph 63 above).

223. The Court does not overlook the fact that the child welfare services had sought information from the first applicant concerning her new family that she apparently refused to provide (see paragraphs 85 and 115 above). At the same time it notes that counsel for the first applicant had expressly requested that a new expert assessment be made but that the High Court dismissed the request (see paragraphs 114 and 118 above). Nor had the City Court ordered a new expert examination *proprio motu* in the course of the proceedings before it. While it would generally be for the domestic authorities to decide whether expert reports were needed (see, for example, *Sommerfeld*, cited above, § 71), the Court considers that the lack of a fresh expert examination substantially limited the factual assessment of the first applicant's new situation and her caring skills at the material time. In those circumstances, contrary to what the City Court seems to suggest, it could not reasonably be held against her that she had failed to appreciate that repeated legal proceedings could be harmful for the child in the long run (see paragraphs 104 and 218 above).

224. In addition, from the City Court's reasoning it transpires that in assessing the first applicant's caring skills it had paid particular regard to X's special care needs, seen in the light of his vulnerability. However, whereas X's vulnerability had formed a central reason for the initial decision to place him in foster care (see, for instance, paragraphs 31 and 42 above), the City Court's judgment contained no information on how that vulnerability could have continued despite the fact that he had lived in foster care since the age of three weeks. It also contained barely any analysis of the nature of his vulnerability, beyond a brief description by experts that X was easily stressed and needed a lot of quiet, security and support, and stating his resistance to and resignation toward having contact with the first applicant, notably when faced with her emotional outbursts (see paragraphs 101 to 102 above). In the view of the Court, having regard to the seriousness of the interests at stake, it was incumbent on the competent authorities to assess X's vulnerability in more detail in the proceedings under review.

225. Against this background, taking particular account of the limited evidence that could be drawn from the contact sessions that had been implemented (see paragraph 221 above)**,** in conjunction with the failure – notwithstanding the first applicant's new family situation – to order a fresh expert examination into her capacity to provide proper care and the central importance of this factor in the City Court's assessment (see

paragraphs 222-3 above) and also of the lack of reasoning with regard to X's continued vulnerability (see paragraph 224 above), the Court does not consider that the decision-making process leading to the impugned decision of 22 February 2012 was conducted so as to ensure that all views and interests of the applicants were duly taken into account. It is thus not satisfied that the said procedure was accompanied by safeguards that were commensurate with the gravity of the interference and the seriousness of the interests at stake.

226. In the light of the above factors, the Court concludes that there has been a violation of Article 8 of the Convention in respect of both applicants.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

227. 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

228. The applicants each claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

229. The Government asked the Court, in the event of a finding of a violation, to afford just satisfaction within the limits of Article 41 of the Convention.

230. The Court considers that awarding damages to the first applicant is appropriate in this case, having regard to the anguish and distress that she must have experienced as a result of the procedures relating to her claim to have X returned and the child welfare services' application to have her parental responsibilities for X withdrawn and his adoption authorised. It awards the first applicant EUR 25,000 under this head. In respect of X, having regard to his age at the relevant time and to the fact that he did not experience the procedures in question in the same way as the first applicant, the Court finds that a finding of violation can be regarded as sufficient just satisfaction.

B. Costs and expenses

231. The applicants also claimed EUR 50,000 for the costs and expenses incurred before the domestic authorities and the Chamber and EUR 9,564 for those incurred before the Grand Chamber.

232. The Government asked the Court, in the event of a violation, to afford just satisfaction within the limits of Article 41 of the Convention.

233. 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.

234. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and before the Chamber, since the applicants have not shown that these expenses were actually incurred. As to the costs and expenses before the Grand Chamber, the Court observes that apart from travel expenses, the claim is submitted with reference to a contingency (no-win no-fee) arrangement, according to which the first applicant is obliged to pay counsel EUR 9,000 in the event of "success before the European Court of Human Rights". Agreements of this nature – giving rise to obligations solely between lawyer and client – cannot bind the Court, which must assess the level of costs and expenses to be awarded with reference not only to whether the costs are actually incurred but also to whether they have been reasonably incurred (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000-XI). Accordingly, the Court must as a basis for its assessment examine the other information provided by the applicants in support of their claim. In accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Court may reject the claim in whole or in part (see, *inter alia*, *A, B and C v. Ireland* [GC], no. 25579/05, § 281, ECHR 2010). In the instant case, the Court, taking into account that the claim has not been contested, considers it reasonable to award the sum of EUR 9,350 for the proceedings before the Grand Chamber. In the circumstances, it is appropriate to award this compensation to the first applicant only.

C. Default interest

235. 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,

1. *Dismisses*, by fifteen votes to two, the Government's preliminary objection;

2. *Holds*, by thirteen votes to four, that there has been a violation of Article 8 of the Convention in respect of both applicants;

3. *Holds*, by sixteen votes to one, that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the second applicant;

4. *Holds*, by thirteen votes to four,
   (a) that the respondent State is to pay the first 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 9,350 (nine thousand three hundred and fifty euros), plus any tax that may be chargeable, 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;

5. *Dismisses*, unanimously, the remainder of the first applicant's claim for just satisfaction.

Done in English and French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 10 September 2019.

Søren Prebensen	Linos-Alexandre Sicilianos
Deputy to the Registrar	President

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

(a) concurring opinion of Judge Ranzoni, joined by Judges Yudkivska, Kūris, Harutyunyan, Paczolay and Chanturia;

(b) concurring opinion of Judge Kūris;

(c) joint dissenting opinion of Judges Kjølbro, Poláčková, Koskelo and Nordén;

(d) joint dissenting opinion of Judges Koskelo and Nordén.

L.A.S.
S.C.P.

CONCURRING OPINION OF JUDGE RANZONI, JOINED BY JUDGES YUDKIVSKA, KŪRIS, HARUTYUNYAN, PACZOLAY AND CHANTURIA

I. Introduction

1. I have voted with the majority in finding a violation of Article 8 of the Convention. However, I partly disagree with the reasoning which, to my mind, does not sufficiently address the main issues which led to the case being referred to the Grand Chamber. In this respect, the majority opted for an excessively narrow approach, entailing a very limited "procedural" violation.

