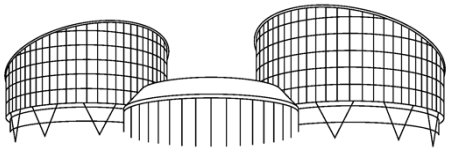

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF ABDI IBRAHIM v. NORWAY

(Application no. 15379/16)

JUDGMENT

Art 8 read in light of Art 9 • Respect for family life • Shortcomings in decision-making process resulting in severance of mother-child ties, in a context of different cultural and religious backgrounds of mother and adoptive parents • Insufficient weight attached to mother and child's mutual interest in maintaining family ties and personal relations through contact • Failure to take due account of mother's interests in allowing the child to retain some ties with his cultural and religious origins

STRASBOURG

10 December 2021

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

In the case of Abdi Ibrahim v. Norway,

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

Jon Fridrik Kjølbro, *President,*
Ksenija Turković,
Síofra O'Leary,
Yonko Grozev,
Paul Lemmens,
Ganna Yudkivska,
Faris Vehabović,
Iulia Antoanella Motoc,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides,
Jolien Schukking,
Péter Paczolay,
Arnfinn Bårdsen,
Peeter Roosma, *judges,*

and Søren Prebensen, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 15 September and 6 October 2021,

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

PROCEDURE

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

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

3. The applicant alleged that the fact of depriving her of parental responsibility in respect of her son, X, who had been placed in foster care with a family holding different religious beliefs to hers, and of authorising X's adoption by that family, had entailed violations of Articles 8 and 9 of the Convention.

4. On 20 September 2016 the application was communicated to the Government. Leave was granted to the Government of the Czech Republic

to intervene in the written procedure, in accordance with Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court.

5. On 17 December 2019 a Chamber of the Second Section, composed of Robert Spano, President, Marko Bošnjak, Valeriu Griţco, Egidijus Kūris, Ivana Jelić, Arnfinn Bårdsen and Darian Pavli, judges, and Hasan Bakırcı, Deputy Section Registrar, unanimously considered that all of the applicant's grievances fell to be examined under Article 8 of the Convention; declared the complaint under Article 8 admissible, and held that there had been a violation of that provision.

6. On 17 March 2020 the applicant requested the referral of the case to the Grand Chamber in accordance with Article 43 of the Convention. She also requested that the Chamber's judgment be revised.

7. On 21 April 2020 the Chamber dismissed the request for revision of its judgment.

8. On 11 May 2020 the panel of the Grand Chamber granted the request for referral to the Grand Chamber.

9. 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.

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

11. The President of the Grand Chamber granted leave to the Governments of Denmark and Turkey, to the AIRE Centre and to X's adoptive parents to intervene in the written procedure. The Government of the Czech Republic were informed that the leave granted to intervene before the Chamber continued before the Grand Chamber. The said third-parties made submissions before the Grand Chamber.

12. A hearing took place in public in the Human Rights Building, Strasbourg, on 27 January 2021 (Rule 59 § 3); on account of the public-health crisis resulting from the Covid-19 pandemic, it was held via video-conference. The webcast of the hearing was made public on the Court's Internet site on the following day.

There appeared before the Court:

(a) *for the Government*

Mr	M. EMBERLAND,	*Agent*,
Ms	H. LUND BUSCH,	*Co-Agent,*
Ms	T. OULIE-HAUGE,	
Ms	L.I. GJONE GABRIELSEN,	
Mr	E. BOLSTAD PETTERSEN,	
Ms	H. BAUTZ-HOLTER GEVING,	
Ms	C. KULLMAN FIVE,	*Advisers*.

(b) *for the applicant*

Ms	A. LUTINA,	*Counsel*,
Ms	M. ABDI IBRAHIM	*Applicant*,
Mr	P. HENRIKSEN,	
Mr	M. ANDENÆS,	
Mr	E. BJØRGE,	*Advisers*.

The Court heard addresses by Ms Lutina and Mr Emberland and their replies to questions put by the judges.

THE FACTS

13. The applicant was born in Somalia in 1993. In 2009 she left home, unaccompanied, while pregnant with a child, X, whose father came from the same city as the applicant. They were unmarried and he did not acknowledge paternity. The applicant went to her uncle's home in Kenya and in November 2009 she gave birth there to her son, X, in traumatic circumstances. She was herself still a minor when she became pregnant and gave birth.

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

15. In order for the applicant to be assisted in caring for X, she and X moved into a residential parent-child centre ("the parent-child institution") on 21 September 2010. On 28 September 2010 the institution sent a "notification of concern" ("*bekymringsmelding*") to the child welfare services, as it considered X to be at risk of harm in the applicant's care. The notification concluded as follows:

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

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

16. It emerges from records of phone calls contained in the child welfare service's case file that various enquiries were made to ascertain whether there were any Somali families available which could act as foster parents, both before the applicant and X entered the parent-child institution and when their stay there ended.

17. X was then placed in emergency foster care with a Norwegian woman, having spent a week in the parent-child institution. The minutes of a meeting held on 11 October 2010 in the emergency foster home indicate

that the foster care services were due to meet with a Somali woman whom the applicant described as her sister and who wished to act as a foster parent for X. The minutes also indicate that the foster care services were to clarify whether another childless Somali couple could be candidates. They further state that these services would establish whether there were any Somali families in the relevant region of Norway who had completed the "PRIDE" course ("Parents, Resources, Information, Development, Education" – a training programme for, among others, persons who wished to become foster parents) and who would be willing to consider the task of acting as foster parents for X. The Government have in addition presented to the Court a document of 13 August 2020, explaining that the child welfare services had also examined the possibility of placing X with an Afghan Muslim family which had completed the "PRIDE" course, but that they had become aware of major cultural differences between Somalians and Afghans and had decided not to do so.

18. The above-mentioned meeting with the Somali woman was held on 14 October 2010. The foster care services' subsequent report notes that she gave the impression of being a mother who took good care of her two children. However, her accommodation was considered unsuitable for an additional child, and the foster care services was unsure that she had the additional time and energy that a foster child would need, given that she was a single mother with two young children.

19. On 6 November 2010 the municipality applied to the County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*) for a care order. The applicant opposed the application and lodged alternative claims for X to be placed in her cousin's home or in a Somali or Muslim foster home.

20. In its decision of 10 December 2010, the Board found it clear that the conditions for issuing a care order in respect of X had been met. It also found that the decision about which foster home X should be placed in was to be left to the authorities.

21. With regard to the care order, the Board considered that it had been substantiated with a high degree of probability that, at the time of its decision, X was a child with abnormal psychological development, and that he suffered from an attachment disorder caused by the applicant's inability to meet his need for physical and psychological security. The evidence showed that X was an emotionally damaged child who had not developed a secure relationship with his mother, and that he was, at the time, a psychologically vulnerable child with exceptional care needs. The applicant had been provided with considerable help and guidance, but none of it had had any significant effect on her competence as a caregiver. In the Board's view, the case clearly involved gross neglect that could be deemed unacceptable by any reasonable standard, regardless of ethnicity, culture and language. In the Board's view, assistance measures as an alternative to

taking X into care had to be deemed inexpedient in terms of protecting him from further neglect, as the Board found it established that the applicant had proved unreceptive to guidance (*lite veiledbar*) and had made it clear that she would not cooperate with the child welfare services unless the boy was first returned to her care.

22. In respect of contact rights, the Board held that four short contact sessions a year would be appropriate. It had noted a statement from the emergency foster mother to the effect that X had been very agitated at night after the sessions with his mother; he had not slept well, had woken up and cried intensely, had seemed scared, and it had been difficult to re-establish contact with him and calm him down. She stated that this behaviour could continue for two or three nights, and the Board found it likely that this corresponded to the anxiety that the staff at the parent-child institution (see paragraph 15 above) had observed in X when the applicant was present. The Board deemed it important to avoid such reactions after contact sessions, and stated that it was necessary to ensure that X's development in the foster home was not delayed by the fact of requiring him constantly to attend contact sessions which left him very disturbed; nor should the contact sessions be too long. Moreover, in the Board's view, supervision during contact sessions was definitely necessary in order to guarantee X's physical and mental security. The child welfare services were therefore authorised to supervise the contact sessions in the manner they considered most appropriate.

23. With regard to the choice of foster home, the Board considered that the primary goal had to be to find a home in which X's extraordinary need for psychological security and for a stable life could be met. The Board held that the emotional damage suffered to date by X was such that an "enhanced" foster home (an arrangement whereby the foster home was given extra assistance and support) would probably be required, and his age and developmental stage indicated to the Board that it was urgent that a foster home be found in which his needs could be fully met. The Board noted that X should be moved as soon as possible from the emergency foster home to a foster family to which he could develop the best possible attachment, and that the longer he stayed in the emergency foster home, the more stressful that subsequent move would be.

24. The Board considered that X's negative attachment to the applicant was an argument against placing him with her cousin. Experience with the applicant to date implied that she would not understand the purpose of limited contact if her son were to stay with a relative, and the Board presumed that it would hinder X's positive development if the applicant were not kept away from the foster home. In addition, the cousin had had no contact with the applicant until very recently and already had substantial care duties, as she was a single parent with two children.

25. Although section 4-15 of the Child Welfare Act stated that due account should be taken of a child's ethnic, religious, cultural and linguistic background when choosing a placement (see paragraph 61 below), the Board considered it more important in the present case that the primary consideration mentioned in that same section be addressed. Specifically, the point of departure of the Child Welfare Act was that a placement should be chosen on the basis of the child's distinctive nature and need for care and training in a stable environment. As the Board had already mentioned, X was by all accounts an emotionally damaged child and consideration of his best interests indicated that starting the essential work of rectifying this state of affairs in a new care situation should be the main priority.

26. The Board stated that it would be ideal if the child welfare services, in cooperation with the Office for Children, Youth and Family Affairs (*Barne-, ungdoms- og familieetaten – Bufetat*), managed to find a foster home that could be deemed suitable for this task and that could also correspond to the specific ethnic, religious, cultural and linguistic considerations in the case. Thus, the Board expected this option to be explored in so far as time would permit but left the further work of choosing a placement to the child welfare services. If an ethnically Norwegian foster home was chosen, efforts had to be made to give X a desirable knowledge of his mother's – the applicant's – language, culture and religion, as far as this could be done without it being an obstacle to his positive development in the foster home.

27. X was placed in care with a Norwegian, Christian, family, members of the Mission Covenant Church of Norway and the Norwegian Missionary Society, on 13 December 2010. Records from a meeting with the applicant three days later, on 16 December 2010, contain the following notes:

> "The mother wants [X] to live with a Somali family, she has heard of a family in ... which takes in foster children. Or ... he [could], if possible, live with ... in ... [A case officer] informs her that it was unfortunately not possible to find a Somali home that could take in [X], so he will now live with a Norwegian family, but that they will take good care of him and that he will have a very good life."

28. The applicant appealed against the Board's decision to the District Court. During the hearing before that court she dropped the alternative claim for X to be placed in a Somali or Muslim foster home, should her principal claim, contesting the care order, be unsuccessful.

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

care situation did not suggest that frequent contact should be granted. There is no information about the applicant having appealed against the District Court's judgment.

30. On 27 June 2012 a meeting was held between the applicant and the child welfare services. The minutes of that meeting include the following information:

> "The caseworker asks if there is anything else about the access visits that [the applicant] would like to be different. Place, time, etc. [The applicant] thinks the arrangements around the access visits are ok and does not want any changes now.
>
> Furthermore, [the applicant] wants [X] not to eat pork and not go to church. They must have respect for me and my religion, she says.
>
> The child welfare services inform her that the foster family eats little pork. They eat a lot of chicken and fish. They are also aware of her wishes and therefore do not want to use a lot of pork in their cooking, but on the other hand they cannot guarantee that they will never eat pork. During the period when the child welfare services had to find a foster home for [X], they had spent a lot of time looking for a Somali foster home. They did not find one. [The family with whom X stayed] was the foster home that became relevant for [X]. They are not Somali and Muslim but have other qualities that are important for [X]. They have great respect for his culture and religion. They have already read a lot about Somalia to [X] and they want to inform him about Somali culture and religion as he grows up, but they [themselves] cannot live like that. They are Norwegian and now that [X] lives in a Norwegian foster home, he will follow the foster home's normal routines.
>
> [The applicant] asks whether the child welfare services have received a letter from her lawyer ... stating that [X] should not be served pork. The caseworker says she is not aware that the child welfare services have received such a letter. [The applicant] says she needs to talk to the lawyer about this.
>
> [The applicant] says that he will then become "like them". The caseworker agrees that he will be influenced by the foster family and how they live, but [that] when he grows up he will be able to choose for himself. This is how it is in Norway. We cannot choose a religion or culture for our children. We can inform them and have wishes about their choices, but the children choose for themselves. This is also how it will be for [X].
>
> [The applicant] goes on to say that [X] cannot stay in that foster home and that [we] will return to the issue. The child welfare services emphasise that they believe [X] must stay where he is.
>
> When it comes to going to church, [X] has not been to church that many times yet. [X] still sleeps every morning, so the foster parents have often taken turns going to church or being at home with [him]. [The applicant] scoffs a little at this. The caseworker continues that when [X] stops sleeping in the morning, there is a high probability that [X] will join [the family] in church more often. This is an important part of this family's everyday life and when [X] lives there it is natural that he accompanies them. As he grows older, it will be natural to consider his wishes about whether or not he attends church with them. In addition, they will inform and teach [X] about Somalia, Islam and his [birth] culture to the extent that they are capable of doing so here in Norway.

