FIFTH SECTION

**CASE OF STRAND LOBBEN AND OTHERS v. NORWAY**

*(Application no. 37283/13)*

JUDGMENT

STRASBOURG

30 November 2017

THIS CASE WAS REFERRED TO THE GRAND CHAMBER WHICH DELIVERED JUDGMENT IN THE CASE ON 10/09/2019

*This judgment may be subject to editorial revision.*

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

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

 Angelika Nußberger, *President,* Erik Møse, André Potocki, Yonko Grozev, Síofra O’Leary, Gabriele Kucsko-Stadlmayer, Lәtif Hüseynov, *judges,*
and Milan Blaško, *Deputy* *Section Registrar,*

Having deliberated in private on 17 October 2017,

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

PROCEDURE

1.  The case originated in an application (no. 37283/13) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Norwegian nationals Ms T. Strand Lobben, born in 1986 (the first applicant), her children X (the second applicant) and Y (the third applicant), born in 2008 and 2011 respectively, Mrs S. Graff Lobben (the fourth applicant) and Mr L. Lobben (the fifth applicant) on 12 April 2013. Before the Court, they were represented by Mr M. Reikerås.

2.  The Norwegian Government (“the Government”) were represented by Mr M. Emberland of the Attorney General’s Office (Civil Matters) as their Agent.

3.  The applicants alleged that the removal of the first applicant’s parental authority over X and the subsequent authorisation of X being adopted, had violated their rights under Article 8 of the Convention.

4.  On 1 December 2015 the application was communicated to the Government.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

A.  Background

5.  In May 2008 the first applicant turned to the child welfare authorities because she was pregnant and was in a difficult situation: she did not have a permanent home and was temporarily staying with her parents, the fourth and fifth applicants.

6.  When the first applicant was twenty-eight weeks’ pregnant she visited the local hospital and requested a late abortion. On 1 July 2008 the hospital sent a notice to the child welfare authorities indicating that the applicant was in need of guidance concerning the unborn child and follow-up with regard to motherhood. It also indicated that she needed to stay at a parent-child institution (“family centre”). The child welfare authorities opened a case with the first applicant’s consent. She agreed to stay at a family centre for three monthsafter the child was born, so that her ability to give the child adequate care could be evaluated.

7.  On 25 September 2008 the first applicant gave birth to a son, X, the second applicant. The identity of X’s father was unknown to the authorities and the first applicant refused to reveal his name. Four days later, on 29 September 2008, the first applicant and X moved to the family centre. For the first five days the fourth applicant (X’s grandmother) also stayed with them*.* The staff soon became concerned about the first applicant’s parenting abilities and X’s development. On 14 October 2008 they asked for an emergency meeting with the child welfare authorities because X had lost a lot of weight and the first applicant did not show any understanding of his needs.

8.  On 17 October 2008 the first applicant withdrew her consent to stay at the family centre. She wanted to leave and take X with her. On the same day the child welfare authorities decided to take X into immediate compulsory care and place him in a foster home on an emergency basis. In the decision they stated that the family centre’s staff had had to check on the family every third hour to make sure that X was receiving enough food. Without those checks, they doubted whether X would have survived. After the placement, the first applicant had weekly half-hour visits with X. The fourth applicant (the grandmother) was present at most of the visits, the fifth (the grandfather) at some of them.

9.  The first applicant appealed against the decision of the child welfare authorities to the County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*), claiming that she and X could live together with her parents. Her mother, the fourth applicant, was staying at home and was willing to help take care of X. They were also willing to accept help from the child welfare authorities.

10.  On 23 October 2008 the family centre drew up a report of the first and second applicants’ stay. The report stated, *inter alia*:

“The mother does not care for her child in a satisfactory manner. During the time the mother and child have stayed [at the family centre] ..., the staff here ... have been very concerned that the child’s needs are not being met. In order to ensure that the child’s primary needs for care and food are met, the staff has intervened and followed-up the child closely day and night.

The mother is not able to meet the boy’s practical care needs. She has not taken responsibility for caring for the boy in a satisfactory manner. The mother has needed guidance at a very basic level, and she has needed advice to be repeated to her several times.

Throughout the stay, the mother has made statements that we find very worrying. She has expressed a significant lack of empathy for her son, and has several times expressed disgust with the child. The mother has demonstrated very little understanding of what the boy understands and what behaviours he can control.