2. The present case can be summarised as follows. On 25 September 2008 the first applicant gave birth to her son, the second applicant. Subsequently, she stayed with him at a family centre. On 17 October 2008 the authorities decided to place the baby in a foster home on an emergency basis, allowing the mother to visit her son for up to one and a half hours per week. By decision of the County Social Welfare Board of 2 March 2009 he was taken into ordinary foster care, and the duration of the mother's contact was set at two hours, six times per year. This decision was revoked by the City Court, but the High Court, in a judgment of 22 April 2010, upheld the Board's decision on compulsory care and reduced the mother's contact rights to four two-hour visits per year. The child remained in foster care until the Board decided on 8 December 2011 to remove the mother's parental authority and to authorise the foster parents to adopt him. Upon an appeal by the first applicant, the City Court on 22 February 2012 upheld that decision, which became final with the Supreme Court Appeals Board's decision of 15 October 2012.

3. Whereas the majority's reasoning focused on the proceedings surrounding the Board's decision of 8 December 2011 and, in particular, the City Court's judgment of 22 February 2012, in my view the "real" issues to be addressed related to the proceedings prior to these decisions and to the specific legal situation in Norway.

II. Shortcomings in the period before December 2011

4. According to the Court's case-law, a care order should be regarded as a temporary measure and, in principle, be consistent with the ultimate aim of reuniting the natural parents and the child (see paragraphs 207-208 of the judgment). In the present case, however, this ultimate aim was absent from the outset of the domestic proceedings. On 21 November 2008 – two months after the child's birth and one month after issuing the care order – the Office for Children, Youth and Family Affairs stated that the boy would

need "stable adults who can give him good care" (see paragraph 30). Seven days later the Social Welfare Board, in the application for a care order, assumed "that it would be a matter of a long-term placement and that X would probably grow up in foster care" and that the applicant's capacity as a mother would be "limited" (see paragraph 31).

5. Even at this early stage the Board did not pursue the aim of reuniting the child with his mother. In its decision of 2 March 2009 – four and a half months after the care order – the Board again envisaged that the child would grow up in the foster home. It emphasised that this would mean "that the foster parents would become X's psychological parents, and that the amount of contact had to be determined in such a way as to ensure that the attachment process [between the foster parents and the child], which was already well under way, was not disrupted" (see paragraph 43). On 22 April 2010 – eighteen months after the care order – the majority of the High Court confirmed that the purpose of the contact sessions was not to establish a relationship with a view to the child's future return to the care of his biological mother (see paragraph 75).

6. Furthermore, the authorities in no way facilitated the development of a good relationship between the mother and her son. On the contrary, the contact sessions were extremely limited – two hours, respectively four and six times a year – and had to take place under supervision and in the presence of the foster mother, sometimes even in the foster home. Under such circumstances these sessions were obviously unable to create a positive atmosphere and to facilitate any rapprochement between mother and child. The authorities' argument that the child's reactions would decrease and the degree of contact could be improved if the sessions became less frequent (see paragraph 75) cannot be considered as anything other than cynical.

7. The domestic authorities never considered the foster care of the child as a temporary measure with the ultimate aim of reuniting the mother and her child, and they did not seriously engage in supporting the mother with a view to improving her capacity as a mother. In this respect, they disregarded the Court's case-law and their respective obligations.

8. The authorities' attitude concurs with the domestic law, setting a very low threshold for taking a child into public care, but an extremely high threshold for discontinuing this public care (see, in particular, section 4-21 of the Child Welfare Act, referred to in paragraph 122). In order for the foster care order to be revoked, the parents have to show that it is "highly probable" that they would be able to provide the child with proper care. Such a requirement is problematic in the light of the Court's case-law and the State's duty to take measures in order to facilitate family reunification as soon as reasonably feasible (see paragraph 208). The Child Welfare Act also seems to grant the authorities unfettered discretion. Moreover, even if in a specific case the parents succeeded in this regard, their attempts would be futile if "the child has become so attached to persons and the environment

where he or she is living that ... removing the child may lead to serious problems for him or her" (see, again, section 4-21 of the Act). In other words, the simple passage of time makes it most unlikely that a care order will ever be revoked.

III. The majority's approach and my own view of the case

9. The focus of the majority's reasoning lay in the assessment of the proceedings of 2011-12, entailing the withdrawal of the first applicant's parental responsibilities for her son and the consent to his adoption. More precisely, the majority centred their examination on the City Court's review as reflected in its decision of 22 February 2012 (see paragraph 215). However, the judgment does not as such deal with the shortcomings in the period from the issuing of the care order in October 2008 until the Board's decision of November 2011. These flaws are briefly mentioned in paragraphs 220 and 221, but solely in order to explain the shortcomings that occurred in the proceedings before the City Court in 2012, particularly the fact that the sparse contact which occurred between the applicants had provided only limited evidence from which to draw clear conclusions with regard to the mother's caring skills. This aspect, together with the lack of updated expert reports, led the majority to conclude that the decision-making process leading to the City Court's decision of 22 February 2012 was flawed and in "procedural" violation of Article 8 of the Convention.

10. I am of the opinion that the finding of a violation of Article 8 is not easily reconcilable with such a narrow approach, and I would have preferred to assess the case more broadly and to look at the "full picture".

11. The judgment only examines the decision-making process before the City Court, which on 22 February 2012 upheld the Board's decision to withdraw the applicant's parental responsibilities and consent to adoption. However, although some shortcomings in this decision-making process before the City Court may have occurred, it should also be recognised that at that point – by which time the child had already lived for three years and four months with the foster parents – the national court had to some extent its hands tied, on account of the previous events and proceedings as well as the simple passage of time. It was confronted with a kind of *fait accomplis*. At that stage the balancing exercise between the interests of the child and those of his biological family would almost inevitably have led to the result of the child remaining with his foster family. As confirmed by the experts and accepted by the court, the child had developed such an attachment to his foster parents, his foster brother and the general foster home environment that it would entail serious problems if he had to move, since his primary security and sense of belonging were in the foster home and he perceived the foster parents as his psychological parents (see, in particular, paragraph 106 of the judgment).