> Later when [X] grows up and if [the applicant] and he have a good relationship, it is not inconceivable that he can go with her to the mosque, but not now [while] he is little. This is something we need to eventually revisit."

31. On 3 October 2012 the child welfare services sent a letter to the applicant, stating:

> "Reference is made to the meeting with [the applicant] on 29 August 2012. At the meeting, [the applicant] stated that she does not want [X] to eat pork and go to church. [The applicant] asked the child welfare services for a letter describing how they relate to this wish.
>
> The order to take [X] into care was heard by both the County Social Welfare Board ... (10 December 2010) and ... the District Court (6 September 2011). In both instances, the courts found in favour of the child welfare services and the child welfare services have had [X] in their care since December 2010. In their decisions and judgments, none of the courts has ruled on matters that have to do with the practice of religion.
>
> Both the child welfare services and the foster home wish for good collaboration with the mother and seek to show respect for her religious beliefs. As the child welfare services see it, this is a long-term placement. This means that [X] will most likely stay in the foster home until he is an adult. [X] will grow up in the foster home and be an integrated part of the family.
>
> The foster parents have Christian beliefs, attend church regularly, and a large part of their social relationships are through the church. As the child welfare services see it, it will not be in [X]'s best interests not to allow him to be a part of this. [X] will follow the foster family's everyday life and, as a result, will go with them to church.
>
> The foster family will not have the right to register him as a member of any denomination without the mother's consent. When [X] is 15 years old, he can register or deregister himself as a member of denominations; see section 32 of the Children Act.
>
> As [X] grows up, it will be natural to inform him about Islam and Somalia, based on his understanding and interest. Both foster parents are very enthusiastic about this. They fully appreciate that it is important to take his history seriously.
>
> At a meeting with the foster parents and the child welfare services on 20 September 2012, the foster parents agreed to arrange for [X] to be served as little pork as possible. They have respect and understanding for [the applicant]'s religious beliefs. The foster parents will try to facilitate her request regarding this as far as possible. However, they cannot rule out that [X] will eat pork on rare occasions."

32. On 11 September 2013 the child welfare services applied to the County Social Welfare Board for an order to withdraw the applicant's parental responsibility in respect of X, and for consent to his adoption by the foster parents. An alternative request, that the applicant be refused contact with X, was also lodged.

33. In connection with the foster parents' application for adoption, the child welfare services prepared a report on the adoption applicants, dated 11 October 2013. Under the heading "Motive for adopting", the following information, *inter alia*, was included:

> "Culture and religion are part of the thinking around adoption. It will be easier for [X] if he can be allowed to grow up with them without other disruptive elements regarding culture and religion. They know he will ask [about it] and they know it is important for him to obtain answers to questions that concern his differences in terms of skin colour, where he was born, etc. This is something they want to take seriously in order to be prepared to deal with his interest.
>
> Also, when it comes to knowledge of his biological origins, they recognise that there will be work for them to do as [X] grows up. It is important to know your biological origins and we will not prevent this, say both [the adoptive parents]. On several occasions during their time as foster parents for the boy, the couple has expressed an interest in the child's family, not only in Norway, but also in Somalia. If this (knowledge of his biological origins) becomes a strong desire before he turns 18, we must assess it based on his maturity, says [the adoptive mother]. How will this information affect him? Is this the right time?"

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

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

36. The Board stated that it considered it very important for the development of X's identity, and for his understanding of his own life situation, that he be given information about his biological family in due course. The foster parents had expressed their willingness to contribute to providing X with information about his biological mother and her culture when he showed sufficient maturity to be able to benefit from such information. X's identity would not be kept hidden from him, nor would the foster parents try to hide him should they happen to meet the applicant in the street.

37. Furthermore, the Board stated that X had already been placed in an ethnically Norwegian foster home. The foster parents were active Christians. He had lived in this environment for more than three years, and this was where he would grow up. His relationship with his mother had

been broken off so early that one could not say that the placement had entailed a break with his culture and religion. It had involved a break with his cultural and religious heritage, however. Contact with his mother in the years ahead could potentially help to promote identity-forming values related to ethnicity in X. However, this factor could not be given decisive weight as an argument against adoption. Since contact with the applicant reactivated dysfunctional responses in X, the importance of the cultural aspect had to be deemed as being of secondary importance in relation to safeguarding X's fundamental personality development.

38. In addition, the Board considered that adoption would place X on an equal footing with the foster parents' four biological children, in particular one of them who still lived at their home and with whom X was accordingly growing up. Equal status with the latter could promote X's feeling of equality, and this was an important consideration in favour of allowing the foster parents to adopt him.

39. Following an appeal by the applicant against the Board's decision, the District Court appointed a psychological expert, S.H.G. In his report of 13 October 2014, the psychologist stated, *inter alia*, under the heading "The present situation":

> "The mother alternates between a traditional and more Norwegian style of dressing, but wears her head garment, is loyal to her Muslim culture and practices her religion. She stresses how much these values mean to her and believes that this also applies to her son – especially as he grows older. She has respect for other religions but is not happy for him to be taken to church without ever being taken to a mosque. ...
>
> The foster parents are active Christians and members of the Norwegian Missionary Society, but state that they have great respect for the mother's religion. The foster parents are passing on their culture to the children as this is what they know, but they emphasise independence and self-confidence."

In a chapter entitled "Report on interviews with and observation of the mother, child, foster parents, and information from collateral sources", the following information, *inter alia*, was included under the heading "Visit to the foster parents' home":

> "Culture and religion? He came at such an early stage, so we have transferred what we know – Christian culture. But the foster mother says they have great respect for the mother's culture and religion. We let our children decide for themselves, she says. We consider self-confidence and self-esteem to be most important. However, it would do him major harm to break with this now and enter something new. We will most likely tell him about the differences eventually and strengthen his identity. We could not take him to church because of the noise levels. We do so now, but it does not work optimally because there are too many people. We keep company with Christian people and read Christian books. He would also be unable to function in a mosque."

The expert recommended that the District Court withhold consent to the adoption, and that the amount of access between the applicant and X should be gradually increased.

40. The District Court held a hearing from 4 to 6 November 2014. The court's bench was composed of one professional judge, one psychologist and one lay person. Eight witnesses were called. The court-appointed expert attended and was present throughout the hearing and testified after the other evidence had been presented.

41. In its judgment of 21 November 2014, the District Court upheld the Board's decision. The District Court endorsed the Board's grounds for depriving the applicant of parental responsibility and granting consent for adoption, and referred to the Board's reasons, but with some clarifications and additions. The District Court concurred with the assessments of psychologist K.P., who had been appointed as an expert before the Board (see paragraph 34 above), and not with those of S.H.G., who had been appointed as an expert by the District Court (see paragraph 39 above).

42. Within the reasons as to why the District Court concluded that an adoption would pertain to X's best interest, the judgment stated, *inter alia*, that X had already been placed in an ethnically Norwegian foster home with a family of practising Christians. He had lived in that foster home for almost four years, and this was relevant to the District Court's assessment as to where he would grow up. The District Court considered that the break with X's cultural heritage had occurred when he was first taken into care.

43. On a further appeal by the applicant, the High Court held a hearing from 12 to 13 May 2015. The High Court's bench comprised three professional judges, one psychologist and one lay person. The applicant attended, together with her counsel. Eight witnesses gave evidence, of whom four, including psychologists S.H.G. and K.P., gave expert testimony. Before the High Court, the applicant acknowledged that X had become so attached to his foster parents that a return to her would be difficult. She also accepted that X had reacted badly to the contact sessions and accepted that contact should possibly be avoided at certain periods in the future. However, she would not apply for his return and she argued that at that specific moment it could not be concluded with certainty that any contact with her in the future would be against X's best interests. In particular, she argued that his need to keep in touch with his cultural and religious roots indicated that the possibility for future contact should be kept open.

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

regarded the foster parents as his parents and all the available information indicated that he was strongly attached to them.

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

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

47. In the majority's view, there were several risk factors relating to the applicant's ability to provide proper care. In addition, many (*fleire*) persons had observed that the applicant had had serious difficulties caring for X during the first year in Norway. By the time of the High Court judgment, the applicant was older and seemed more mature. Given her age and history, it was understandable that she had experienced considerable challenges in caring for X. Her son had to be regarded as a child with special care needs and was possibly suffering from early attachment disorder. The majority found that he had been subjected to gross neglect, both physically and emotionally. The parent-child institution had indicated that he had been in physical danger several times while the applicant and X were staying there. Another witness, M.L., had also been concerned about the applicant's ability to care for X on a practical level. In the High Court's view, the most important aspect of the neglect nonetheless appeared to be the lack of emotional contact and security.

48. The High Court's majority stated that these findings might reflect the applicant's psychological functioning and her life circumstances during the pregnancy, birth and postnatal period, but that this had nevertheless created a serious situation for X and his development. He had displayed trauma reactions on seeing his mother again. These reactions following contact sessions could, for instance, include screaming for several hours at a time, or being agitated and anxious for several days. Similar reactions had also been noted at the kindergarten. His reactions had been observed both during and after the contact sessions. The hospital had also made a statement about them. The majority disagreed with psychologist S.H.G., who had considered that X's reactions could be related to his emergency placement in care in 2010, as it found it unlikely that a separation from his biological mother when X had been ten months old could give rise to such reactions later in his life.

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

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

51. The considerations of ensuring that a particularly vulnerable child would have a continued attachment to an environment in which he was deeply rooted had to be weighed against other relevant weighty considerations. The High Court reiterated that, in all cases, adoption entailed a breach of the biological principle, which was a major element in any decision. In the instant case, the foster parents had been unwilling to accept an "open adoption", with future contact visits foreseen for the applicant, and there were additional aspects in the case related to ethnicity, culture and religion, and religious conversion. The fact that the applicant was a Muslim and the intended adoptive parents Christian raised special issues, which were further highlighted by the fact that the latter were active Christians who intended to baptise the adopted child.

52. An expert witness – N.S., a specialist in religious studies – had stated before the High Court that in Islam, the children of Muslims were regarded as Muslims as long as they had not been, for example, baptised. The parties had referred to a White Paper from a Government-appointed committee (NOU 2012: 5 *Bedre beskyttelse av barns utvikling*), containing an assessment of adoption from a cultural and Islamic perspective. The White Paper stated that religion could be an obstacle to adoption for practicing Muslim families, since Islam had a general prohibition against adoption in the sense of making children born to other biological parents one's own. Elsewhere, the White Paper had noted that various Muslim countries and Muslim schools of law had differing views on adoption, but they all had a prohibition against breaking the ties with the adoptive child's biological family. The White Paper had concluded that the child welfare services faced a particular challenge when considering adoption as a child welfare measure for Muslim children. One of the members of the committee which drafted the White Paper had testified as an expert witness before the High Court, and stated that the committee had not wished to make

recommendations one way or another with regard to the above observations; she had emphasised that each case was to be assessed on the basis of the child's needs.

53. Based on international law sources, the High Court had not found that any prohibition could be inferred against the adoption of children from a Muslim background in Norway. Article 20(3) of the United Nations Convention on the Rights of the Child stated that when possible solutions, including adoption, were assessed, "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" (see paragraph 73 below). The best interests of the child should be a primary consideration in all actions and decisions concerning children, pursuant to Article 3(1) of the United Nations Convention on the Rights of the Child and the second paragraph of Article 104 of the Norwegian Constitution (see paragraphs 73 and 59 below, respectively). In adoption cases, the child's best interests should be the paramount consideration, under Article 21 of the United Nations Convention on the Rights of the Child (see paragraph 73 below).

54. The High Court noted that the County Social Welfare Board had commented, in the context of the care order, on the choice of foster home, based on ethnic, cultural and religious considerations. Further information about which assessments had been carried out by the child welfare services when X had been placed in a foster home with ethnically Norwegian parents had not emerged during the presentation of evidence, but the High Court assumed that there had been no available foster parents with a more similar cultural background. It was known that there was a serious shortage of foster parents from minority backgrounds. Regardless of how the choice of foster home was otherwise evaluated, the initial placement had a bearing on the assessment of what was in the best interests of X at the time of the High Court's judgment.

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

56. The High Court's majority considered that a further foster home placement could give rise to problems in connection with, for example, the applicant's wishes that X be circumcised, attend Koranic school and follow Muslim food traditions. Her statement in the High Court that she had considered it best for X to remain with his foster parents had not been called into question, but the High Court was somehow uncertain (*noko usikker*) as to how permanent this opinion would be, and whether demands for X to be returned to her care would be made in future. A vulnerable boy such as X required a calm and stable situation. Adoption would create clarity, strengthen the development of X's identity and make him an equal member of the family. In the light of the above considerations, the majority of the High Court bench found that there were particularly compelling reasons for authorising the adoption and thus voted to dismiss the applicant's appeal.