The mother’s mental functioning is inconsistent and she struggles considerably in several areas that are crucial to the ability to provide care. Her ability to provide practical care must be seen in light of this. The mother’s mental health is marked by difficult and painful feelings about who she herself is and how she perceives other people. The mother herself seems to have a considerable unmet care need.

Our assessment is that the mother is incapable of providing care for the child. We are also of the opinion that the mother needs support and follow-up. As we have verbally communicated to the child welfare service, we believe it to be important that the mother is taken especially closely care of in the time following the emergency placement.

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

11.  On 26 October 2008 the County Social Welfare Board rejected the appeal (see paragraph 9 above). It concluded that it was the first applicant who would be responsible for the daily care of X, not the fourth applicant, and that the first applicant was unable to provide the care that X needed. Furthermore, the fourth applicant had stayed with the first applicant and X during the first days at the family centre,but had not noticed the first applicant’s lack of parenting skills, even though it had been obvious to the staff.

12.  On 27 October 2008 X was sent to a child psychiatry clinic for an evaluation. The team at the clinic carried out six different observations between 3 and 24 November 2008. Their conclusions were set out in a report dated 5 December 2008, which read, *inter alia*:

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

13.  The first applicant appealed against the Board’s decision of 26 October 2008 to the City Court (*tingrett*) which, on 26 January 2009, upheld it in full. In the judgment the court found that X had shown signs of both psychological and physical neglect when he was taken into local authority care. Moreover, it did not find that the first applicant’s abilities to take care of X had improved or that the support of the fourth and fifth applicants would be sufficient to ensure that X was given adequate care. The first applicant did not appeal to the High Court.

B.  Care proceedings

1.  Proceedings before the County Social Welfare Board and the City Court

14.  Following the judgment by the City Court on 26 January 2009, the local authorities applied to the County Social Welfare Board for a care order, submitting that the first applicant lacked parenting skills.

15.  On 2 March 2009 the Board accepted the child welfare authorities’ application. X remained in the foster home where he had already been placed on an emergency basis in October 2008, when first taken into care (see paragraph 8 above). The Board also decided that contact rights for the first applicant should be fixed at six two-hour visits per year, under supervision. It concluded, on the basis of the report from the family centre*,* that if X were returned to the first applicant, there would be serious deficiencies in both the physical and psychological caregiving, which could not be remedied with assistance measures. For those reasons the Board found that it would be in the best interests of X to be placed in care.

16.  The first applicant appealed against the Board’s decision and again submitted that the authorities had not tried to intervene in other ways before immediately taking X into care, and that the decision was based on insufficient evidence.

17.  On 19 August 2009 the City Court overturned the Board’s decision and decided that X should be reunited with the first applicant, but that there was a need for a readjustment period. It found, *inter alia*, that X’s problems with weight gain could have been due to an eye infection.

18.  As a consequence of the judgment, the first applicant’s visits with X were increased with the goal of reunification. According to the child welfare authorities, the visits were characterised by hostility from the first applicant and her parents towards the foster mother. The authorities claimed that after the visits, X had reacted strongly, he had become tired, anxious and insecure, and his sleeping patterns had changed.

2.  Proceedings before the High Court

19.  The child welfare authorities appealed against the City Court’s judgment and concurrently applied for its implementation to be suspended. They claimed that it was unlikely that the eye infection could have been the reason for X’s slow weight gain. Moreover, the first applicant had had visits with X, but they had not worked well even though she had been given advice on how to improve them. X had had strong reactions after the visits.

20.  On 8 September 2009, the City Court decided to suspend enforcement of its judgment until the High Court had adjudicated the case.

21.  On 9 October 2009, the child welfare authorities decided to appoint two experts, a psychologist, B.S., and a family therapist, E.W.A., who submitted their report on 20 February 2010 (see paragraph 29 below).

22.  Meanwhile, on 12 October 2009, the High Court (*lagmannsrett*) granted leave to appeal on the ground that the ruling of, or the procedure in, the City Court had been seriously flawed (see paragraph 66 below). It also upheld the City Court’s decision to suspend the implementation of the judgment.

23.  On 3 March 2010, the High Court appointed an expert to assess the case, psychologist M.S., who also submitted a report.