12. The Court should not disregard the reality of life, and it should not engage in a formalistic assessment of the City Court's decision of 22 February 2012 and overemphasise, in particular, the lack of updated expert reports. It seems more than questionable whether any new report on the mother's abilities could at that point in time have overruled the child's best interests in staying with the foster parents. The main shortcomings, for which the authorities were responsible, did not occur in the proceedings of 2011-12, but rather had occurred at the earlier stages.

13. The judgment does not directly address these main shortcomings, due to the lack of jurisdiction (see paragraph 147). While, strictly speaking, it is correct that the Court does not have jurisdiction to review as such the compatibility of the decisions that predated or were reviewed by the High Court's judgment of 22 April 2010 with Article 8 of the Convention, this does not exclude the possibility that the previous flaws can, nevertheless, be addressed directly.

14. The majority (referring to *Jovanovic v. Sweden*, no. 10592/12, § 73, 22 October 2015, and *Mohamed Hasan v. Norway*, no. 27496/15, § 121, 26 April 2018) conceded in paragraph 148 that, in its review of the proceedings relating to the decisions taken in 2011-12, the Court was required to put these proceedings and decisions in context, which inevitably meant that it had to some degree to have regard to the former proceedings and decisions. While I accept that statement as such, I disagree with the majority's narrow understanding of the "related" proceedings, as well as with their restricted interpretation of the "degree" of regard.

15. The judgment examines only the decision-making process directly surrounding the City Court's decision of 22 February 2012. To my mind, the Court should have assessed the entire inter-connected process which ultimately led to the impugned decision. This "process" should, particularly in a case such as the instant one, be understood in a broader context. It concerns not only the final proceedings before the courts, but extends to the previous proceedings before the administrative authorities, which were intrinsically linked to the later proceedings resulting in the impugned decision. Therefore, "related proceedings" should include all relevant actions, omissions and decisions by the authorities which paved the way for the final court decisions, built their inseparable factual and/or legal basis and predetermined their outcome to a large extent.

16. In this respect, the Court has stated in previous cases that the necessity of the interference needs to be assessed in the light of the case as a whole (see, for example, *Paradiso and Campanelli* [GC], no. 25358/12, § 179, 24 January 2017). The Court cannot confine itself to considering the impugned decisions in isolation (see *Olsson v. Sweden (no. 1)*, judgment of 24 March 1988, Series A no 130, § 68). The decisions relating to the withdrawal of the first applicant's parental responsibilities and the authorisation of the adoption have thus to be placed in context, which means

in my understanding to be put in direct context with the preceding proceedings and the respective facts. It seems to me that the term "case as a whole" should, at least in the present circumstances, be understood in this broader sense, that is, not limited to the final court proceedings, but extended to the full process surrounding a given case and the actual consequences of the decisions taken within that process.

17. Such an approach finds some support in the Court's case-law. Therefore, let us examine to what degree the Court had regard in other cases to the "related proceedings".

18. In *Gnahoré v. France* (no. 40031/98, ECHR 2000-IX) the application was lodged in 1997 and concerned, *inter alia*, a father's complaint against a decision taken in 1996 dismissing his request to have a care order lifted. However, the Court's assessment was not restricted to these proceedings, but also explicitly included the original care order of 1992, the subsequent measures and the several renewals of the care order (ibid., §§ 56-58).

19. In *K. and T. v. Finland* ([GC], no. 25702/94, ECHR 2001-VII) two children were taken into emergency care in June 1993 and one month later were placed in "normal" public care. Whereas the latter decisions were upheld in court proceedings, the former decisions were not appealed against. The Court accepted that the ratification of the emergency care orders had "in effect" been confirmed by the normal care orders and had dispensed the applicants from filing a separate appeal (ibid., § 145). It therefore assessed also the emergency care orders, although the application had been lodged with the Court more than one year after these orders had been issued, and although the Court found that there existed substantive and procedural differences between the two sets of proceedings and that the respective decisions were of different kind.

20. In *Zhou v. Italy* (no. 33773/11, 21 January 2014) the applicant complained about the adoption of her child, decided by court decisions in 2010. However, the Court considered that the decisive point consisted in establishing whether the domestic authorities, before extinguishing the legal relationship between mother and child, had taken all necessary and adequate measures that could reasonably be required in order for the child to live a normal family life within his own family (ibid., § 49). It therefore assessed all of the authorities' previous decisions relating to the placement of the child in a foster family and the mother's contact rights.

21. In *Jovanovic* (cited above) the Court first declared inadmissible the complaints concerning the decision to take the child into public care. However, in its assessment of the complaints concerning the subsequent decision not to terminate the public care, the Court nevertheless examined in some detail the proceedings which had resulted in the first care order and found that the national authorities' decision to place the child in compulsory public care was "clearly justified" (ibid., § 78). Therefore, the Court did not

limit itself to placing the later decisions in the simple context of these preceding proceedings, but took an explicit stand on the justification of the previous decisions, even though it had declared the respective complaints inadmissible.

22. Finally, in the recent case of *Mohamed Hasan* (cited above), the Court began by limiting its examination to the proceedings concerning the removal of parental responsibility and adoption, declaring the earlier proceedings on placement in care to be relevant only in so far as it was necessary for the Court to have regard when carrying out its examination of the later proceedings. However, in a kind of *obiter dictum* the Court stated that there were no grounds to assume that the procedural issues in the previous care proceedings had consequences for the later adoption proceedings "or [for] the case overall in such a manner that they require further examination by the Court when assessing the applicant's complaints against the removal of parental authority and adoption" (ibid., § 151).

23. In contrast, these requirements are fulfilled in the present case. The preceding care proceedings between 2008 and 2011 actually had decisive consequences for the decisions taken in the subsequent 2011-12 proceedings and thus did require such further examination by the Court when assessing the applicants' complaints against the removal of parental responsibility and the adoption.