57. The minority, one of the lay judges, found that the reasons for allowing the adoption were not sufficiently compelling, but that there were reasons for refusing to grant the applicant contact rights for the time being. The minority viewed the applicant's ability to provide care in a slightly more positive light than the majority and emphasised that, for the moment, a continued foster home arrangement would be more flexible than adoption. Greater weight should also be placed on ethnic, cultural and religious considerations in the overall assessment of what would be in X's best interests at the given time; this was highlighted in particular by the fact that adoption would entail religious conversion.

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

RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. The Constitution

59. Articles 16, 102 and 104 of the Norwegian Constitution of 17 May 1814 (*Grunnloven*), as revised in May 2014, read as follows:

Article 16

> "All inhabitants of the realm shall have the right to free exercise of their religion. The Church of Norway, an Evangelical-Lutheran church, will remain the Established Church of Norway and will as such be supported by the State. Detailed provisions as to its system will be laid down by law. All religious and belief communities should be supported on equal terms."

Article 102

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

Article 104

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

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

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

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

B. Human Rights Act

60. Sections 2 and 3 of the Human Rights Act of 21 May 1999 (*menneskerettsloven*) read, in so far as relevant:

Section 2

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

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

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

Section 3

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

C. Child Welfare Act

61. The two first paragraphs of section 4-15, section 4-20 and the second paragraph of section 4-22 of the Child Welfare Act of 17 July 1992 (*barnevernloven*) read:

Section 4-15. Choice of placement in the individual case

"Within the framework determined in section 4-14, the placement shall be chosen on the basis of the child's distinctive characteristics and need for care and training in a stable environment. Due account shall also be taken of the desirability of ensuring continuity in the child's upbringing, and of the child's ethnic, religious, cultural and linguistic background. Account shall also be taken of the likely duration of the placement, and of whether it is possible and desirable for the child to have access to and other contact with the parents.

In its proposal to the county social welfare board the child welfare service shall give an account of the points of view upon which the choice of placement in the individual case should be based. In its order the county social welfare board may attach conditions to the placement. If it is not possible for the child to be placed as stipulated in the proposal or the order, the matter shall be resubmitted to the county social welfare board."

Section 4-20. Deprivation of parental responsibility. Adoption

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

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

Consent may be given if

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

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

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

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

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

Section 4-22. Foster homes

"Persons selected as foster parents shall have a special aptitude for giving children a secure and good home, and be capable of discharging their responsibilities as foster

parents in accordance with the conditions on which the duration of the placement etc. (see section 4-15), is based."

62. On 27 March 2020, the Supreme Court, sitting in a Grand Chamber formation, gave judgment and decisions in three childcare cases (HR-2020-661-S, HR-2020-662-S and HR-2020-663-S) in order to draw up guidelines for the application of the Child Welfare Act in the light of the European Court of Human Rights' judgments in the case of *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, 10 September 2019) and subsequent cases concerning childcare measures adopted in the respondent State.

63. One of the above rulings (HR-2020-661-S) concerned an appeal against the High Court's refusal to grant leave to appeal in a case about deprivation of parental responsibility and consent to adoption, in which the Supreme Court carried out an in-depth examination of the Court's case-law in conjunction with the domestic case-law and practice, in order to clarify the Convention requirements and identify and resolve any possible inconsistencies with a view to ensuring compliance with the Convention.

64. In respect of cases where the replacement of foster care with adoption was at issue, the Supreme Court concluded that the general legal conditions, as they were expressed in the Child Welfare Act and the Supreme Court's case-law, were compliant with the Convention and the Court's case-law and thus could be maintained, but found that adjustments were still called for in Norwegian child welfare practice. Under the heading "Summarising remarks on reunification", the Supreme Court stated the following:

"(142) Based on the presentation of the Child Welfare Act as interpreted in case-law and judgments by the European Court of Human Rights, the status of the law may in my opinion be summarised as follows:

(143) Under both Norwegian law and the European Convention on Human Rights, the overall goal is to have the care order revoked and the family reunited. A care order is therefore always temporary as a starting point. The authorities have a positive duty to strive actively to maintain the relationship between the child and the parents and to facilitate reunification. This implies that the authorities must monitor developments closely. Contact rights and assistance measures are crucial here. As long as reunification is the goal, contact must be arranged to make this possible. The authorities are to ensure, to the extent possible, that the contact sessions are of a good quality. If the sessions do not work well, one must try out adjustments or alternatives, for instance arranging them elsewhere, or under guidance.

(144) As long as family reunification is the goal, the purpose of access is not only to ensure that the child knows who his or her parents are, but also to preserve the possibility of reunification. This requires a thorough assessment of the frequency and quality of the contact sessions. And even when reunification is not possible, there is an intrinsic value in maintaining family bonds, so long as this does not harm the child.

(145) In my opinion, and depending on the situation, the child welfare services should in principle not be prevented early in the process – when choosing where to place a child (section 4-14 of the Child Welfare Act) and preparing a care plan

(section 4-15) – from assuming that the placement will be long-term. If siblings are involved, an individual assessment must be made with regard to each child. However, the extent of contact must in any case be determined with a view to a future return of the child to his or her biological parents. This applies until a thorough and individual assessment at a later stage demonstrates that this goal should be abandoned, despite the authorities' duty to facilitate reunification. In any event, the frequency of the contact sessions cannot be determined in a standard way, and it must be borne in mind that a strict visiting regime may render reunification more difficult.

(146) It is crucial that the authorities do their utmost to facilitate family reunification. However, this goal may be abandoned if the biological parents have proved particularly unfit; see, for instance, *Strand Lobben*, paragraph 207. Such a situation may also affect which measures the child welfare authorities need to apply. In this assessment the interests of the child are also of paramount importance. However, this does not automatically preclude contact altogether while the child is in foster care. The parents may be competent in contact situations but lack the caring skills necessary for reunification. Maintaining family ties, even if the goal of reunification has been abandoned, still has a value in itself.

(147) Secondly, the parents cannot request measures that may harm the child's health and development; see *Strand Lobben*, paragraph 207. Adoption may therefore take place if it can be established that continued placement will harm the child's health or development. In addition, reunification may – even in the absence of such damaging effects – be ruled out when a considerable amount of time has passed since the child was originally taken into care, so that the child's need of stability overrides the interests of the parents; see paragraph 208 of the judgment. In any event, the child welfare authorities and the courts must, before deciding on a possible adoption, make an individual assessment based on a solid factual basis and thorough proceedings.

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

65. In this Grand Chamber decision, the Supreme Court also stated that judgments by the European Court had demonstrated that the decision-making process, the balancing exercise or the reasoning had not always been adequate. In particular, the Court had found violations with regard to the authorities' duty to work towards reunion of the child and the parents. As to the dilemmas represented by the choice of perspective when assessing possible errors or shortcomings, the Supreme Court stated as follows:

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

(115) If errors have been committed by the child welfare services or the County Social Welfare Board at an earlier stage of the proceedings (for instance due to

inadequate remedial measures, or because the basis for the decision or its reasoning was unsatisfactory), the court may, depending on the circumstances, seek to remedy such errors by setting aside a care order or an adoption order. In other cases, the court may alter a previous decision, for example by increasing the granted access. However, if no such options are available and depending on the situation, the court will have to choose foster care or adoption if it is clear at the time of the judgment that this is in the best interests of the child, despite previous errors in the consideration of the case. To what extent not just the error, but also the final Norwegian ruling, must be regarded as a violation of Article 8, if the Court finds a violation at a later stage, thus relies on an interpretation of the Court's judgment.

(116) In order to prevent such a situation from occurring before the review instances, it is important that the child welfare services and the County Social Welfare Board – in seeking to identify the measures that best serve the child – consider from the very outset all relevant requirements laid down in the second paragraph of Article 104 of the Constitution, Article 8 of the Convention, the Convention on the Rights of the Child and chapter 4 of the Child Welfare Act."

66. The Supreme Court delivered a further decision on 11 June 2020 (HR-2020-1229-U), in which it also stressed the temporary nature of care orders and the aim of reunification in the light of this Court's case-law. Furthermore, it decided on two cases concerning the conditions under domestic law for lifting care orders on 15 September 2020 (HR-2020-1788-A and HR-2020-1789-A). With reference to its decisions of 27 March 2020, it reiterated on 15 September 2020 that the general conditions set out in the Child Welfare Act and domestic case-law – including the "threshold" for issuing care orders – could be maintained, but that the practice in respect of their application to concrete cases needed some adjustment in the light of the judgments of the European Court of Human Rights.

67. A new child welfare act was adopted by Parliament on 18 June 2021 but has not yet entered into force. The relevant preparatory works (Bill No. 133 (2020-2021) (*Ny barnevernslov*), page 35) stated that this Court's judgments as well as the above-mentioned case-law from the Supreme Court had been central to the work leading to the proposal of the new act.

D. Foster Home Regulation and Circular

68. The Foster Home Regulation of 18 December 2003 (*fosterhjemsforskriften*) includes further detailed rules on foster homes. Under section 3 of the Regulation, foster parents must have the special abilities, time and energy to provide the child with a safe and good home. Foster parents must have stable living conditions, normal good health, and good interpersonal skills. They also must have the finances, home and social network required to provide the child with the opportunity to live a full life. Section 4 of the Regulation states that in choosing a foster home, the child welfare services are to give decisive importance to what is in the child's best interests. The child welfare services must assess whether the foster

parents have the requisite abilities to take care of the individual needs of the child. The child welfare services are to give appropriate consideration to the child's ethnic, religious, cultural and linguistic background.

69. The Ministry of Children and Families (*Barne- og familiedepartementet*) issued a circular on guidelines in respect of foster homes on 15 July 2004 (Q-2004-1072 B). Among other points, the circular states that the child welfare services must give appropriate consideration to the child's ethnic, religious, cultural and linguistic background. Where the child's parents belong to a religious or linguistic minority, this will not always be possible. With regard to religious background, the child welfare services should nevertheless, to the extent possible, avoid placing children with foster parents who have a philosophy of life that differs substantially from that of the parents.

E. Children Act

70. The Act relating to Children and Parents (the Children Act) of 8 April 1981 (*barnelova*) included at the relevant time the following provisions:

Section 30. Meaning of parental responsibility

"The child is entitled to care and consideration from those who have parental responsibility. These persons have the right and the duty to take decisions for the child in personal matters within the limits set by sections 31 to 33. Parental responsibility shall be exercised on the basis of the child's interests and needs.

Those who have parental responsibility are under an obligation to bring up and maintain the child properly. They shall ensure that the child receives an education according to his or her ability and aptitude.

The child must not be subjected to violence or in any other way be treated so as to harm or endanger his or her mental or physical health. This shall also apply when violence is carried out in connection with the child's upbringing. Use of violence and frightening or annoying behaviour or other inconsiderate conduct towards the child is prohibited. ..."

Section 31. The child's right of co-determination

"As and when the child becomes able to form his or her own point of view on matters that concern him or her, the parents shall consider the child's opinion before making a decision on the child's personal situation. Importance shall be attached to the opinion of the child according to his or her age and maturity. The same applies to other persons with custody of the child or who are involved with the child.

A child who has reached the age of seven and younger children who are able to form their own points of view must be provided with information and opportunities to express their opinions before decisions are taken concerning personal matters affecting them, including parental responsibility, custody and access. The opinions of the child shall be given weight according to his or her age and maturity. When the child reaches the age of 12 his or her opinion shall carry significant weight."

Section 32. Education, membership of associations

"Children who have reached the age of 15 shall themselves decide the question of choice of education and of applying for membership of or resigning from associations."

Section 33. The child's right to make his or her own decisions

"Parents shall steadily extend the child's right to make his or her own decisions as he or she gets older and until he or she reaches the age of 18."

F. Adoption Act

71. The Adoption Act of 28 February 1986 (*adopsjonsloven*), in force at the relevant time, contained, *inter alia*, the following provision:

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. ..."

G. Act relating to religious communities, etc.

72. The Act relating to religious communities, etc. of 13 June 1969 (*lov om trudomssamfunn og ymist anna*) includes the following provisions:

Section 3

"Anyone over the age of 15 may join or resign from a religious community."

Section 6

"When the parents do not both belong to the Church of Norway they may together make the child a member of a religious community or withdraw the child from such a community as long as the child is under 15 years of age.

When only one of the parents has parental responsibility for the child, he or she may make this decision alone.

If neither of the parents has parental responsibility for the child, the guardian may make the child a member of a religious community or withdraw the child from such a community.

If possible, children of 12 years of age or more shall be allowed to express their opinions concerning registration or resignation of membership."

II. INTERNATIONAL LAW MATERIALS

73. Articles 3, 5, 8, 9, 14, 20, 21 and 30 of the United Nations Convention on the Rights of the Child, adopted on 20 November 1989, in so far as relevant, read:

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.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

Article 5

"States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention."

Article 8

"1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. ..."

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. ..."

Article 14

"1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others."

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; ..."