24. In its judgment of 22 April 2010, the High Court confirmed the Board’s decision that X should be taken into compulsory care. It also reduced the first applicant’s contact rights to four two-hour visits per year.

25.  The High Court had regard to the information in the report produced by the family centre on 23 October 2008 (see paragraph 10 above). It also took account of the family consultant’s testimony before the court, in which it had been stated that the first applicant’s mother had lived with her at the family centre for the first four nights. It went on to state:

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

26.  The High Court found that the family centre had made a correct evaluation and – contrary to the City Court – considered it very unlikely that the evaluation would have been different if X had not had an eye infection.

27.  Furthermore, the High Court referred to the report of 5 December 2008 from the child psychiatry clinic (see paragraph 12 above). It also took into account the report of the court-appointed expert, M.S. (see paragraph 23 above).

28.  As the stay at the family centre had been short, the High Court found it appropriate to consider the first applicant’s behaviour (“*fungering*”) during the contact sessions that had been organised subsequent to X’s placement in foster care. Two persons had been entrusted with the task of supervising the sessions, and both had written reports, none of which had been positive. The High Court stated that one of the supervisors had given an “overall negative description of the contact sessions”.

29.  The High Court also referred to the report of the psychologist and the family therapist appointed by the child welfare authorities (see paragraph 21 above). They had assessed X in relation to the reactions that he had shown after visits from the first applicant. In their report, they noted, *inter alia*:

“there does not seem to be much contact between the mother and [X], including in the periods with frequent contact sessions. He turns away from his mother and prefers to seek contact with others. He tries to distance and protect himself by protesting against his mother, by refusing to eat, by not looking at her and then seeking out the person to whom he has a secure attachment, namely his foster mother. [X] becomes uncertain and insecure when he is not ‘read’ and understood.

...

... the biggest source of stress for [X] is probably not meeting his mother and her extended family during the contact sessions in itself, but the amount of contact and the pressure arising from [utterances to the effect that] ‘now you’re coming back home’, and an atmosphere dominated by the mother’s hostility towards the foster mother. It is also a problem that the mother makes negative and offensive statements about the foster mother, so that the atmosphere becomes unpleasant and insecure. It is concluded that [X] has reached his tolerance threshold for contact on the occasions when he has fallen asleep immediately once the contact session is over, when he has cried afterwards, been difficult to regulate and calm down, and had difficulties sleeping.”

30.  Furthermore, the High Court noted that the court-appointed psychologist, M.S. (see paragraph 23 above), stated in court that the contact sessions had appeared to be so negative that she was of the opinion that the mother should not have right of access to her son. The contact sessions were, in her view, “not constructive for the child”. In conclusion to the question of the first applicant’s competence as a carer, she stated in her report that the stay at the family centre had illustrated that the first applicant “had problems handling and retaining information in such a manner that it could be used to guide her behaviour”. She went on to state:

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

31.  The High Court agreed with the conclusion of expert M.S., before proceeding to the question whether assistance measures could sufficiently remedy the shortcomings in the first applicant’s lack of parenting skills. In that respect, it noted that the reasons for the deficiencies in competence as a carer were crucial. The High Court referred at this point to the expert’s elaboration on the first applicant’s medical history, namely how she had suffered from serious epilepsy since childhood and until brain surgery had been carried out in 2009, when the first applicant had been 19 years old.

32.  The High Court noted that expert M.S. had also pointed out that the first applicant’s medical history must necessarily have affected her childhood in several ways. Her summary as regards the illness and its consequences read as follows:

“Anamnestic information from the school, the specialist health service and the family provides an overall picture of weak learning capacity and social functioning from early childhood into adulthood. [The first applicant] performed poorly at school despite good framework conditions, considerable extra resources and good efforts and motivation on her own part. It is therefore difficult to see any other explanation for her performance than general learning difficulties caused by a fundamental cognitive impairment. This is underlined by her consistently low IQ score – regardless of the epilepsy surgery. She also had problems with socio-emotional functioning, which has also been a recurring topic in all documents that deal with [the first applicant’s] childhood and adolescence. A lack of social skills and social adaptation is reported, primarily related to social behaviour that is not adequate for her age (‘childish’) and poor impulse control. It is also stated that [the first applicant] has been very reserved and had low self-confidence, which must be seen in conjunction with her problems.”