24. In such a situation the Court is compelled to scrutinise, as set out, *inter alia*, in the above-cited *Zhou* case, whether the domestic authorities, before extinguishing the legal relationship between parent and child, had taken all necessary and adequate measures that could reasonably be required in order for the child to live a normal family life within his own family. In so doing, it needs to take into account all previous proceedings that were intrinsically linked to this final decision, irrespective of whether or not the previous decisions were officially taken within the same formal framework of adoption proceedings or in separate proceedings preceding the adoption proceedings.

25. As already mentioned above, the authorities in the present case failed from the outset to pursue the aim of reuniting the child with his mother, but rather immediately envisaged that he would grow up in the foster home. This underlying assumption runs like a thread through all stages of the proceedings, starting with the care order. The City Court's decision of 22 February 2012 – taken when the child had already lived with the foster parents for three years and four months – seems to have been merely the "automatic" and "unavoidable" consequence of all the previous events and decisions. In other words, the shortcomings from October 2008 onwards led to the *de facto* determination in 2011-12 that the relationship between the applicants had broken down.

26. This aspect also formed an essential element of the dissenting opinion to the Chamber judgment. The minority underlined that the

decisions to place the child in care "fed inexorably into the decisions leading to adoption, created the passage of time so detrimental to the reunification of a family unit, influenced the assessment over time of the child's best interests and, crucially, placed the first applicant in a position which was inevitably in conflict with that of the authorities which had ordered and maintained the placement and with the foster parents, whose interest lay in promoting the relationship with the child with a view ultimately to adopting him." While not calling into question the decisions of the domestic authorities regarding placement, the minority held that it was "not possible to ignore the sequence of events which preceded and led to the adoption" (see paragraph 18 of the separate opinion). I fully agree with these considerations.

27. Furthermore, it must be emphasised that assessing the "process" at national level and the reasons given by the domestic authorities does not mean, as the Chamber majority did and, to an extent, the Grand Chamber majority have also done, exclusively focussing on the procedural steps taken. Procedural requirements have no end in themselves, but they rather provide a means for protecting an individual against arbitrary action by public authorities. Therefore, one must look beyond and behind the formalities of a procedure. The authorities' attitudes and objectives have likewise to be examined. Procedural assessment cannot be reduced exclusively to an assessment of the form taken by the final decisions. If at national level, as in the present case, the authorities performed only a "formalistic" assessment from the outset, without a real and substantive engagement in taking account of all interests involved and without balancing these interests in the light of the Court's case-law on Article 8 of the Convention, the proceedings seen "as a whole", including the relevant previous decisions and actions, were not conducted in a satisfactory manner and were not accompanied by safeguards commensurate with the gravity of the interferences and the seriousness of the interests at stake.

IV. Conclusion

28. I would very much have hesitated to vote in favour of finding a violation of Article 8 of the Convention had I been required to follow the majority's approach and formally to assess only the review proceedings leading to the City Court's decision of 22 February 2012 – at a time when the child had already lived with the foster parents for three years and four months. However, by examining the case as brought before the Court in a broader manner and addressing the "real" issues related to the proceedings prior to the said decision, which were the actual source of the problem, I had no difficulties in joining the majority with regard to the outcome of this application and in finding that there has been a violation of Article 8 in respect of both applicants.

CONCURRING OPINION OF JUDGE KŪRIS

1. I (together with some other colleagues) have joined the Concurring opinion of Judge Ranzoni. Here I add only a few remarks.

2. It has been observed by many that case-law in general (not only that of the Strasbourg Court) has become increasingly "analytical" in the disruptive sense of the word, in that the facts which are complained of by litigants and, accordingly, the application of law to these facts tend to be severed into small parts, which are then dealt with separately. In a recent Grand Chamber case (with a different subject matter) my two colleagues and I expressed our disagreement with the majority's decision to split, artificially and very formalistically, the period under consideration into two parts and to assess only the later part of it as a separate period, notwithstanding the fact that whatever took place during that latter "period" had its roots in the preceding one (I refer to the separate opinion of judges Yudkivska, Vehabović and myself in *Radomilja and Others v. Croatia*, [GC], nos. 37685/10 and 22768/12, 20 March 2018). In the present case a similar structural problem has been created.

3. From whichever angle we consider it, reality is a whole. This is a matter of fact – and of principle. While it has been admitted in the present judgment that "in its review of the proceedings relating to the County Social Welfare Board's decision of 8 December 2011 and the decisions taken on appeal against that decision, notably the City Court's judgment of 22 February 2012, the Court will have to put those proceedings and decisions in context, which inevitably means that *it must to some degree have regard* to the former proceedings and decisions" (see paragraph 148; emphasis added), it is unclear what that "degree" is and what is meant by "having regard".

Courts must not leave ambiguities in their judgments. Here, an ambiguity has been deliberately created.

4. I surmise that the ambiguity in question has something to do with the formula that has been repeated and made use of in so many cases, to the effect that "the content and scope of the 'case' referred to the Grand Chamber are delimited by the Chamber's decision on admissibility" (see paragraph 144 of the present judgment). While in many instances the concurrence of the Chamber's and the Grand Chamber's views on the scope – temporal or material – of a given case does not raise problems, this is not always so (on this point, I refer to my separate opinion in *Lupeni Greek Catholic Parish and Others v. Romania*, [GC], no. 76943/11, 29 November 2016). Such "pruning" of the applicants' complaint is overly mechanical. It is undertaken without the Grand Chamber having itself considered the matter. What is more, the Chamber judgment whereby part

of an applicant's complaint is found inadmissible never becomes final. Thus, no legal basis for the "pruning" ever in fact comes into existence.

Although the Court's determination to "have regard [to some unspecified degree] to the former proceedings and decisions" (which, at least formally, are *not* under examination from the perspective of *their* compliance with Article 8 of the Convention) has helped to bypass the rigidity of the limits imposed on the Grand Chamber by the Chamber (through its never-finalised judgment), would it not be rational and fair, at some point in time, to look into whether these limits themselves are justified? For until this matter is properly addressed and reviewed, the Grand Chamber will constantly find itself obliged to invent ingenuous formulas in order to circumvent the obstacle which it has itself erected. What is at stake in such cases is the comprehensiveness of the Court's examination of the case.