Article 30

"In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

74. Resolution 64/142 on Guidelines for the Alternative Care of Children, adopted by the United Nations General Assembly on 18 December 2009, includes the following paragraphs:

"11. All decisions concerning alternative care should take full account of the desirability, in principle, of maintaining the child as close as possible to his/her habitual place of residence, in order to facilitate contact and potential reintegration with his/her family and to minimize disruption of his/her educational, cultural and social life. ...

16. Attention must be paid to promoting and safeguarding all other rights of special pertinence to the situation of children without parental care, including, but not limited to, access to education, health and other basic services, the right to identity, freedom of religion or belief, language and protection of property and inheritance rights. ...

57. Decision-making on alternative care in the best interests of the child should take place through a judicial, administrative or other adequate and recognized procedure, with legal safeguards, including, where appropriate, legal representation on behalf of children in any legal proceedings. It should be based on rigorous assessment, planning and review, through established structures and mechanisms, and should be carried out on a case-by-case basis, by suitably qualified professionals in a multidisciplinary team, wherever possible. It should involve full consultation at all stages with the child, according to his/her evolving capacities, and with his/her parents or legal guardians. To this end, all concerned should be provided with the necessary information on which to base their opinion. States should make every effort to provide adequate resources and channels for the training and recognition of the professionals responsible for determining the best form of care so as to facilitate compliance with these provisions. ...

58. Assessment should be carried out expeditiously, thoroughly and carefully. It should take into account the child's immediate safety and well-being, as well as his/her longer-term care and development, and should cover the child's personal and developmental characteristics, ethnic, cultural, linguistic and religious background, family and social environment, medical history and any special needs. ...

88. Children should be allowed to satisfy the needs of their religious and spiritual life, including by receiving visits from a qualified representative of their religion, and to freely decide whether or not to participate in religious services, religious education or counselling. The child's own religious background should be respected, and no child should be encouraged or persuaded to change his/her religion or belief during a care placement."

75. 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, includes, *inter alia*, the following paragraphs:

"38. In respect of adoption (art. 21), the right of best interests is further strengthened; it is not simply to be "**a primary** consideration" but "**the paramount** consideration". Indeed, the best interests of the child are to be the determining factor when taking a decision on adoption, but also on other issues.

...

55. Children are not a homogeneous group and therefore diversity must be taken into account when assessing their best interests. The identity of the child includes characteristics such as sex, sexual orientation, national origin, religion and beliefs, cultural identity, personality. Although children and young people share basic universal needs, the expression of those needs depends on a wide range of personal, physical, social and cultural aspects, including their evolving capacities. The right of the child to preserve his or her identity is guaranteed by the Convention (art. 8) and must be respected and taken into consideration in the assessment of the child's best interests.

56. Regarding religious and cultural identity, for example, when considering a foster home or placement for a child, 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 (art. 20, para. 3), and the decision-maker must take into consideration this specific context when assessing and determining the child's best interests. The same applies in cases of adoption, separation from or divorce of parents. Due consideration of the child's best interests implies that children have access to the culture (and language, if possible) of their country and family of origin, and the opportunity to access information about their biological family, in accordance with the legal and professional regulations of the given country (see art. 9, para. 4).

57. Although preservation of religious and cultural values and traditions as part of the identity of the child must be taken into consideration, practices that are inconsistent or incompatible with the rights established in the Convention are not in the child's best interests. Cultural identity cannot excuse or justify the perpetuation by decision-makers and authorities of traditions and cultural values that deny the child or children the rights guaranteed by the Convention."

76. The following remarks were included in the United Nations Committee on the Rights of the Child's Concluding observations on the combined fifth and sixth periodic reports of Norway (CRC/C/NOR/CO/5-6) of 4 July 2018:

"21. Drawing the State party's attention to the Guidelines for the Alternative Care of Children, the Committee emphasizes that financial and material poverty — or conditions directly and uniquely attributable to such poverty — should never be the sole justification for removing a child from parental care, for receiving a child into alternative care or for preventing a child's social reintegration. In this regard, the Committee recommends that the State party: ...

(f) Take the measures necessary, including adequate training of personnel, to ensure that children belonging to an indigenous or national minority group who are placed in alternative care learn about and maintain their connection to their native culture; ..."

77. Article 18 of the United Nations International Covenant on Civil and Political Rights, adopted on 16 December 1966, reads as follows:

Article 18

"1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

78. The third paragraph of Article 13 of the United Nations International Covenant on Economic, Social and Cultural Rights, adopted on 16 December 1966, reads as follows:

Article 13

"3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions."

79. The first to fourth paragraphs of Article 5 of the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed by General Assembly resolution 36/55 of 25 November 1981, read as follows:

Article 5

"1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.

2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.

3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle."

III. COMPARATIVE LAW OBSERVATIONS

80. The Court has considered it appropriate to conduct a comparative survey with regard to the domestic law and practice in 41 States Parties to the Convention (namely Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, the Netherlands, Montenegro, North

Macedonia, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, Turkey, Ukraine, and the United Kingdom) as it relates to the subject matter of the case.

81. According to the information available to the Court, in at least 11 States or jurisdictions (Armenia, Azerbaijan, the Flemish Community of Belgium, Finland, France, Hungary, the Netherlands, Montenegro, Poland, Russia and Spain), a requirement to take account of the religious, ethnic or linguistic backgrounds in adoption or foster care proceedings follows directly from laws or regulations. In at least six States (Albania, Ireland, North Macedonia, Slovenia, Switzerland and the United Kingdom), a requirement to take into account the religious, ethnic, cultural and linguistic backgrounds of the concerned children and adults is mostly laid down not by laws or regulations but by infra-legislative administrative acts such as instructions and circulars.

82. Furthermore, in at least 15 States (Austria, Azerbaijan, Bosnia and Herzegovina, France, Italy, Moldova, Montenegro, the Netherlands, North Macedonia, Poland, Romania, Slovenia, Spain, Switzerland and the United Kingdom), the requirement to take into account the religious, ethnic, cultural and linguistic backgrounds is not shaped as an independent obligation, but as a specific aspect of the more general fundamental criterion of the "best interest of the child" or "the child's welfare". Moreover, in Ireland there is an obligation to "where possible" respect the wishes of the child's guardian as to the child's religious upbringing and the religion of the prospective foster parents and in Northern Ireland there is a rather clear obligation of result. None of the other States covered by the Court's research provides a positive obligation to place the child in a family sharing his/her religious, ethnic, cultural and linguistic identity or that of his/her biological parents. There is only a procedural obligation to "take it into account" as one of the criteria for choosing an adoptive and/or foster family. However, it is never the weightiest or the decisive criterion, and it may be outweighed by other considerations within the general framework of the "best interest of the child".

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 8 AND 9 OF THE CONVENTION AND ARTICLE 2 OF PROTOCOL No. 1 TO THE CONVENTION

83. The applicant initially complained that the withdrawal of her parental responsibility in respect of her son, X, and the authorisation granted

to his foster parents to adopt him, had violated her right to respect for family life as guaranteed by Article 8 of the Convention, which provides:

> "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."

84. Furthermore, the applicant complained that the above measures had entailed a violation of her right to freedom of religion as guaranteed by Article 9 of the Convention, which provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

85. In addition, in the proceedings before the Grand Chamber, the applicant relied on Article 2 of Protocol No. 1 to the Convention, which provides:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

A. The Chamber judgment

86. The Chamber, referring to fact that the Court was the master of the characterisation to be given in law to the facts of the case, considered that the applicant's submissions relating to her and X's cultural and religious background, within the particular context of the case, also fell to be examined under Article 8. It went on to declare the complaint under Article 8 admissible.

87. With regard to the merits, the Chamber stated that the general principles applicable to cases involving child welfare measures, such as those at issue, were well-established in the Court's case-law and had recently been set out extensively in the case of *Strand Lobben and Others*, cited above, §§ 202-213. In applying those principles to the case, it noted that in the domestic proceedings the applicant had not applied for the care order to be lifted and accordingly to be reunited with X; she had only requested that her parental responsibility in respect of X not be removed and

that consent to his adoption be refused. Furthermore, although the applicant had not appealed against the District Court's judgment or even applied to the Court when the care order was originally issued, the Chamber went on to find that the decisions on contact rights taken in the course of those proceedings meant that there had only been minimal contact between the applicant and X from the very outset, contrary to the principle under Article 8 that the contact regime ought to guard, strengthen and develop family ties. That being the case, the Chamber had difficulties in considering that the domestic authorities could be said to have taken any real measures to facilitate family reunification before deciding to approve X's adoption.

88. The Chamber also considered that the High Court had provided limited grounds for the findings in respect of the nature and causes of X's reactions to contact with the applicant, to which it had attached importance when deciding on the adoption. Adding to the other specific reasons that militated in favour of maintaining the possibility of some contact between X and the applicant, particularly those relating to their cultural and religious background, the above considerations led the Chamber to conclude that in the course of the case culminating in X's adoption, insufficient weight had been attached to the aim that the applicant and X enjoy family life. Emphasising the gravity of the interference and the seriousness of the interests at stake, the Chamber did not consider that the decision-making process leading to the impugned decision to withdraw the applicant's parental responsibility in respect of X and to authorise his adoption had been conducted in such a manner as to ensure that all of the applicant's views and interests were duly taken into account. The Chamber concluded that there had been a violation of Article 8 of the Convention.

B. The parties' submissions

1. The applicant

89. The applicant maintained that the question as to whether Article 8 of the Convention had been violated was a bygone conclusion following the Chamber's judgment. The applicant had not requested referral to the Grand Chamber with reference to that provision, and the respondent Government had not requested referral. They should therefore be estopped from arguing that there had been no violation of Article 8. Moreover, in the applicant's view there had plainly been a violation of that provision. She argued that the foster placement in the instant case had put even greater strain on the bond between the biological mother and the child than in the case of *Strand Lobben and Others*, cited at paragraph 62 above, since X, in contrast to the child involved in that case, had been cut off from his cultural, ethnic, linguistic and religious roots.

90. The visits that had been carried out during X's foster care had taken place under supervision and had not given the applicant and X enough space

to develop a family bond. After a while the foster parents had stopped calling the applicant "mum".

91. In the applicant's view, Article 8 should be interpreted in the light of Article 9 of the Convention and Article 2 of Protocol No. 1. Questions regarding violations of freedom of religion should, however, be kept separate from Article 8 and the issue arising under Article 9 merited its own discussion. For a parent to raise a child in accordance with his or her religion or belief was a manifestation of that religion or belief, and this practice was at the core of the perception of what religious freedom is; it was also universal to all religions and belief systems.

92. The applicant submitted that, contrary to section 4-15 of the Child Welfare Act, no attempts had been made to find a foster home that had matched her cultural and religious background. There had therefore been a breach of the lawfulness requirement in Article 9 of the Convention; reference was also made to Article 7. The child should have been placed in a Muslim foster family with Somali roots or, if not possible, at least a Muslim family. In her observations before the Grand Chamber, the applicant submitted that it was not correct to assert that the authorities had made efforts to facilitate such a placement. In her subsequent pleadings she argued that she had been unaware of and not involved in any efforts that had been made. She also argued that, by setting the adoption in motion, the child welfare services had made a decision that had also violated the child's rights, as they had permitted indoctrination of the child away from his religion, in contravention of Article 9 and Article 2 of Protocol No. 1 to the Convention. Furthermore, the foster family had not been sufficiently informed by Norwegian authorities about how to respect and take account of the foster child's religious identity and their duty not to convert the child to their religion.

93. Furthermore, nothing even approaching such sound and weighty considerations as were required by the Court's case-law in order to justify the severing of family ties had been proffered by the domestic authorities in the instant case. All the ties to the applicant's religion had been severed through the adoption, because the foster family had wished to baptise the child and had done so following the adoption. Furthermore, conversion to another religion was considered to be apostasy in Islam and a crime under Sharia law. Moreover, following the adoption, the child's name had been changed. Naming a child was a parent's prerogative and a name was often a bearer of familial, cultural and religious tradition. In the present case, there had been an especially strong religious connotation to his name and the name change had been directly related to the adoptive parents' religion. The name change in itself therefore fell within the scope of Article 9 of the Convention in this case.

94. The applicant argued that, throughout her whole case, she had been vocal about her religious identity and her specific wishes for a religious

upbringing for the child. Placing the child with the particular family at issue had not been done in the pursuit of a legitimate aim; the legitimate aim would have been to reunite the child with the applicant. The violation of Article 9 of the Convention was not something that occurred at the specific time of adoption; it had first occurred when the child was placed with his foster family and was continuous throughout the duration of the placement.

95. The applicant maintained that Article 2 of Protocol No. 1 applied to the facts of her case. It was clear from the Court's case-law that the placement of a child in public care did not cause the parents to lose all their rights under that provision.

96. In the applicant's view, Articles 8 and 9 of the Convention and Article 2 of Protocol No. 1 interacted and had to be interpreted in the light of Article 14 of the Convention. A "religiously neutral" policy of child placements systematically benefitted religious majorities, as children belonging to such groups would be more likely to be placed with someone of the same religion than those belonging to minorities. The case also involved a child who had been christened into a missionary church outside the religious mainstream whose activities could be described by the majority as indoctrination, and natural parents belonging to the Christian majority could also have objected to fostering and adoption on those grounds.