33.  The High Court based its assessment on the description of expert M.S. concerning the first applicant’s health problems and the impact they had had on her social skills and development. It further noted that placement at a family centre (see paragraphs 7-8 above) had been attempted as an assistance measure. The stay had been supposed to last for three months, but had been interrupted after just under three weeks. As a condition for staying longer, the first applicant had demanded a guarantee that she be allowed to take her son home with her after the stay. The child welfare authorities could not give such a guarantee, and the first applicant had therefore returned home on 17 October 2008.

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

“In my assessment, there are grounds for claiming that there were serious deficiencies in the care the child received from the mother, and also serious deficiencies in terms of the personal contact and security he needed according to his age and development. [The first applicant’s] cognitive impairment, personality functioning and inadequate ability to mentalise make it impossible to have a normal conversation with her about the physical and psychological needs of small children. Her assessments of the consequences of having the child returned to her care and what it will demand of her as a parent are very limited and infantile, with her own immediate needs, there and then, as the most predominant feature. It is therefore found that there is a risk of such deficiencies (as mentioned above) continuing if the child were to live with his mother. It is also found that satisfactory conditions for the child cannot be created with the mother by means of assistance measures under the Act relating to Child Welfare Services, section 4-4 (e.g. relief measures in the home or other parental support measures), due to a lack of trust and a reluctance to accept interference from the authorities – taking the case history into consideration.”

35.  The High Court’s conclusions in its judgment of 22 April 2010 was that a care order was necessary and that assistance measures for the mother would not be sufficient to allow the son to stay with her. The conditions for issuing a care order under the second paragraph of section 4-12 of the Child Welfare Act were thus met (see paragraph 65 below). In this connection, the High Court also gave weight to the attachment that X had formed to his foster parents, particularly the foster mother.

36.  The first applicant did not lodge an appeal against the judgment.

C.  Adoption proceedings

1.  Proceedings before the County Social Welfare Board

37.  On 18 July 2011 the child welfare authorities requested the County Social Welfare Board to deprive the first applicant of her parental responsibility for X, which would then be transferred to the authorities, and to grant X’s foster parents, with whom he had stayed since he was taken into care (see paragraph 8 above), permission to adopt him. The identity of X’s biological father was still unknown to the authorities. In the alternative, the authorities’ proposed that the first applicant’s contact rights be removed.

38.  On 29 July 2011 the first applicant applied for termination of the care order or, in the alternative, extended contact rights with X.

39.  On 18 October 2011 the first applicant gave birth to Y, the third applicant. She had married the father of Y in the summer of that same year. The new family had moved to a different municipality. When the child welfare authorities in the first applicant’s former municipality became aware that she had given birth to another child, it sent a letter expressing concern to the new municipality, which started an investigation into her parenting abilities.

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

41.  On 8 December 2011 the Board decided that the first applicant should be deprived of her parental responsibility for X and that X’s foster parents should be allowed to adopt him. The Board found that there was nothing in the case to indicate that the first applicant’s parenting abilities had improved since the High Court’s judgment of 22 April 2010. Therefore she was still considered incapable of giving X adequate care. Moreover, the Board stated:

“In her statement before the County Social Welfare Board, the mother maintained her view that the care order was a conspiracy between the child welfare service, [the parent-child institution] and the foster parents for the purpose of ‘helping a woman who is unable to have children’. In the mother’s words, it was a question of ‘an advance order for a child’. The mother had not realised that she had neglected [X], and stated that she spent most of her time and energy on ‘the case’.

The reports from the contact sessions between the mother and [X] consistently show that she is still unable to focus on [X] and what is best for him, but is influenced by her very negative view of the foster mother and of the child welfare service.

[The first applicant] has married and had another child this autumn. Psychologist [K.M.] has stated before the Board that he observed good interaction between the mother and child and that the mother takes good care of the child. The Board takes note of this information. In the County Social Welfare Board’s opinion, this observation can in any case not be used as a basis for concluding that the mother has competence as a caregiver for [X].