Perhaps it is a fortunate coincidence that in the present case an acceptable outcome (a finding of a violation of Article 8) has been reached, despite the fact that a process which ought to have been examined as a whole was divided into two parts: the one formally under consideration, and the other only being "had regard" to.

5. Had the process in question been examined as a whole (that is, the initial period not merely been given "regard" to), it would have been even more obvious that the fundamental problem dealt with in this case lies not only and not so much in the concrete circumstances of the applicant's case, but rather, to put it very mildly, in certain specificities of the Norwegian policy which underlies the impugned decisions and the process as a whole.

It is hardly a coincidence that so many third-party interveners have joined the present case. They include those States whose authorities have had to deal with the consequences for their under-age citizens of the decisions taken by Norway's *Barnevernet*.

Sapienti sat.

JOINT DISSENTING OPINION OF JUDGES KJØLBRO, POLÁČKOVÁ, KOSKELO AND NORDÉN ON THE MERITS OF THE CASE

1. We have regrettably been unable to agree with the majority in its finding that there has been a violation of Article 8 in the present case.

2. Amongst ourselves we have taken different positions on the admissibility of the application in so far as the first applicant's right to pursue the complaint on behalf of the second applicant is concerned. As regards the merits of the case as declared admissible by the majority, however, our views are shared.

3. Essentially, we concur with the position taken by the majority in the Chamber, the judgment of which we find both well-considered and well-reasoned, and consonant with the proper role of this Court (see paragraphs 111-30 of the Chamber judgment).

4. In the following considerations, however, we would like to make some further observations arising from the subject matter of the present case and the approach taken by the majority.

Some remarks on the Court's general principles

5. We note at the outset that the present case concerns issues in relation to which the general principles developed in the Court's case-law have a rather long history, marked in part by changes in the societal and legal environment which informs the Court's approach to the rights of persons as individuals, family members and children. The complexity of the issues, the dynamics of the underlying factual and legal developments and the diversity of the values and contextual conditions prevailing in these matters have all contributed to a situation where, at present, the general principles as set out by the Court are riddled not only with some inevitable ambiguities but also with some undeniable tensions and outright contradictions, "internally" as well as in relation to the relevant specialised legal instruments, particularly the International Convention on the Rights of the Child (CRC).

6. One notable point of such tensions and contradictions concerns the question of how to reconcile the "sanctity" of the biological family with the best interests of the child – the latter as enshrined in the CRC, as well as in many subsequent constitutional provisions at national levels and in the EU Charter of Fundamental Rights. There is indeed no doubt that the removal of a child from his or her natural parents cannot be justified by a finding that such a measure would enable the child to be placed in a more beneficial environment for his or her upbringing. The principle according to which the removal of a child from the care of his or her natural parent(s) is subject to a test of necessity in terms of the child's best interests and is available only as

a measure of last resort is uncontroversial. The same is true for the position that the domestic authorities must be allowed a wide margin of appreciation in determining whether the best interests of the child do require that he or she should be taken into public care. The main point of difficulty and tension arises in situations where long-term measures come under consideration.

7. In the general principles as set out in the Chamber judgment, it was reiterated as "the guiding principle" that a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child. 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 (see paragraph 105 of the Chamber judgment). Similarly, according to the present judgment, "regard for family unity and reunification... are inherent considerations in the right to respect for family life under Article 8" and, "in the case of an 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" (see paragraph 205).

8. The dilemma is well illustrated by the above rendition of the position in the Chamber judgment. Under this approach, reuniting the natural parent(s) and the child is the "inherent" and "ultimate" aim and the "guiding principle" to be followed. This guiding principle is "subject to" the proviso that the "ultimate aim" (of reuniting the biological family) must be "balanced against" the duty to "consider" the best interests of the child. This gives the impression that the "ultimate aim" of reuniting the biological family might override the best interests of the child. Under the CRC, and similar constitutional or other provisions in many domestic legal orders, however, the position has evolved to one where the best interests of the child are recognized as a primary, or paramount, consideration – based on children's particular need for protection as dependent and vulnerable human beings. This in turn implies that the best interests of the child may, where the circumstances so demand, override the aim of reuniting the child with the biological parent(s).

9. The background of these two approaches can no doubt be traced back to the history and context of each legal instrument. The ECHR is rooted in the protection, and balancing, of the rights of everyone within a State's jurisdiction, including those who have formed a family, whereas the CRC is focused on strengthening and protecting children as holders of distinct individual rights. The tension referred to above should be neither over-emphasised nor ignored. It is always the case that efforts must be made

to reconcile the rights of each of the individuals concerned. There are, however, inevitable limits to the possibilities available for such reconciliation. Consequently, it may ultimately be necessary to decide which consideration takes precedence. In this sense, it does make a difference whether the determinative precept is that reuniting the biological family can take precedence over the best interests of the child, or whether the determinative precept is that the best interests of the child may take precedence even where this entails renouncing the child's reunification with his or her biological parent(s).

10. It appears undeniable that this remains a point of principle on which the Court is struggling. As a result, it has difficulty formulating general principles with all the desirable clarity and coherence.

11. Another manifestation of the tension referred to above is the fact that on the one hand, the Court has – quite rightly – been concerned about the impact of time on the prospects of successful family reunification. Thus, it has held that the positive obligation to take measures toward family reunification as soon as reasonably feasible will weigh on the 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 (see § 209 of the present judgment). On the other hand, the Court has also accepted that the impact of time may weigh against such reunification. Thus, it has held that when a considerable period of time has passed since the child was originally taken into public care, the interest of a child not to have his or her *de facto* family situation changed again may override the interests of the parents to have their family reunited (see *K. and T. v. Finland* [GC], no. 25702/94, § 155, ECHR 2001 VII). In this context, the Court has thus made it clear that the best interests of the child may ultimately take precedence over the "ultimate aim" of reunification.