97. In the applicant's opinion, the Court should attach great weight to the measures that predated the acts brought before it, as the manner in which they had been made had paved the way for the subsequent adoption. She asserted that, by not considering her rights under Article 9 of the Convention and Article 2 of Protocol No. 1, the Norwegian authorities had not fulfilled their duty as the primary guarantors of Convention rights, as required by Article 1 of the Convention.

98. Before the Grand Chamber, the applicant asked that the Court make a statement regarding indicative measures under Article 46 of the Convention. She submitted in that context that the domestic procedural law provided for reopening of judgments in which the Convention had been misapplied.

2. The Government

99. The Government argued that the Chamber had correctly subsumed the case's cultural and religious aspects under Article 8 of the Convention. The complaint related to the applicant's own sentiments in respect of her son's upbringing, which were suitably encompassed by the interests of parents, integral to the proportionality assessment under the second paragraph of that provision. They also pointed out that Article 8 protects the parent's "private life", which included, among other things, individual ethnicity as well as the relationship between parent and child.

100. Based on the criteria set out by the Court in the case of *Strand Lobben and Others*, cited above, the Government argued that there had been

no violation of Article 8 in the instant case. The Chamber had built on its own assessment of evidence and had failed to refer to relevant facts; in so doing, it had departed from the Court's subsidiary and procedural role. The Chamber had, among other things, made no reference to the efforts made by the domestic authorities to enable the applicant to maintain her relationship with her child, nor to the efforts made by those authorities prior to the emergency decision.

101. In that context, the Government pointed out that in the period which had elapsed from the point at which X was placed in an emergency care home (that is, at the turn of September and October 2010) until the municipal child welfare office applied for foster parent adoption (on 11 September 2013), and then again until his adoption was confirmed in 2015, several assistance measures were adopted. These included the initial and comprehensive follow-up from two asylum centres, before arrangements were made for the applicant to live in a house with professionals who had been contracted by the municipality to help, assist and guide the applicant, with whom her son was then residing. From January 2011 the applicant had stayed for two years in a shared house for single minor asylum seekers, where she had been supported day and night by therapists. In January 2013 she had moved into a flat in shared accommodation, where staff had monitored her regularly. She had received continuous training in everyday activities and been given considerable medical and educational assistance. While all these measures had been conducive to aiding the applicant in maturing, becoming independent and being able to act as a responsible adult who could resume looking after her child, the applicant had shown no improvement in her caring skills. At the same time X had had extraordinary needs.

102. The domestic authorities' decisions showed that there had been exceptional circumstances behind the decision to deprive her of parental responsibility and to consent to adoption and that these measures had been justified, since they were motivated by an overriding requirement pertaining to the child's best interests.

103. The Government submitted that, in the circumstances of the instant case, no separate issues arose in respect of either Article 9 of the Convention or Article 2 of Protocol No. 1. As to Article 9 in general, they were however prepared to assume that making choices motivated by religion on behalf of one's child might amount to a religious "manifestation" under that provision. They further stated that regardless of whether the case was assessed through the lens of negative or positive obligations under Article 9, a balancing of the different interests at stake had to be carried out.

104. The child welfare services had tried to accommodate the applicant's wish that her son be placed in a Somali and Muslim foster home. They had contacted a cousin of the applicant, a Somali couple, as well as an

Afghan Muslim family, but without success. Despite efforts over many years to recruit Muslim foster parents in Norway, it remained difficult to find such homes. The child welfare services had thus had due regard to the applicant's wishes and had made the efforts that could be reasonably expected of them to find a Muslim foster home, but when the search for such a home proved unsuccessful, X's interests in obtaining a rapid placement overrode the applicant's interests.

105. During the foster home placement, the child welfare services had assessed cultural and religious aspects of the foster home stay as part of their supervision of the foster home. The child welfare services had been aware of, and sensitive to, the importance of preserving the child's cultural and religious background in order to safeguard the goal of a future reunification. X's foster parents had also participated in a training course which emphasised the importance of preserving this background.

106. The Government accepted that the subsequent adoption had interfered with the applicant's right to manifest her religion, notwithstanding the fact that some of her freedom of religion in that respect had already been removed by virtue of the care order. The decision to consent to adoption had however been based on what was in X's best interests. The religious and cultural aspects of the case had been extensively discussed and a balanced and well-founded assessment, in which the applicant's interests had been weighed against X's interest in remaining with the family with which he had lived for more than three years, had been made by the High Court. The High Court had heard and relied on the witness statements of two experts in Islam regarding the placement of a Muslim boy with Christian foster parents and had had considerable and detailed regard to the applicant's and the boy's interests in having their faith respected. The margin of appreciation had not been exceeded.

107. While the Government were principally of the view that no separate questions arose either under Article 9 of the Convention or under Article 2 of Protocol No. 1, they argued, in the alternative, that Article 9 was more suitable than Article 2 of Protocol No. 1, as the functions assumed by the respondent State in this case fell outside the scope of "education" and "teaching" in the sense of the latter provision.

108. The Government stated that most decisions under Article 2 of Protocol No. 1 had concerned activities in schools and other educational institutions. By removing X from his biological parent and placing him with foster parents, the State had conceivably and in a certain manner interfered with his "teaching", but this was "teaching" taking place in a family environment and significantly different from the "teaching" taking place in State schools in so far as this concerned its content, context and purpose.

109. The principles developed under Article 2 of the Protocol were not well suited to addressing the issues at stake. In the Government's view, those principles reflected the balancing of interests required in an

educational institution in the light of the school's function as an arena of integration, pluralism and knowledge transmission. The balancing of interests in a case such as the present one was different; the interests of the individual child played a predominant role and the balancing of interests between different religious groups was of less importance. The Government added that while education was generally examined from the angle of that provision, this had not excluded the Court from reviewing cases relating to education under Article 9.

3. Third parties

(a) The Government of Denmark

110. The Danish Government focused its intervention on the general principles guiding deprivation of parental responsibility and adoption without parental consent. In essence, they argued that the Court should – in line with the principle of subsidiarity – not substitute its own substantive balancing of interests for that of the national authorities but rather review the national authorities' decision-making process in such cases. Moreover, the Danish Government argued that the Court should confirm the best interests of the child as the primary consideration in cases relating to child welfare, such as adoption cases.

111. In the Danish Government's view, the Chamber had conducted a substantive scrutiny of the national decisions and, in its assessment, indicated a move towards attaching increased weight to the interests of the parents and, in consequence, had decreased the weight that was to be attached to the best interests of the child.

112. With regard to the issue of the choice of foster home, the Danish Government found that the best interests of the child should be the guiding factor. When choosing a foster family, the authorities should have regard for the child's needs and life situation, including the child's cultural and religious background and needs. Sometimes, however, it would not be possible to find a family with a similar cultural and religious background to that of the child and his or her parents, notably owing to a lack of foster families with such backgrounds. When necessary and in the best interests of the child to be removed from his or her parents, this should not prevent the child being placed with a foster family even if they were of a different cultural and religious background.

(b) The Government of the Czech Republic

113. The Czech Government stressed that, when assessing the compliance of State authorities with their obligations under Article 8 of the Convention, it was necessary to take due account of the situation of all members of the family, as that provision guaranteed protection to the whole family. Moreover, they stressed that there was a broad consensus that in all

decisions concerning children, their best interests must be paramount. The "best interests" principle was however not designed to be a kind of a "trump card" and the paramountcy of the child's interests did not mean that the Contracting States should give up on the biological parents' right to family life.

114. On the topic of contact between the biological parents and their child in public care and other measures to reunite the family, the Czech Government pointed out that, under Article 9 § 3 of the Convention on the Rights of the Child, the child had the right to maintain personal relations and direct contact with both parents on a regular basis, except when this was contrary to his or her best interests. Moreover, they emphasised the positive duties inherent in Article 8 of the Convention and that it was highly important to maintain contact between biological parents and the child during the latter's placement in care, as the regime of contact ought to guard, strengthen and develop family ties.

115. With respect to adoption, the Czech Government stated that the crucial question was whether, in cases where the biological parents wished to participate in their child's upbringing and/or to exercise their contact rights (if allowed), adoption and other restrictions or a ban on contact rights were in compliance with Article 8 of the Convention. It further stated in this regard, among other points, that the extent of the child's relationship with the biological parent could be a crucial factor. This led to the question of allowing for sufficient contact rights and of preserving the bond with the biological family while the child was in foster care.

116. The Czech Government emphasised the United Nations General Assembly Resolution on "Guidelines for the Alternative Care of Children" and noted that, according to the Committee on the Rights of the Child, the State party should take measures, including adequate training of personnel, necessary to ensure that children belonging to an indigenous or national minority group who are placed in alternative care learn about, and maintain their connection to, their native culture.

117. Furthermore, they stated that, when deciding about out-of-home placement, or even adoption, the authorities must have due regard also to the wishes of the biological parents to have their children placed with foster or adoptive parents that will comply with their religious beliefs. When choosing a suitable adopter, the authorities should therefore take due account of the understanding by prospective adopters of developmental and behavioural issues, issues surrounding the cultural, spiritual or religious needs of the child, the importance of providing information to the child about his background, and issues of racism and its effects.

118. The Czech Government also pointed out that information about the child's origin was critical to the ability of a child from a minority group or of indigenous origin to exercise the right to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own

language under Article 30 of the Convention on the Rights of the Child. In this context, the Committee on the Rights of the Child had recommended that States parties ensure the right of adopted children, as far as possible, to maintain one of their original first names.

(c) The Government of Turkey

119. The Government of Turkey maintained that the Court recognised that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care. However, a stricter scrutiny was called for both of any further limitations, such as restrictions placed by those authorities on parental rights and access, and of any legal safeguards designed to secure effective protection of the right of parents and children to respect for their family life.

120. Furthermore, the Government of Turkey submitted that, according to the Court's case-law and international practices, removal and placement of children with long-term foster families and prospective adoptive parents should be used only in exceptional cases and as a last resort, after all other options are exhausted, as these measures are often irreversible, especially in respect of children aged 0-6. In the instant case, it was not clear whether there had been exceptional circumstances such as a history of violence, ill-treatment or drug or alcohol addiction that would prevent the mother from providing parental care to her own child permanently and would have justified the authorities' severe measures, which led to the severing of mother-child ties. It was not sufficiently proved that the child welfare services had exhausted other options prior to removing the applicant's child and placing him with a prospective adoptive family. The Government of Turkey also drew the Court's attention to the vulnerable condition of the applicant and her son and argued that by the very act of imposing a very restrictive contact regime, the authorities had failed in their positive duty to take measures to facilitate the applicant's and her child's continued enjoyment of a family life.

121. The Government of Turkey maintained that it was unclear whether the national authorities had conducted a thorough assessment when choosing the foster parents and exhausted all other available options before placing the child in foster care with foster parents of a different religion. They also stated that it was unknown which steps, if any, had been taken by the child welfare services with regard to the applicant's concerns that the foster parents actively indoctrinated her child into their faith without any consideration for the fact that he was of the Muslim faith and that the applicant, as the child's mother, wished to bring him up as a Muslim, following the cultural and religious identity of his roots.

122. Moreover, the Government of Turkey noted that, following his adoption, the child had been baptised and given a Christian name, and argued that the authorities' decisions had resulted in the child's religious

conversion into the Christian faith, in violation of the applicant's and her son's right to freedom of religion under Article 9 of the Convention. They stated in this context that the fact that the child had been baptised and given a Christian name implicitly implied the argument that the child would not have been able to integrate into his adoptive family without surrendering the cultural and religious identity into which he had been born. Lastly, they stated that it would be beneficial in the instant case if the Court could examine, in conjunction with the other provisions, whether there had been a violation of the prohibition of discrimination set out in Article 14.

123. The Government of Turkey were of the opinion that the child's religious, cultural, ethnic and linguistic background had not been taken into consideration in the decisions of the child welfare services and the Norwegian courts' judgments concerning the placement of the applicant's child. This constituted an interference with the applicant's rights, not only under Article 8, but also under Article 9 of the Convention and Article 2 of Protocol No. 1, as well as under Article 14 of the Convention in conjunction with these provisions. The authorities' conduct had violated the applicant's right to raise and educate her child in conformity with her own religious beliefs and convictions.

(d) The AIRE Centre

124. The AIRE Centre focused on the United Nations Convention on the Rights of the Child. In that context, it drew the Court's attention, among other points, to the fact that the rights set out in that Convention applied to all children under the age of 18, including teenage mothers. In the context of teenage mother asylum seekers, that Convention required a guardian to be appointed for the young mothers as well as for their babies, in order to ensure that all their needs, including their needs as mothers, were properly met. The AIRE Centre also emphasised that the principle of the paramountcy of the child's best interests applied equally to the best interests of babies and to the best interests of their mothers if their mothers were also children.

125. The AIRE Centre also emphasised issues relating to the child's participation in the decision-making process if it involves children who are able to form own opinions and stated, *inter alia*, that for domestic proceedings to comply with the procedural requirements of Article 8 of the Convention, the child had to have participated, either directly or indirectly, in the child protection or adoption proceedings. The same applied to proceedings before this Court, meaning that in order to meet the requirements of the United Nations Convention on the Rights of the Child, the child's views had to be heard by the European Court of Human Rights.