The County Social Welfare Board finds it reasonable to assume that [X] is a particularly vulnerable child. He experienced serious and life-threatening neglect during the first three weeks of his life. Reference is also made to the fact that there have been many contact sessions with the mother, some of which have been very stressful for [X]. All in all, he has been through a lot. He has lived in the foster home for three years and does not know his biological mother. If [X] were to be returned to the care of his mother, this would require, among other things, a great capacity to empathise with and understand [X] and the problems he would experience, not least in the form of mourning and missing his foster parents. The mother and her family appeared to be completely devoid of any such empathy and understanding. Both the mother and grandmother stated that it would not be a problem, ‘he just had to be distracted’, and thus gave the impression of not having sympathy with the boy and therefore also being incapable of providing the psychological care he would need in the event of a return.”

42.  In addition,the Board had especially noted the conclusions of expert M.S. They were quoted by the High Court in its judgment of 22 April 2010 (see paragraph 34 above). The Board found that this description of the first applicant was still accurate. In any event, it was decisive that X had established such a connection to his foster family that removing him would result in serious and permanent problems for him.

43. The Board assumed that the alternative to adoption would have been continued foster care on a long-term basis, and noted that the foster parents were X’s main caregivers and the ones he thought of as his parents. The foster parents were moreover considered suitable and wanted to take care of X as their own child. The Board made general reference to the Supreme Court’s decision in *Norsk Retstidende* (*Rt*.) 2007 page 561 (see paragraph 69 below) and found that the considerations underlying the following passage from that judgment – reiterated in Aune v. Norway, no. 52502/07, § 37, 28 October 2010 – were also pertinent to the present case:

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

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

2.  Proceedings before the City Court

45.  The first applicant appealed against the decision, claiming that the Board had made a wrongful evaluation of the evidence when deciding that she was unable to give X adequate care. She considered that it would be in X’s best interest to be returned to her and stressed that her situation had changed drastically. The first applicant was now married and had another child that she was taking care of. She had a good support system in her husband and her extended family, and was also prepared to accept help from the child welfare authorities. Moreover, in her view, removing X from the foster home would only cause him problems in the short term; no long-term problems could be expected. She also claimed that the visits between her and X had worked well.

46.  The child welfare authorities opposed the appeal and submitted that the first applicant’s ability to care for X had not changed since the High Court’s judgment of 22 April 2010. The visits between X and the first applicant had not worked well. She had had outbursts during the visits and had left before the time was up. Afterwards X had reacted negatively. The first applicant and her mother had manifested a very negative attitude towards the authorities. Moreover, X had a good attachment to his foster family and had lived with them for over three years. He was a vulnerable child and he needed a caregiver who was sensitive to his needs. They also noted that the first applicant had exposed X and their story on the Internet, together with pictures of them, which could be harmful for X. It was in the best interests of X to be adopted by the foster family.

47.  On 22 February 2012 the City Court, comprised of one professional judge, one psychologist and one lay person, in accordance with section 36-4 of the Dispute Act (see paragraph 66 below), upheld the decision after having held an oral hearing which lasted for three days and during which twenty-one witnesses were heard. The first applicant was present together with her legal counsel.

48.  The City Court initially noted that the first applicant’s general situation had improved. She had married in August of 2011, her husband had a permanent job and they had a daughter, Y. It also noted that the child welfare authorities in the couple’s current municipality were conducting an ongoing inquiry concerning the mother’s ability to care for Y. A staff member of the authorities in that new municipality had testified at the oral hearing, stating that they had not received any reports of concern other than that from the authorities in the first applicant’s former municipality. As part of their inquiry they had made observations at the first applicant’s home. They had observed many good things but also that the parents might need some help with routines and structure. The City Court found that this indicated that the authorities in the municipality to which the first applicant had moved thought that the parents could give Y adequate care if assisted by the authorities. She was not a child with any special care needs.

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

50.  Furthermore, the City Court took account of how the foster parents and supervisor had described X’s emotional reactions after contact sessions with his mother in the form of inconsolable crying and his needing a lot of sleep. During the contact sessions, X had repeatedly resisted contact with the first applicant and, as the sessions had progressed, reacted with what had been described as resignation. The City Court considered that a possible reason for that could be that the boy was vulnerable to inexpedient interaction and information that was not adapted to his age and functioning. The first applicant’s emotional outbursts in situations during the contact sessions, for example when X had sought out his foster mother and called her “mummy”, were seen as potentially frightening and not conducive to X’s development.