12. Yet another manifestation of the tensions mentioned above is the fact that the Court has held that it is "in principle in a child's interests to preserve family ties, save where weighty reasons exist to justify severing those ties" (see paragraph 157 of the present judgment). However, especially in situations where it has been necessary to adopt care measures in respect of an infant and to maintain placement with a foster family for a long period, the child's *de facto* family life and family ties may be almost exclusively with the foster family rather than the biological parent(s). In this sense, too, the ultimate question may be which perspective, namely that of the child or that of the biological parent(s), and (accordingly) which family life, should take precedence.

13. These tensions in the general principles are bound to be a source of some real difficulties for the domestic authorities in several Contracting States, not least those where constitutional provisions entail that the best interests of the child be regarded as a pivotal consideration.

The majority's approach

14. In the present case, the position taken by the majority is presented as being concerned with the decision-making process at the domestic level. The key paragraph (§ 220) reveals, however, that the actual underlying problem as perceived by the majority is a substantive one, namely that the domestic authorities "focused on the interests of the child" and did not "seriously contemplate" the child's reunification with his biological family. This key passage recaptures and reveals the tension discussed above, and reflects the view taken by the present majority on the question of principles.

15. We find it problematic that the Court should proceed in this manner, effectively substituting its own preferences for the assessment made by the domestic authorities, despite the fact that the latter have carried out a thorough examination of the case in proceedings involving courts composed of both judicial and other professionals with expertise in the field, and on the basis of extensive evidence. The problem is not only that the Court is extremely ill-placed to take on a "fourth-instance" role in these kinds of situations. The more profound problem is that by giving priority to its own preferences as to how the competing interests should be weighted and balanced, the Court in effect curtails the margin of appreciation that it is important to preserve, especially in situations where the domestic authorities must consider individual rights and interests that may well be contradictory and where views may differ as to how the relevant values, principles and competing considerations should best be reconciled in the given circumstances. This is all the more so in a context such as the present one, where the domestic authorities are under a duty to fulfil positive obligations toward a vulnerable child.

16. In the present case, it clearly appears that the manner in which the majority have identified "procedural shortcomings" in fact arises from the substantive view taken, as a result of which the domestic authorities are faulted for "focusing on the interests on the child" instead of his reunification with the biological family. The majority thus consider that they are in a position to conclude that the "lack of a fresh expert examination substantially limited the factual assessment" (see paragraph 223 of the present judgment) and that any evidence that could be drawn from the contact sessions was "limited" (see paragraph 225).

17. Moreover, the majority even question the domestic court's findings concerning the (particular) vulnerability of X (the child). On this point, we refer to paragraph 224 of the judgment, where the majority imply doubts as to "how the vulnerability could have continued despite the fact that the child had lived in foster care since the age of three weeks", which is to be contrasted with paragraph 90, citing the Social Welfare Board's conclusion in this regard concerning the "serious and life-threatening neglect suffered by the child during the three first weeks of his life"). In this matter, our

reservations go beyond the problem of the Court adopting a "fourth-instance" mode. Members of the Court cannot be expected to be familiar with child psychology in general, or with research concerning the long-term effects of early neglect of an infant in particular. Furthermore, we find it highly problematic that the Court should question the domestic findings on the particular vulnerability of the individual child – which were reached by instances having taken evidence on this matter and possessing the professional expertise which this Court is clearly lacking – without having raised this particular question in the course of the proceedings before the Court, and thus without providing the parties with the opportunity to shed light on the "nature of the vulnerability" of X (the child), which the Court is apparently unable to comprehend or attach much credence to. The Court should ensure that issues identified as being of particular significance are subjected to adversarial debate.

18. In sum, this is a case where it is hard to avoid the conclusion that the majority dislike the outcome of the case at the domestic level and have sought to address the substantive objections or misgivings under the guise of procedural shortcomings. Yet the underlying value judgments and preferences deserve to be ventilated with greater transparency.

Our position

19. First of all, and limiting our attention now to the specific context of the impugned decisions (refusal to discontinue the care order, deprivation of parental rights, permission for the foster parents to adopt the child), we subscribe to the Court's case-law to the effect that measures which totally deprive a parent of his or her family life with his or her child and which thus abandon the aim of reuniting them 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" (see, for instance, *Jansen v. Norway*, no. 2822/16, 6 September 2918, § 93, and *Aune v. Norway*, no. 52502/07, § 66, 28 October 2010).

20. In our view, there is no basis for the Court to conclude that the impugned decisions failed to comply with the above requirements, or to hold that there were any significant deficiencies in the domestic decision-making process.

21. Although the Court is concerned only with the most recent set of decisions, taken in 2012, it should not be overlooked that the case has a long history, starting with support measures put in place even before X (the child) was born, followed by assiduous support measures after his birth, with a view to assisting the mother in learning to take responsibility and care for her baby. Nor can it be overlooked that the care measures were triggered because the assistance provided, although intensive, proved to be unsuccessful. Instead, extremely serious circumstances arose which

rendered the care measures necessary for the protection of the child's life and health. The facts of the case as recounted in the present judgment provide plenty of insight into the challenges faced by the domestic authorities. In particular, it is to be noted that although the first applicant did not contest the High Court's care order of 2010, she appears not to have realised why any of the imposed measures had been deemed necessary, and continued to perceive the authorities' actions as a "conspiracy" against her (see paragraphs 77, 90 and 101 of the present judgment). Furthermore, it appears that the contact sessions were also affected by these difficulties, in that the first applicant's antagonism toward the welfare authorities and foster mother tended to prevail over her attention to the child (see paragraphs 90, 101-03).

22. As regards the particular point that no fresh expert report was requested on the alleged recent improvements in the mother's situation and caring skills (see paragraph 223 of the present judgment), we do not consider that the facts of the case justify departing from the usual approach under which it is for the national courts to assess the evidence before them, including the means to ascertain the relevant facts (see, in particular, *Sommerfeld v. Germany* [GC], no. 31871/96, § 71, ECHR 2003-VIII (extracts)). We find it rather far-fetched to criticise the City Court, as the majority do, for not having commissioned a new expert examination. The domestic court was informed of the positive developments in the mother's situation, and it was not in dispute that, together with her husband and assisted by a social worker, she was capable of taking care of her daughter. However, given the concurrent findings by the County Board and the City Court regarding the mother's striking lack of empathy and understanding with regard to X and the challenges entailed for the latter if he were to be returned to her care (see paragraphs 90 and 101 of the present judgment), together with his strong social and psychological attachment to his foster parents, we are unable to share the conclusion that the lack of a new expert examination could, in the circumstances of the present case, be considered a significant shortcoming in the domestic decision-making process.