126. In their submissions, the AIRE Centre also discussed different forms of alternative care and adoption with regard to the aspect of religious matters. Furthermore, it stated that it was essential to be aware that adoption

was not permitted in Islam and that the Koran forbade it. Children who had lost the care of their birth parents were provided in Islam with new homes through the institution of Kafalah. Kafalah placed very exacting religious obligations on the *kefils* (the new parents) and was often carried out through judicial proceedings.

127. With regard to issues relating to the child and religion, the AIRE Centre's submissions primarily dealt with the United Nation Convention on the Rights of the Child. It stated, among other things, that in most branches of the Christian religion a child did not "acquire" Christianity at birth, but only through baptism. In Islam and Judaism, a child born to a Muslim or a (qualifying) Jewish parent acquired that religion at birth, similarly to the situation in many States where citizenship was acquired at birth. In the Islamic world, apostasy was in many places regarded as a crime, but in all Islamic countries it was socially frowned on. Very serious and explicit consideration had therefore to be given to whether and why it was in the best interests of any Muslim child of Muslim heritage to be forcibly converted to Christianity. This was a quite distinct issue from whether it was appropriate to place a Muslim child within a Christian foster family, which could be an acceptable solution where forced conversion was not an issue and where there were no other suitable family members available to take on this role.

(e) X's adoptive parents

128. X's adoptive parents focused on the fact that the Court had established in its case-law that relationships amounting to "private or family life" within the meaning of Article 8 of the Convention were not exclusive to biological parental relationships. With regard to family life with foster parents, the Court's judgment in the case of *Moretti and Benedetti v. Italy* (no. 16318/07, §§ 44-52, 27 April 2010) in particular laid down the relevant guidelines. The adoptive parents also emphasised that on the basis of the Court's case-law due regard should be had to other close personal ties that had formed while the child had been in foster care, for instance with siblings.

129. Furthermore, the adoptive parents emphasised the paramountcy of the child's best interests in cases such as the present one, and submitted that in the continuation of these two aspects of the Court's case-law – the strength of the family ties between child and foster parents, and the paramountcy of the principle of the child's best interests – the Grand Chamber should seek to combine them in the application of Article 8 in the present case. In this respect *Moretti and Benedetti*, cited above, was particularly relevant to the Court, as an example of the complex reality of situations where several interests – interests originating in family ties that were protected under the Convention – came into conflict with each other and pulled in different directions.

C. The Court's assessment

1. Scope of the case before the Grand Chamber

130. 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 applicant (see paragraph 3 above), which concerned the deprivation of parental responsibility and the authorisation for the adoption of her son, X, first decided by the County Social Welfare Board on 21 March 2014 and then upheld on appeal (see, *inter alia*, paragraphs 14-30, 34 and 36 of the Chamber's judgment).

131. The Grand Chamber observes that X was taken into emergency foster care in 2010 (see paragraph 17 above) and into ordinary foster care following the County Social Welfare Board's decision of 10 December 2010 (see paragraph 20 above). In the same decision the first applicant was granted contact rights amounting to four short contact sessions, under supervision, per year (see paragraph 22 above). She appealed against that decision, which was ultimately upheld by the District Court in its judgment of 6 September 2011, increasing her contact rights to one hour, six times per year (see paragraph 29 above). As the applicant did not avail herself of the possibility of lodging an appeal, the District Court's judgment became final on the expiry of the time-limit for doing so.

132. The above proceedings from 2010 to 2011 did not form part of the applicant's application in so far as it was declared admissible by the Chamber and the Court does not have jurisdiction to review their compatibility with Article 8 of the Convention. The same applies to the decisions imposing limitations on the applicant's right to contact with X, predating the adoption proceedings, which started in 2013 (see paragraph 32 above).

133. Nonetheless, in its review of the proceedings relating to the County Social Welfare Board's decision of 21 March 2014 and the decisions taken on appeal against that decision, notably the District Court's judgment of 21 November 2014, the High Court's judgment of 27 May 2015 and the Supreme Court's Appeals Leave Committee's decision of 23 September 2015, 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 preceding proceedings and decisions (see, similarly, *Strand Lobben and Others*, cited above, § 148). Indeed, as recognised by the Norwegian Supreme Court (see paragraphs 62-66 above), it is relevant in a case such as the present one whether the competent domestic authorities have considered

from the very outset all the relevant requirements of Article 8 of the Convention, as reflected in domestic law and other international instruments such as the Convention on the Rights of the Child (see *M.L. v. Norway*, no. 64639/16, § 98, 22 December 2020).

2. Legal characterisation of the applicant's complaint

134. A principal reason for the applicant's request that the case be referred to the Grand Chamber was the Chamber's decision that all of her arguments fell to be examined under Article 8 of the Convention, rather than, in part under Article 9, as she had submitted (see paragraph 34 of the Chamber's judgment).

135. The Court observes in that connection that the applicant's complaints lodged with the Court under Articles 8 and 9 of the Convention concern the same measures, notably the withdrawal of her parental responsibility in respect of X and the authorisation for X's adoption by his foster parents. This is also valid with regard to her additional arguments, made for the first time before the Grand Chamber, in relation to Article 2 of Protocol No. 1 to the Convention. It also observes that X himself is not an applicant before the Court.

136. In this connection, the Court reiterates that a complaint consists of two elements: factual allegations and legal arguments. By virtue of the *jura novit curia* principle the Court is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018).

137. While the type of measures under consideration in this case is one which, according to the Court's case-law, is invariably considered under Article 8 of the Convention, the question arises as to whether and to what extent the applicant's complaint attracts the application of Article 9 of the Convention and/or Article 2 of Protocol No. 1.

138. Turning to the latter provision first, the Court reiterates that the Convention institutions have on certain occasions been called upon to examine complaints formulated under this provision, in addition to the complaint under Article 8 of the Convention, in regard to the choice of foster home. It is noteworthy that in *Olsson v. Sweden (no. 1)*, 24 March 1988, § 95, Series A no. 130, the former European Commission of Human Rights stated in paragraph 183 of its report adopted on 2 December 1986:

> "A decision to take a child into care is of a different character from adoption or the removal of custody. A care order does not mean that the right to custody is removed from the parents. But it implies that the public authorities take over the responsibility for the actual care of the child for a period which is not normally fixed in advance. A

> care order is however of a temporary nature and the aim is that eventually the children should return to their parents. In the Commission's opinion the right of the parents under Article 2 of Protocol No. 1 is not removed as a result of a care order. However, since such an order temporarily transfers certain parental rights to the public authorities it is inevitable that the contents of the parents' rights in Article 2 of Protocol No. 1 must be reduced accordingly. On the other hand, the responsible authorities must, in the exercise of their rights under a care order, have due regard to the parents' right under Article 2 of Protocol No. 1."

139. The Court, finding the complaint unsubstantiated, agreed with the Commission in that no violation of Article 2 of Protocol No. 1 had been established (see *Olsson v. Sweden (no. 1)*, cited above). The Commission similarly reached a negative conclusion in *Tennenbaum v. Sweden* (dec.) no. 16031/90, 3 May 1993), as it had many years earlier in regard to an adoption measure in *X v. the United Kingdom* (no. 7626/76, 11 July 1977). However, apparently because of the secondary importance of the matter and slender basis for the complaints, the Convention institutions have not elucidated the reach of this provision beyond affirming that the authorities must have due regard to the parents' right under Article 2 of Protocol No. 1. It appears that most cases examined under this provision and the principles developed in the Court's case-law concern the obligations of the State in relation to institutionalised education and teaching, as pointed out by the respondent State. The Court further observes that, whilst Article 2 of the Protocol is a *lex specialis* in relation to Article 9 of the Convention (see, for example, *Folgerø and Others v. Norway* [GC], no. 15472/02, § 54, ECHR 2007-III; and *Lautsi and Others v. Italy* [GC], no. 30814/06, § 59, ECHR 2011 (extracts)), the applicant relied only on the latter provision in her initial application to the Court as declared admissible by the Chamber. In these circumstances, the Grand Chamber will not review the matter with reference to Article 2 of Protocol No. 1.

140. Turning then to Article 9, which the applicant did invoke in her original application, the Court recognises that her views attained the "level of cogency, seriousness, cohesion and importance" so as to fall within the scope of the guarantees embodied in this provision (see, among other authorities, *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 68, 26 April 2016). The Court also considers that for a parent to bring his or her child up in line with one's own religious or philosophical convictions may be regarded as a way to "manifest <u>his</u> religion or belief, in ... teaching, practice and observance" (emphasis added here). It is clear that when the child lives with his or her biological parent, the latter may exercise Article 9 rights in everyday life through the manner of enjoyment of his or her Article 8 rights. To some degree he or she may also be able to continue doing so where the child has been compulsorily taken into public care, for example through the manner of assuming parental responsibilities or contact rights aimed at facilitating reunion. The compulsory taking into care of a child inevitably entails limitations on the freedom of the biological parent to

manifest his or her religious or other philosophical convictions in his or her own upbringing of the child. However, for the reasons stated below the Court does not find it necessary in the instant case to determine the scope of Article 9 and its applicability to the matters complained of.

141. In the Court's view, the applicant's complaint relating to the adverse effect of the choice of foster home in regard to her wish that X be brought up in line with her Muslim faith may be examined as an integral part of her complaint concerning her right to respect for her family life as guaranteed by Article 8 of the Convention, interpreted and applied in the light of Article 9, rather than as a separate issue of alleged failures to comply with the rights protected by the latter provision.

142. Against this background, the Court considers it appropriate to centre its examination of the present case on the compatibility of the impugned measures with the applicant's right to respect for family life under Article 8, which has however to be interpreted and applied in the light of Article 9 of the Convention. This is an approach that it has followed in a number of cases in which it has found the complaint to be most appropriately characterised with reference to one Article, while acknowledging that the subject matter also touches upon interests protected by other Articles of the Convention and Protocols (see, for example, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 7 December 1976, § 52, Series A no. 23; and *Folgerø and Others*, cited above, § 100, where the Court held that the two sentences of Article 2 of Protocol No. 1 must be read not only in the light of each other but also, in particular, of Articles 8, 9 and 10 of the Convention; see also *Lautsi and Others*, cited above) and the approach adopted in a number of cases to interpret Article 11 in the light of Articles 9 and/or 10 (see, for example, *Young, James and Webster v. the United Kingdom*, 13 August 1981, § 57, Series A no. 44; *Socialist Party and Others v. Turkey*, 25 May 1998, § 41, Reports of Judgments and Decisions 1998-III; *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 102, 15 November 2018) or the other way round (see *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 others, §§ 53 *et seq*., ECHR 2011); or Article 9 in the light of Article 11 (see *İzzettin Doğan and Others*, cited above, § 93).

3. Compliance with Article 8

143. It is not disputed between the parties, and the Court finds it unequivocally established, that the measures decided in the proceedings complained of, namely the withdrawal of the applicant's parental responsibility in respect of X and the authorisation for X's adoption, entailed an interference with the applicant's right to respect for her family life, as guaranteed by paragraph 1 of Article 8 of the Convention. Moreover, the Court sees no reason to question that the measures were in accordance with the law, namely the Child Welfare Act (see paragraph 61 above), and

pursued legitimate aims under paragraph 2 of Article 8, namely the protection of X's "health and morals" and his "rights". It remains to be considered whether the disputed measures were "necessary in a democratic society" for the pursuit of these legitimate aims, including whether the domestic authorities had due regard to the applicant's interests protected by the Article 9 freedom.

144. This approach is not only consistent with promoting internal consistence and harmony (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 48, ECHR 2005-X) with that referred to in paragraph 142 above concerning Article 8 in relation to Article 2 of Protocol No. 1. It is also consonant with the standard expressed in various forms in the domestic laws of the great majority of Convention States and reflected in the UN Convention on the Rights of the Child, notably its Article 20(3), whereby due regard shall be paid, *inter alia,* to the child's religious, ethnic and cultural background (see paragraphs 73, 81 and 82 above).

(a) General principles

145. The general principles relevant to child welfare measures were set out in the Grand Chamber's judgment in *Strand Lobben and Others*, cited above, §§ 202-213 (see also, *inter alia*, *K.O. and V.M. v. Norway*, no. 64808/16, §§ 59-60, 19 November 2019; *A.S. v. Norway*, no. 60371/15, §§ 59-61, 17 December 2019; *Cînța v. Romania*, no. 3891/19, § 26, 18 February 2020; *Y.I. v. Russia*, no. 68868/14, §§ 75-78, 25 February 2020; *Hernehult v. Norway*, no. 14652/16, §§ 61-63, 10 March 2020; *Pedersen and Others v. Norway*, no. 39710/15, §§ 60-62, 10 March 2020; and *M.L. v. Norway*, cited above, §§ 77-81). While bearing in mind the scope of the case as delimited in paragraphs 130-133 above, and also that the crux of the matter concerns the deprivation of parental responsibility and authorisation to adoption described in paragraphs 32-58 above, in assessing whether these measures were "necessary in a democratic society" the Court will have regard to the following principles:

> "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 (see *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). ...