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

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

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

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

55.  Turning to the issues of deprivation of parental responsibility and consent to adoption, the City Court stated at the outset that when a care order has been issued, it is in principle sufficient for removal of parental rights that this is in the child’s best interests. At the same time, it had been emphasised in several Supreme Court judgments that removal of parental responsibility is a very invasive decision and that therefore strong reasons are required for making such a decision (see, *inter alia*, paragraph 67 below). The requirements in respect of adoption were even more stringent. However, the questions of deprivation of parental responsibility and consent to adoption had to be seen in conjunction, since the primary reason for depriving someone of parental responsibility would be to facilitate adoption. The court also took into consideration that if the mother retained her parental responsibility, she might engage in conflicts in the future about the rights that such responsibility entailed, such as exposing the child on the Internet.

56.  The City Court went on to declare that adoption could only be granted if the four conditions in the third paragraph of section 4-20 of the Child Welfare Act were met (see paragraph 65 below). In the present case, the decisive factor would be whether adoption was in X’s best interests and whether consent for adoption should be given on the basis of an overall assessment. Regarding that assessment, several Supreme Court judgments had stated that strong reasons must exist for consenting to adoption against the will of a biological parent. There must be a high degree of certainty that adoption would be in the child’s best interests. It was also clear that the decision must be based not only on a concrete assessment, but also on general experience from child-psychology research. Reference was made to the Supreme Court’s judgment in *Rt.* 2007 page 561 (see paragraph 69 below).

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

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

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

60.  Based on an overall assessment, the City Court found that it would be in X’s best interests for the first applicant to be deprived of her parental responsibility and for the foster parents to be allowed to adopt him. The court believed that particularly weighty reasons existed for consenting to adoption in the case.

61.  The City Court lastly stated that since it had decided that X should be adopted, it was unable to decide on contact rights for the first applicant, since that question would be up to the foster parents to decide on. It mentioned that section 4-20a of the Child Welfare Act provided a legal basis for fixing rights to access subsequent to adoption (see paragraph 65 below, where that provision is reiterated, and paragraph 72 below, on the “open adoption”-system). The City Court was, however, not competent to examine or decide on such rights since its competence was dependent on a party to the case having made a request to that effect. In the instant case, none of the parties had done so.

3.  Proceedings before the High Court and the Supreme Court

62.  The first applicant appealed against the judgment, claiming that the City Court had evaluated the evidence incorrectly when considering her ability to give X the necessary care. She also argued that the City Court should have obtained an evaluation by an expert witness concerning her and her husband’s ability to provide adequate care. She submitted an evaluation made by the municipality in which she currently lived, dated 21 March 2012.

63.  On 22 August 2012, the High Court decided not to grant leave to appeal. It stated that the case did not raise any new legal issues of importance for the uniform application of the law. As concerned the new evidence, the court noted that the evaluation dated 21 March 2012 had been made by, *inter alia*, an expert who had testified before the City Court and that the document would not change the outcome of the case. Moreover, it observed that the first applicant had not asked for an expert witness to be heard in the City Court and had not given any reasons as to why it was necessary to appoint an expert before the High Court. Thus there were no reasons for leave to appeal to be granted.

64.  The first applicant appealed against the decision to the Supreme Court (*Høyesterett*) which, on 15 October 2012, refused leave to appeal.

II.  RELEVANT LAW AND PRACTICE

A.  Domestic law and practice

1.  The Child Welfare Act

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

Section 4-12 Care orders

“A care order may be issued

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

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

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

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

An order may only be made under the first paragraph when necessary due to the child’s current situation. Hence, such an order may not be made if satisfactory conditions can be created for the child by assistance measures under section 4-4 or by measures under section 4-10 or section 4-11.

An order under the first paragraph shall be made by the county social welfare board under the provisions of Chapter 7.”

Section 4-20 Deprivation of parental responsibility. Adoption

“If the 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 persons other than the parents.

Consent may be given if

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

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

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

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

...

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

...”

Section 4-21 Revocation of care orders

“The county social welfare board shall revoke a care order when it is highly probable that the parents will be able to provide the child with proper care. The decision shall nonetheless not be revoked if the child has become so attached to persons and the environment where he or she is living that, on the basis of an overall assessment, removing the child may lead to serious problems for him or her. Before a care order is revoked, the child’s foster parents shall be entitled to state their opinion.