23. In view of the facts of the case as recorded in the present judgment, it is clear that the domestic authorities were faced with a situation where serious issues were at stake in terms of the child and his best interests. It would be wrong, from the perspective of this Court, to underestimate the complexity and difficulty arising from such circumstances. Against this background, the domestic authorities should not, in our view, be criticised for having "focused on the best interests of the child". We are unable to perceive a sufficient basis for this Court to conclude that, in the particular circumstances of the case, their efforts were misguided or are to be regarded as an unjustified failure to reunify the child with his biological family (mother). Whilst it is true that the impugned measures were based on an assessment of what was required to secure the best interests of the child, we

can accept that in the present case, in the light of the facts of the case and the thorough examination given to them in the domestic proceedings, there were exceptional circumstances which justified the drastic measures taken, for reasons pertaining to the overriding requirement to protect the child's best interests (see point 19 above).

JOINT DISSENTING OPINION OF JUDGES KOSKELO AND NORDÉN ON THE QUESTION OF THE FIRST APPLICANT'S RIGHT TO REPRESENT THE SECOND APPLICANT

1. We have voted against point 1 of the operative part of the present judgment, whereby the majority dismiss the Government's preliminary objection concerning the first applicant's (i.e. the mother's) capacity to act before the Court also on behalf of the second applicant (i.e. the child). We consider that there is, in the circumstances of the present case, a conflict of interests between the mother and the child which is of such a nature as to preclude the mother from representing her child in the proceedings before the Court. In this respect, the present case exemplifies issues which, in our view, require changes to be made in the practice followed by the Court to date.

General remarks

2. As holders of rights under the Convention, children give rise to particular challenges in terms of the procedural safeguarding of those rights, in that, as minors, they are unable to act on their own as applicants before the Court. It has been acknowledged in the case-law that the position of children under Article 34 of the Convention calls for careful consideration, since children must generally rely on other individuals to present their claims and represent their interests, and may not be of an age or capacity to authorise any steps to be taken on their behalf in any real sense (see *A.K. and L. v. Croatia*, no. 37956/11, § 47, 8 January 2013, and *P., C. and S. v. the United Kingdom* (dec.), no. 56547/00, 11 November 2001). The Court has found it necessary to avoid a restrictive and purely technical approach in this area; in particular, consideration must be given to the links between the child in question and his or her "representatives", to the subject-matter and the purpose of the application and to the possibility of a conflict of interests (see S.*P., D.P. and A.T. v. the United Kingdom*, no. 23715/94, Commission decision of 20 May 1996, unreported; *Giusto, Bornacin and V. v. Italy* (dec.), no. 38972/06, ECHR 2007-V; and *Moretti and Benedetti v. Italy* (no. 16318/07, § 32, 27 April 2010). One example of a case where the situation of minors was considered to justify granting *locus standi* to a relative who had lodged an application only on behalf of the minors and not on her own behalf is that of *N.TS. and Others v. Georgia*, no. 71776/12, §§ 55-59, 2 February 2016).

3. In situations involving public care measures, the Court's concern has been the danger that the child's interest may not be brought to the Court's attention and that the child will therefore be deprived of effective protection

of his or her rights under the Convention. In the event of a conflict between a natural parent and the State over a minor's interests with regard to the question of deprivation of custody, the State as holder of custodial rights cannot be deemed to ensure the child's Convention rights, which is why the natural parent has been recognised as having *locus standi* on behalf of his or her child before the Court, even though the parent may no longer be vested with parental rights as a matter of domestic law (see *Lambert and Others v. France* ([GC], no. 46043/14, § 94, ECHR 2015; *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 138, ECHR 2000 VIII; and *Sahin v. Germany* (dec.), no. 30943/96, 12 December 2000).

4. While this approach is understandable and justifiable in the light of the underlying concern relating to minors' access to the Court, it nevertheless gives rise to problems in situations where the natural parent who wishes to act on behalf of the child is himself or herself involved in the facts of the case in such a way that the parent's and the child's interests are not aligned but are instead in conflict.

5. This brings us to the crux of the issue. The need to ensure effective protection of the rights of minors under the Convention entails two key requirements: firstly, it must be possible to bring before the Court complaints alleging the violation of a child's Convention rights; secondly, the child's interests must be properly represented in proceedings brought on behalf of a child. Focusing on the first aspect is not sufficient for the effective protection of the rights of children. The second aspect becomes acute precisely in situations where the circumstances of the case indicate that there may be a conflict between the interests of the person acting on behalf of the child, be this a natural parent or anyone else, and the child himself/herself.

6. The need to distinguish between the positions of the parent and the child, particularly in situations involving measures taken by the domestic child-welfare authorities, is accentuated by the fact that their perspectives may differ. From the perspective of the parent any measures taken – notably where they are imposed against his or her will – constitute interference in family life between the parent and the child, whereas from the perspective of the child such measures represent fulfilment of the positive obligations incumbent on the State authorities *vis-à-vis* the child in order to protect the his or her rights and vital interests, while simultaneously entailing an interference in the child's existing family life. The very context and its complex nature thus indicate that the two perspectives, that of the parent and that of the child, may not be aligned on the question of the necessity and justification of the impugned measures.

7. Ensuring the proper representation of the child in proceedings before the Court is all the more important when, as is often the case, the issues to be resolved depend on an assessment of whether the best interests of the child have been adequately safeguarded at the domestic level. The concept

of the child's best interests is a broad, multifaceted and complex one. It comprises various elements which, in the specific circumstances of a given case, may be in a relationship of tension or conflict with each other. The perception of where a child's best interests lie in specific situations may depend on the perspective taken, especially for those personally involved, and become intertwined with the individual's own interests. When a serious conflict has arisen between a natural parent and the State's child-welfare authorities over the child's interests, the reality is that neither those authorities nor the parent whose acts or omissions are at issue can be regarded as detached from that conflict. If the child's rights and best interests are to be taken seriously, the child needs independent representation by a person who is not involved in the underlying conflict and is capable of taking the child's perspective in the matter.