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). ..."

(b) Application of those principles to the present case

146. Turning to the concrete examination of the necessity of the impugned measures, the Court observes that the High Court decided that X's foster care should be replaced with adoption after having held a hearing over two days, which the applicant attended together with her counsel. Eight witnesses gave evidence, of whom four, including psychologists S.H.G. and K.P., gave expert testimony. The High Court's bench comprised three professional judges, one psychologist and one lay person (see paragraph 43 above). Similarly, extensive proceedings were conducted by the County Social Welfare Board and the District Court (see paragraphs 34 and 40 above).

147. The Court further notes that, in its decision to replace X's foster care with adoption, contrary to his biological mother's wishes, the High Court essentially relied on the following reasons: X had lived in his foster home for four and a half years; he had reacted negatively to contact with the applicant; he had become attached to his foster parents; and he was a vulnerable child in need of stability (see, in particular, paragraphs 44-50 above). Furthermore, adoption – in contrast to continued foster care – would rule out the possibility for the applicant to request X's return to her in the future and also remove the potential for conflicts between her and the foster parents relating to differences in their cultural and religious views (see, in particular, paragraph 56 above).

148. The Court observes moreover that the High Court accepted the applicant's view at the relevant time that continued foster care would be in X's best interests. Thus, it appears to the Court that at the time of the impugned proceedings the applicant's interest in avoiding adoption primarily stemmed from the final and definitive nature of the measure. Since the foster parents did not wish a so-called "open adoption", an arrangement which included post-adoption contact visits (see paragraph 51 above), adoption would have as a consequence the loss, *de facto* and *de jure*, for the applicant of any right to future contact with her child. Moreover, the applicant's interests in X's foster care being continued, rather than being transformed into adoption, was due to the expressed likelihood that the latter measure would lead to her son's religious conversion, contrary to her own wishes.

149. The Court reiterates that an adoption will as a rule entail the severance of family ties to a degree that, according to its case-law, is permissible only in very exceptional circumstances and could only be justified if motivated by an overriding requirement pertaining to the child's best interests (see *Strand Lobben and Others*, §§ 206 and 207, quoted at paragraph 145 above). That is so since it is in the very nature of adoption that no real prospects of rehabilitation or family reunification exist and that it is instead in the child's best interests that he or she be placed permanently in a new family (ibid., § 209). Given the nature of the issues and the seriousness of the interests at stake, a stricter scrutiny is necessarily called for in respect of such decisions (ibid., §§ 209 and 211).

150. Against this background, it should be emphasised that, regardless of the applicant's acceptance during the adoption proceedings that X's foster care could continue, and irrespective of whether the domestic authorities were justified in considering long-term foster care for X were he not to be adopted, she and her son retained a right to respect for family life under Article 8 of the Convention. The fact that the applicant did not apply for family reunification did not dispense the authorities from their general obligation to consider the best interests of X in maintaining family ties with the applicant, to preserve their personal relations and, by implication, to provide for a possibility for them to have contact with one another in so far as reasonably feasible and compatible with X's best interests (see *Strand Lobben and Others,* § 207, quoted at paragraph 145 above). The foregoing is a central consideration in the Court's examination of whether the domestic authorities provided relevant and sufficient reasons to show that the circumstances of the case were so exceptional as to justify a complete and definite severance of the ties between X and the applicant and were motivated by an overriding requirement pertaining to the child's best interests and also whether, in so deciding, they struck a fair balance between the competing interests at stake.

151. Moreover, 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 responsibility 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 those of his biological family, 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 retaining contact with his biological family (see, similarly, *Strand Lobben and Others*, cited above, § 220). In this context, the Court is not persuaded that the competent domestic authorities duly considered the potential significance of the fact that the applicant had not applied to have the care order lifted, but merely opposed adoption on the grounds that she wished to maintain a right of contact with her child (see paragraph 43 above). In this regard, given that the High Court's decision was largely premised on an assessment of X's attachment to his foster home, the factual basis on which it relied in making that assessment appears to disclose shortcomings in the decision-making process.

152. In this respect the Court observes that the issue of contact between the applicant and X, and especially X's reactions to the contact sessions that had been conducted since his placement in care, played a central role in the question before the High Court. In that connection, the Court takes particular note that the decision under consideration was taken in a context where there had in fact been very little contact between the applicant and her son from the outset following his placement. On 10 December 2010, when the care order was issued, the County Social Welfare Board decided to grant the applicant contact rights for two hours, four times per year, and the District Court in its judgment of 6 September 2011 put in place a regime with contact rights for one hour, six times per year (see paragraphs 22 and 29 above). Between 2013 and the High Court's decision, X had apparently met the applicant only twice (see paragraph 49 above). The Court considers that that sparse contact between the applicant and X after the care order was issued had provided limited evidence from which to draw clear conclusions about whether it would be in X's best interests, as these appeared in 2015 when the impugned decision was taken, that the applicant be given no right to future contact with him (see, *mutatis mutandis*, *Strand Lobben and Others*, cited above, § 221).

153. Moreover, the Court notes that the reasons set out in the High Court's decision focused essentially on the potential effects of removing X from his foster parents and returning him to the applicant, rather than on the grounds for terminating all contact between X and the applicant. In this respect, the High Court appears to have given more importance to the foster parents' opposition to "open adoption" than to the applicant's interest in the possibility of a continued family life with her child through contact with him.

154. Furthermore, the Court has reservations regarding the emphasis placed by the High Court on the need to pre-empt the applicant from resorting at some future point to legal remedies to contest the care order or the arrangements for visiting rights. Although there might indeed be instances when, owing to the particular circumstances of a case, repeated legal proceedings may harm the child concerned and must therefore be taken into account, a biological parent's exercise of judicial remedies cannot automatically count as a factor in favour of adoption (see *Strand Lobben and Others*, cited above, §§ 212 and 223). The Court notes in this regard that biological parents' procedural rights, including their right to have access to proceedings in order to have a care order lifted or restrictions on contact with their child relaxed, form an integral part of their right to respect for their family life afforded by Article 8 of the Convention (see, for example, *M.L. v. Norway*, cited above, § 95).

155. As to the particular aspect of the case which turns upon the applicant's Muslim faith and her wish that X be brought up in accordance with her religious beliefs and background, it should be noted that the High Court acknowledged that the interest in ensuring X's attachment to the foster home environment had to be balanced against other weighty considerations. The latter related not only to the fact, referred to above, that the adoptive parents had been unwilling to apply for an open adoption, but also to aspects relating to ethnicity, culture and religion, and religious conversion, particularly in the light of the differences between the applicant's and the prospective adoptive parents' religious faiths (see paragraph 51 above).

156. In this connection, the High Court took evidence from two expert witnesses who provided information about obstacles to adoption in Islam; one of these experts had emphasised that each case had to be assessed on the basis of the child's needs (see paragraph 52 above).

157. Furthermore, on examining sources of international law, the High Court did not find that it could be inferred from these that the adoption of a child of a Muslim background in Norway was prohibited. The Court takes particular note of the High Court's reliance on Article 20(3) of the United Nations Convention on the Rights of the Child, affirming that when possible solutions, including adoption, were assessed, "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" (see paragraph 53 above), in other words on a standard that in substance corresponds to and is in compliance with the requirements of the Convention (see paragraphs 143-144 above).

158. The High Court also examined how the applicant would perceive adoption in view of her religious values (see paragraph 55 above). It also commented on the choice of foster home in the case, and presumed in that context that there had been no foster parents available who had a cultural

background more similar to that of the applicant. It noted that it was known that there was a serious shortage of foster parents from minority backgrounds and that, regardless of how the choice of foster home was otherwise evaluated, the initial placement had a bearing on the assessment of what was in X's best interests at the time of its judgment (see paragraph 54 above). Furthermore, the High Court looked into what could be considered as X's own values at the time of the possible adoption, in the light of his upbringing by his foster parents (see paragraph 55 above). It further noted that the religious differences in question could also create difficulties with regard to continuing the foster home arrangement, before it effectively concluded that decisive importance ought to be attached to how adoption would create clarity, strengthen the development of X's identity, and make him an equal member of the family with which he lived (see paragraph 56 above).

159. The Court restates that its jurisdiction in the present instance is limited to the proceedings in 2013-2015 (see paragraphs 130-133 above). It follows that the decision in which X's foster home was chosen in 2010 falls outside its jurisdiction. However, as it transpires from the High Court's reasoning, referred to in the preceding paragraph, the choice of foster home made in 2010 was a relevant consideration for its 2015 assessment of the issue of deprivation of parental responsibility and authorisation for adoption, in that the initial placement had a significant bearing on what was considered to be in X's best interests at the time of its judgment.

160. In the proceedings before the Court, the respondent Government adduced materials showing that the domestic authorities had at the time made efforts to find a foster home which matched the applicant's interests (see paragraphs 16 to 18 above). After the care order had been issued, the applicant was informed that it had not been possible to find a Somali home (see paragraph 27 above), and in the course of her appeal against the care order, she dropped the alternative claim for X to be placed in a Somali or Muslim foster home (see paragraph 28 above).

161. The Court notes that the applicant's rights under Article 8 of the Convention, as interpreted in the light of Article 9, could be complied with not only by ultimately finding a foster home which corresponded to her cultural and religious background. It refers to the assessments of the domestic courts of the various interests that have to be taken into account throughout the whole process in cases of this nature where the child's best interest must remain paramount (see, in particular, paragraphs 23-26, 36-37 and 51-56 above) and to the relatively broad agreement in international law that domestic authorities in circumstances such as those in the present case are bound by an obligation of means, not one of result (see paragraphs 80-82 above). Nor can the Court question the fact that, on the basis of the information available, the actions of the authorities included efforts, which ultimately proved unsuccessful, to find a foster home for X at the outset that

was more suitable from this perspective (see paragraph 17 above). However, the Grand Chamber agrees with the Chamber (see paragraph 64 of the Chamber judgment) that the arrangements made thereafter as to the applicant's ability to have regular contact with her child (see paragraph 152 above), culminating in the decision to allow for X's adoption (see paragraphs 44-56 above) failed to take due account of the applicant's interest in allowing X to retain at least some ties to his cultural and religious origins.

162. Having regard to all of the above considerations, the Court is not satisfied that in depriving the applicant of her parental responsibility in respect of X and authorising his adoption by the foster parents, the domestic authorities attached sufficient weight to the applicant's right to respect for family life, in particular to the mother and child's mutual interest in maintaining their family ties and personal relations and hence the possibility for them to maintain contact. The reasons advanced in support of the decision were not sufficient to demonstrate that the circumstances of the case were so exceptional as to justify a complete and definite severance of the ties between X and the applicant, or that the decision to that effect was motivated by an overriding requirement pertaining to X's best interests. Emphasising the gravity of the interference and the seriousness of the interests at stake, the Court also considers that the decision-making process leading to the applicant's ties with X being definitively cut off, was not conducted in such a way as to ensure that all of her views and interests were duly taken into account. There has accordingly been a violation of Article 8.

II. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

A. Article 41 of the Convention

163. 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."

1. Damage

164. Before the Grand Chamber, the applicant claimed compensation in respect of non-pecuniary damage but did not specify any amount.

165. The Government made no specific remarks to the claim.

166. The Court observes that the applicant did not make any claims for just satisfaction in her reply of 23 March 2017 to the Court's letter of 9 February 2017, or in any other manner within the deadline set by the Court in that letter. Nor did she make any such claim at any other point during the ordinary proceedings before the Chamber. The Court also

observes that in the applicant's request of 17 March 2020 for revision of the Chamber's judgment in order to include an award in respect of just satisfaction, she stated that her failure to file a claim in respect of just satisfaction had been owing only to an oversight.

167. Under Rule 60 § 2 of the Rules of Court an applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the applicant's observations on the merits. If the applicant fails to comply with these requirements, the Court may reject the claim in whole or in part (Rule 60 § 3). In its above letter to the applicant dated 9 February 2017, the Court drew her attention to these matters.

168. Moreover, the Court's practice in cases referred under Article 43 of the Convention has been generally that the just satisfaction claim remains the same as that originally submitted before the Chamber, an applicant only being allowed at this stage to submit claims for costs and expenses incurred in relation to the proceedings before the Grand Chamber (see *Nagmetov v. Russia* [GC], no. 35589/08, § 63, 30 March 2017).

169. Indeed, in *Nagmetov*, cited above, the Court adopted an approach to be applied in exceptional situations in order to decide on whether the Court should make an award of just satisfaction. It held that it was first necessary to ascertain that a number of prerequisites had been met, before weighing the compelling considerations in favour of making an award, in the absence of a properly made "claim" for just satisfaction.

170. In the instant case, however, the case file discloses no explicit wish from the applicant to file a claim for just satisfaction in the ordinary proceedings before the Chamber (contrast *Nagmetov*, cited above, § 85). Having regard to Rule 60, it therefore makes no award in respect of non-pecuniary damage under Article 41 of the Convention.

2. Costs and expenses

171. The applicant did claim a total of 383,906.25 Norwegian kroner (NOK), approximately 37,650 euros (EUR), for the costs and expenses incurred before the Grand Chamber.