The parties may not demand that a case concerning revocation of a care order shall be dealt with by the county social welfare board if the case has been dealt with by the county social welfare board or a court of law in the preceding twelve months. If a demand for revocation of the previous order or judgment was not upheld with reference to section 4-21, first paragraph, second sentence, new proceedings may only be demanded when documentary evidence is provided to show that significant changes have taken place in the child’s situation.”

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

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

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

Section 36-10 Appeal

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

Leave can only be granted if

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

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

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

d) the judgement provides for coercion that has not been approved by the County Board.”

2.  Case-law under the Child Welfare Act

67.  There are several Supreme Court judgments about the Child Welfare Act. Of relevance in the present context is its judgment of 23 May 1991 (*Rt.*1991 page 557), the Supreme Court stated that since removal of parental authority with a view to adoption implies that the legal ties between the child and its biological parents and other relatives, are permanently broken, strong reasons have to be present in order for a decision of that sort to be taken. It was moreover emphasised that decisions to remove parental authority must not be taken without first having carried out a thorough examination and consideration of the long-term consequences of alternative measures, based on the concrete circumstances of each case.

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

69.  The above case-law was developed further, *inter alia*,in the Supreme Court’s judgment of 20 April 2007 (*Rt.* 2007 page 561), after the Court had declared a second application from the applicant in the above case of *Johansen v. Norway* inadmissible (see *Johansen* *v. Norway* (dec.), 12750/02, 10 October 2002).The Supreme Court reiterated that the requirement that adoption be in the child’s best interest, as set out in section 4-20 of the Child Welfare Act (see paragraph 65 above) implied that “strong reasons” (“*sterke grunner*”) must be present in order for a consent to adoption to be made contrary to the wish of the biological parents. In addition, the Supreme Court emphasised that a decision of this kind had to be made based on the concrete circumstances of each case, but also take account of general experience, such as experience from child-psychological or -psychiatric research. The Supreme Court examined the general principles in the case-law of the Strasbourg Court and concluded that domestic law was in conformity with those principles; an adoption could only be authorised where “particularly weighty reasons” were present. The case was subsequently brought before the Court, which found no violation of Article 8 of the Convention in *Aune*, cited above, see § 37 of that judgment for a recapitulation of the Supreme Court’s analysis of the general principles developed in the case-law of the Supreme Court and the Court.

70.  The Supreme Court again set out the general principles applicable to adoption cases in a judgment of 30 January 2015 (*Rt.* 2015 page 110). It recalled that forced adoptions have severe impact and generally inflict profound emotional pain on the parents. The family ties were protected by Article 8 of the Convention and Article 102 of the Constitution. Also for the child, the adoption is an intrusive measure, which may, under Article 21 of the Convention on the Rights of the Child (see paragraph 74 below), accordingly only be decided when in his or her best interests. However, when there were decisive factors on the child’s hand in favour of adoption, the parents’ interests would have to yield, as had been provided by Article 104 of the Constitution and Article 3 § 1 of the Convention on the Rights of the Child (see paragraph 74 below). Reference was made to *Aune*, cited above, § 66, where the Court had set out that an adoption may only be authorised when justified in “an overriding requirement pertaining to the child’s best interests” (see, also, paragraph 106 below), which corresponded to the standard of “particularly weighty reasons” as set out by the Supreme Court in the judgment that had been scrutinised by the Strasbourg Court in *Aune* (see paragraph 69 above).

71.  Parliament had examined, and a majority had supported, a proposal from the Government (*Ot.prp.* no. 69 (2008-2009)), which had discussed the issue of a considerable decline in adoptions in Norway. In the proposal it had been suggested that the child welfare authorities had developed a reluctance to propose adoptions in the aftermath of the Court’s finding of a violation in *Johansen v. Norway*, cited above, even though research had shown that it was in a child’s best interest to be adopted rather than experiencing a continuous life in foster care until coming of age. The Supreme Court interpreted the document so as to emphasise that the child welfare authorities should ensure that adoption would actually be proposed where appropriate, but that the document did not imply that the legal threshold, drawn up by Article 8 of the Convention, had changed. The Supreme Court added that the general information from research on adoption was relevant to the concrete assessment of whether an adoption should be authorised in an individual case.