8. The International Convention on the Rights of the Child, adopted already three decades ago and in force for nearly as long, established the position of a child as a subject of distinct individual rights. As stated in its Preamble "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection" (citing the Declaration of the Rights of the Child, adopted by the UN General Assembly on 20 November 1959). Accordingly, the key standard of the child's best interests has an important procedural component, also set out in the General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration. In this document, the UN Committee on the Rights of the Child states, *inter alia*: "The child will need appropriate legal representation when his or her best interests are to be formally assessed and determined by courts and equivalent bodies. In particular, in cases where a child is referred to an administrative or judicial procedure involving the determination of his or her best interests, he or she should be provided with a legal representative, in addition to a guardian or representative of his or her views, when there is a potential conflict between the parties in the decision."

9. In this Court, the need for a child to be separately and independently represented in situations of a conflict of interest between the child and the parent purporting to act on both his or her own and the child's behalf has so far not been given the attention it requires. The case of *X, Y and Z v. the United Kingdom* (no. 21830/93, 22 April 1997, *Reports of Judgments and Decisions* 1997-II) appears to have been the first occasion where, in a context different from the present one, Judge Pettiti in his concurring opinion referred to the conflict of interests between parents and children and observed that in similar situations arising in the future, "it would no doubt be desirable for [the Commission and] the Court to suggest to the parties that a lawyer be instructed specifically to represent the interests of the child alone". This suggestion, however, has remained without impact on the Court's practices.

10. It appears clear to us that changes are required in this respect, but also that the present legal framework governing proceedings before the Court is not adequate to meet the needs of ensuring that children are able to have both access to and appropriate, non-conflicted representation in proceedings before the Court. In this context, it seems necessary to make a distinction between the admissibility of an application lodged on behalf of a child by a natural parent (or other person) and the right to represent the child for the purposes of submissions relating to the merits of alleged violations of that child's rights under the Convention.

11. This issue merits consideration by the Court and the Contracting Parties in order to develop adequate solutions and practices, taking into account also the need to comply with the constraints set out in Article 35(1) of the Convention (see, in this respect, the recent joint concurring opinion by Judges Koskelo, Eicke and Ilievski in the case of *A and B v. Croatia*, no. 7144/15, 20 June 2019).

Assessment in the present case

12. Turning to the present case, the majority "discern no such conflict of interest in the present case as would require it to dismiss the [mother's] application on behalf of the [child]" (see paragraph 159 of the judgment). We are unable to agree with this assessment, which furthermore is devoid of any explanation or reasoning.

13. On the contrary, the existence of a conflict of interests is in our view obvious in the light of the facts of the case. When assessing this particular issue – and notwithstanding the position taken on the scope of the Court's examination on the merits (with which we are in agreement), namely that the latter must be limited to the proceedings which resulted in the domestic judgment by the City Court on 22 February 2012, which subsequently became final – it is also pertinent to take into account the background to the measures taken by the child-welfare authorities in respect of the second applicant. The facts of the case as established by the domestic courts show that during her first pregnancy the first applicant was identified as requiring assistance and support once the child would be born. Having given birth, she was accommodated in a specialised facility with a view to receiving such assistance and support, foreseen as lasting for three months. Even in the early days of this stay, the professionals in charge of the facility grew increasingly concerned about the mother's ability to care for the infant and satisfy his basic needs, including feeding and hygiene. The situation was serious, as baby was suffering from dramatic weight loss. The staff were forced to introduce round-the-clock monitoring in order to safeguard him, including measures to wake the mother up at night-time to ensure she would feed her newborn (see paragraph 20 of the present judgment). However, less than three weeks into a stay scheduled to last three months, the mother

announced her intention to leave the facility with the baby, which is when and why the initial emergency care measure was imposed (ibid.).

14. Thus, the facts from which the present case originate lie in a situation where the assistance and support given to the mother had to be replaced by emergency care measures, because the mother's behaviour and her intention to abandon the support and assistance put in place gave rise to a real risk of life-threatening maltreatment of the newborn child. Yet the facts as they transpire from the case file also show that the mother was unable to understand, even at the time of the impugned proceedings before the City Court, why the measures had been taken, and was unaware that there had been any neglect of the baby on her part (see paragraphs 101 and 220 of the present judgment). Instead, she perceived the imposed measures as being based on lies (as per her complaint to the County Governor; see paragraph 77 of the judgment) and characterised them as a conspiracy against herself (statement to the County Social Welfare Board in 2011; see paragraph 90 of the judgment).

15. If such circumstances do not make for a conflict sufficing to preclude the mother from acting before the Court to represent not only her own position but also the interests of her child, it is difficult to see what would. The interests at stake cannot be assimilated with each other; there is a stark tension between them. Neither the fact that the issue raised before the Court concerns a domestic decision to sever the legal ties between the mother and the child, nor the Court's case-law according to which it is in principle in a child's interests to preserve family ties, nor the fact that the domestic proceedings were conducted while the mother was vested with parental rights over the child (see paragraphs 156-57) are capable of overriding the existence of a conflict of interests arising from the specific circumstances of the case. In our opinion, such a conflict cannot be disregarded when determining whether the parent may act on behalf of the child throughout the proceedings before this Court.

Conclusion

16. In our opinion, the facts show the existence of a clear and serious conflict of interests. Under such circumstances, the first applicant should not have been allowed to represent her child before this Court.

17. It is high time for the Court to reconsider its approach and practices regarding the issue of permitting a natural parent to act on behalf of his or her child even where the circumstances of the case indicate an actual or potential conflict of interests between them. If the Court is genuinely to embrace, in line with the Convention on the Rights of the Child, the idea of children as subjects of distinct individual rights and the need to regard the best interests of the child as a primary consideration, it appears necessary to make changes also in the procedural practices.