172. The costs and expenses related to her counsel having worked for 30 hours on the request for referral to the Grand Chamber, drafting the applicant's memorial before the Grand Chamber, and researching the case documents in that connection. Furthermore, the applicant's counsel had worked for 35 hours on reviewing the Government's memorial and preparing the draft for her oral pleadings before the Grand Chamber. Requesting NOK 2,500 per hour, compensation for counsel's work thus amounted to NOK 162,500, approximately EUR 16,000.

173. Furthermore, the applicant's costs and expenses included her adviser Mr Henriksen having worked 10 hours with research into aspects of facts, Norwegian law and the Court's case-law, as well as doctrine, and

contributing to drafting the applicant's memorial. He had also worked for 15 hours on reviewing the Government's memorial and reviewing and contributing to counsel's draft for the oral pleading, and he had attended the Grand Chamber's hearing via videoconferencing technology. Requesting NOK 2,500 per hour, compensation for Mr Henriksen's work thus amounted to NOK 62,500, approximately EUR 6,100.

174. In addition, the applicant had engaged as advisers Mr Andenæs and Mr Bjørge, who had each spent 10 hours researching the Court's case-law and the doctrine, and on reviewing and contributing to the draft of the applicant's memorial before the Grand Chamber. Moreover, Mr Andenæs and Mr Bjørge had each spent 10 hours reviewing the Government's memorial, reviewing and contributing to counsel's draft for her oral pleadings, and attending the Court's hearing via videoconferencing technology. Requesting NOK 2,500 per hour, compensation to Mr Andenæs and Mr Bjørge thus amounted to NOK 100,000, approximately EUR 9,800.

175. Moreover, the applicant had incurred translation expenses of NOK 27,281.25 when she filed her memorial before the Grand Chamber, and an additional NOK 10,875 before the hearing, amounting to NOK 38,156.25, approximately EUR 3,700. She had also engaged a sound technician to be present for the hearing before the Grand Chamber and the corresponding testing sessions, which amounted to NOK 8,750, approximately EUR 850. She also sought reimbursement of the expenses incurred by renting the premises from where the applicant and her counsel had participated in the Court's hearing by way of videoconferencing technology, amounting to NOK 12,000, approximately EUR 1,200. Expenses for the applicant's own travel and accommodation, as well as the premises for the hearing, were covered by the Council of Europe's legal aid scheme.

176. The Government did not make any submissions in respect of the applicant's claim for costs and expenses.

177. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 30,000 covering costs for the proceedings before the Grand Chamber.

3. Default interest

178. 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.

B. Article 46 of the Convention

179. In her pleadings before the Grand Chamber, the applicant argued, for the first time in the course of the proceedings before the Court, that the Court should indicate individual measures under Article 46 of the Convention. Without clearly specifying what measures she envisioned, she referred in particular to the possibility of ordering a reopening of the adoption proceedings.

180. The Court reiterates that under Article 46 of the Convention the Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects (see, among other authorities, *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 311, 1 December 2020).

181. The Court further notes that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order in order to discharge its obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions and spirit of the Court's judgment. However, in certain special circumstances the Court has found it useful to indicate to a respondent State the type of measures that might be taken to put an end to the situation – often a systemic one – which has given rise to the finding of a violation (ibid., § 312).

182. As to the applicant's request in the instant case, the Court firstly notes that in a case of this type, in general the best interests of the child must be a paramount consideration also when it is to consider indication of any individual measures to be taken under Article 46 of the Convention (see, *mutatis mutandis*, *Haddad v. Spain*, no. 16572/17, § 79, 18 June 2019; and *Omorefe v. Spain*, no. 69339/16, § 70, 23 June 2020).

183. The Court notes that X and his adoptive parents currently enjoy family life together, and that individual measures could ultimately entail an interference with their respect for that family life. It follows that facts and circumstances relevant to Article 46 of the Convention could raise new issues which are not addressed by the present judgment on the merits (see, *mutatis mutandis*, *Johansen v. Norway* (dec.), no. 12750/02, 10 October 2002).

184. Furthermore, although the applicant did not request any measure of a more general character, the Court observes that, in so far as there might be a certain systemic issue in question, the respondent Government have shown that they are making efforts to implement the judgments rendered by the Court concerning various types of child welfare measures in which violations of Article 8 have been found (see, for example, paragraphs 62-66 above). It also observes that the respondent State is in the process of enacting new legislation (see paragraph 67 above).

185. For the above reasons, the Court does not find that any measures are to be indicated under Article 46 of the Convention.

FOR THESE REASONS, THE COURT,

1. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention;

2. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicant, within three months, EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses*, by fourteen votes to three, the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 10 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Søren Prebensen
Deputy to the Registrar

Jon Fridrik Kjølbro
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) partly dissenting opinion of Judges Lemmens and Motoc;
(b) partly dissenting opinion of Judge Serghides.

J.F.K.
S.C.P.

JOINT PARTLY DISSENTING OPINION OF JUDGES LEMMENS AND MOTOC

1. We fully agree with the judgment in so far as it concludes that there has been a violation of Article 8 of the Convention. We also agree with the award of (at least) 30,000 euros [EUR] as reimbursement of the costs and expenses incurred by the applicant.

2. To our regret, however, we are unable to join the majority in concluding that no further just satisfaction is to be awarded (see point 3 of the operative provisions). In our opinion, the Court should have awarded compensation in respect of non-pecuniary damage. Moreover, we believe that the costs and expenses should have been reimbursed in a more generous way.

Compensation in respect of non-pecuniary damage

3. The majority note that the applicant failed to make any claims for just satisfaction within the deadline set by the Court at the Chamber stage of the proceedings. The applicant stated that this failure was due to an oversight (see paragraph 166 of the judgment). The majority then apply Rule 60 § 2 of the Rules of Court, and reject the claim for compensation made before the Grand Chamber (see paragraph 167). They do not make use of the possibility, available to the Court, of awarding just satisfaction in certain situations, even in the absence of a properly made claim (see paragraphs 169-70 of the judgment, referring to *Nagmetov v. Russia* [GC], no. 35589/08, § 63, 30 March 2017).

4. It should be recalled that Article 41 of the Convention empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *O'Keeffe v. Ireland* [GC], no. 35810/09, § 199, ECHR 2014; *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 179, 17 May 2016; *Nagmetov*, cited above, § 57; *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 245, 19 December 2017; *Mihalache v. Romania* [GC], no. 54012/10, § 145, 8 July 2019; *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 122, 20 January 2020; and *Molla Sali v. Greece* (just satisfaction) [GC], no. 20452/14, § 32, 18 June 2020).

5. As the Court acknowledged in *Nagmetov*, "Article 41 of the Convention [is] the primary legal provision on just satisfaction, the norm of a higher hierarchical value (see, *mutatis mutandis*, *Cyprus v. Turkey* (just satisfaction) [GC], no. 25781/94, § 42, ECHR 2014) and the norm which is applicable in the context of the system for the protection of human rights agreed by the Contracting Parties" (see *Nagmetov*, cited above, § 76). It therefore held in that case that "while it would normally not consider of its own motion the question of just satisfaction, neither the Convention nor the

Protocols thereto preclude the Court from exercising its discretion under Article 41 of the Convention. The Court therefore remains empowered to afford, in a reasonable and restrained manner, just satisfaction on account of non-pecuniary damage arising in the exceptional circumstances of a given case, where a "claim" has not been properly made in compliance with the Rules of Court" (ibid.).

6. The present case is of such a nature that its circumstances can and must be considered as "exceptional". Moreover, taking into account (a) the fact that it is only because of an oversight that no claim for compensation in respect of non-pecuniary damage was made during the proceedings before the Chamber, and (b) that it is uncertain to what extent the applicant will ever be able to have contact with her son again (see paragraph 183 of the judgment), we are of the opinion that some sort of compensation for the non-pecuniary damage sustained by her is called for.

The applicant did not specify the amount of such compensation. In these circumstances, it is also unnecessary for us, within the framework of a dissenting opinion, to specify an amount.

Reimbursement of costs and expenses

7. The majority award the sum of EUR 30,000, covering part of the costs of the proceedings before the Grand Chamber (see paragraph 177 of the judgment).

This amount is to be compared to the applicant's claim of EUR 37,650 (see paragraph 171), relating to the following items:

(a) fees of her counsel: approximately EUR 16,000 (see paragraph 172);
(b) fees of additional advisers: approximately EUR 15,900 (see paragraphs 173-74);
(c) other costs: approximately EUR 5,750 (see paragraph 175).

The majority do not explain why the whole amount claimed is not considered "actually and necessarily incurred" and/or "reasonable as to quantum" (see paragraph 177) and why therefore the sum awarded is only EUR 30,000, rather than EUR 37,650.

8. In our opinion, there is no reason to doubt that all the costs and expenses were actually and necessarily incurred, and that they were reasonable as to quantum. In particular, we do not consider that the applicant should be "penalised" for having consulted three advisers, who carried out additional research with a view to drafting the applicant's memorial before the Grand Chamber. On the contrary, once a case has been referred to the Grand Chamber, it is in the interest of the proper administration of justice that memorials are produced that are of a quality consonant with the level at which the case is to be argued. We believe that applicants – and also Governments – should be encouraged to produce high-quality memorials before the Grand Chamber. The applicant's memorial in

the present case was of such high quality. In our opinion, therefore, the costs and expenses related to it deserved to be fully reimbursed by the Government.

In conclusion, we are of the opinion that the amount claimed should have been awarded in full.

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

I. JUST SATISFACTION UNDER ARTICLE 41 OF THE CONVENTION: NON-PECUNIARY DAMAGE

A. Introduction

1. My only disagreement with the judgment concerns point 3 of the operative provisions, dismissing the remainder of the applicant's claim for just satisfaction.

2. My disagreement is focused, in particular, on the decision not to award the applicant a sum in non-pecuniary damages, a claim which she first made before the Grand Chamber (see paragraph 164 of the judgment).

3. Having found, like all the rest of my eminent colleagues, that there has been a violation of the applicant's right to respect for her family life under Article 8 of the Convention, I would award the applicant an amount in respect of non-pecuniary damage, as just satisfaction under Article 41 of the Convention. Since, however, I am in the minority, it is not necessary to determine the sum that should have been awarded.

B. Fulfilment of the requirements under Article 41

4. In my view, all the requirements of Article 41 are satisfied for granting just satisfaction in the present case: "there has been a violation" of a Convention provision, specifically Article 8; the High Contracting Party concerned allows for no or "only partial reparation"; and it is "necessary" for such an award to be granted to the applicant.

C. The term "necessary" under Article 41 and the use of "exceptional circumstances" by the Court

5. I disagree with the judgment (see paragraphs 169-170), which confines the application of Article 41 only to "exceptional situations". Such an interpretation is overly restrictive and outside the wording of Article 41, and also goes against the principle of the effectiveness of Convention rights.

6. The argument that Article 41 should not be confined only to "exceptional situations" should not be misunderstood as suggesting that every time the Court finds a violation of a Convention right, it must award just satisfaction. The Court is to award non-pecuniary damage if it considers that this is "necessary". However, what is "necessary" depends on the facts of each case and does not require the existence of any "exceptional" circumstances. In the present case, taking into account all of the circumstances and the impact the violation had on the applicant, the Court

should have found it necessary to make an award in respect of just satisfaction, which, to my regret, it did not do.

D. Practice based on Article 43 of the Convention - criticism

7. I disagree with the practice, followed also by the Court in the present case, whereby, if an applicant fails to submit a claim for just satisfaction in the Chamber procedure, she or he cannot do so before the Grand Chamber. The Court has based this practice on Article 43 of the Convention, concerning "referral to the Grand Chamber" (see paragraph 168 of the judgment); however, such a practice cannot be supported expressly or implicitly from any provision of Article 43.

E. Just satisfaction and the nature of the violation of a human right

8. In my humble view, just satisfaction is inherently interwoven with the nature of a human-rights violation and is an implicit part or element of the complaint alleging such a violation. Hence, I submit that the Court has inherent power to award just satisfaction when the prerequisites of Article 41 are met, irrespective of whether a specific claim has been made for non-pecuniary damages, before either the Chamber Court or the Grand Chamber. The Court has discretionary power to decide what is "necessary" under Article 41, but if it finds that all the requirements of Article 41 are met, it is under an obligation to award just satisfaction.

F. The "finding of a violation" and "just satisfaction" under Article 41

9. My view is also that the finding of a violation of Article 8 does not constitute sufficient just satisfaction in respect of any non-pecuniary damage that may have been sustained by the applicant. Article 41 of the Convention, as worded, cannot be interpreted as meaning that "[the] finding [of] a violation of a Convention provision" could in itself constitute sufficient "just satisfaction to the injured party", because the former is a prerequisite for the latter and one cannot take them to be the same.

G. Conclusion: consequences of not awarding non-pecuniary damages

10. Failure to award the applicant a sum in non-pecuniary damages for the violation of her Article-8 right amounts, in my view, to rendering the protection of her right illusory and fictitious. This runs counter to the Court's case-law to the effect that the protection of human rights must be practical and effective and not theoretical and illusory.