72.  The Supreme Court also examined the implication of amendments of the rules concerning contact between the child and the biological parents, which had been coined as an “open adoption” in the above document. The rules had been incorporated in section 4-20a of the Child Welfare Act, which had been in effect since 2010. They required that an “open adoption” would be in the child’s best interests as well as the adoption parents’ consent (see paragraph 65 above). It observed that the legislator’s reasons for introducing the system of “open adoptions” had lain in the purpose of securing the child stable and predictable surroundings in which to grow up, while at the same time ensuring a certain contact with its biological parents, where this would be in the child’s best interest. The child would thus have all the benefits of the adoption, while still having contact with its biological parents. The Supreme Court found that the introduction of the system with “open adoptions” had not implied that the legal threshold for authorising adoptions had been lowered. However, in some cases, further contact between the child and the biological parents could mitigate some of the arguments in favour of not adopting. Reference was made to *Aune*, cited above, § 78.

3.  The Adoption Act

73.  The Act relating to Adoption of 28 February 1986 contained the following relevant provisions:

Section 2

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

Section 12

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

When the child has reached 18 years of age, he or she is entitled to be informed by the Ministry of the identity of his or her biological parents.”

Section 13

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

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

Section 14 a. Visiting access after adoption.

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

B.  Relevant international law materials

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

Article 3

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

Article 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;

...”

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

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

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

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

76.  The applicants complained that the domestic authorities’ decision to let the foster parents adopt X had infringed their right to family life as provided for in Article 8 of the Convention, which reads as follows:

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

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

77.  The Government contested the allegation that there had been a violation of Article 8.

A.  Admissibility

1.  The first applicant

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

2.  The second applicant

(a)  The Government’s objection

79.  The Government argued that since there was a conflict of interests between X and the first applicant, who had no right to represent X in domestic legal proceedings, this part of the application should be dismissed as incompatible *ratione personae* with the Convention’s provisions, in accordance with Article 35 §§ 3 and 4 of the Convention.

80.  The second applicant made no remarks in response to this objection.

(b)  The Court’s assessment

81.  The Court notes that a possible conflict of interests between the first applicant and X is of relevance to the question of whether the first applicant can lodge an application on X’s behalf (see, for example, *Kruškić v. Croatia* (dec.), no. 10140/13, §§ 101-102, 25 November 2014). However, the Court has also stated, in *Scozzari and Giunta v. Italy* ([GC], nos. 39221/98 and 41963/98, §§ 138-139, ECHR 2000‑VIII):

“138.  The Court points out that in principle a person who is not entitled under domestic law to represent another may nevertheless, in certain circumstances, act before the Court in the name of the other person ... In particular, minors can apply to the Court even, or indeed especially, if they are represented by a mother who is in conflict with the authorities and criticises their decisions and conduct as not being consistent with the rights guaranteed by the Convention. Like the Commission, the Court considers that in the event of a conflict over a minor’s interests between a natural parent and the person appointed by the authorities to act as the child’s guardian, there is a danger that some of those interests will never be brought to the Court’s attention and that the minor will be deprived of effective protection of his rights under the Convention. Consequently, as the Commission observed, even though the mother has been deprived of parental rights – indeed that is one of the causes of the dispute which she has referred to the Court – her standing as the natural mother suffices to afford her the necessary power to apply to the Court on the children’s behalf, too, in order to protect their interests.”

139. Moreover, the conditions governing individual applications are not necessarily the same as national criteria relating to locus standi. National rules in this respect may serve purposes different from those contemplated by Article 34 of the Convention and, whilst those purposes may sometimes be analogous, they need not always be so (see the Norris v. Ireland judgment of 26 October 1988, Series A no. 142, p. 15, § 31).”

82.  In the circumstances, the Court finds that these principles are applicable also in the present case insofar as the second applicant, X, is concerned. It notes in that respect that X’s complaint concerns the decision to sever his ties with his biological mother and the proceedings in that regard, as opposed to measures taken subsequent to a decision of that type (compare, for example, *A.K. and L. v. Croatia*, no. 37956/11, § 48, 8 January 2013). The decisions to deprive the first applicant of her parental responsibility and to authorise X’s adoption resulted in the first applicant losing legal guardianship over X.

83.  Accordingly, the Court dismisses the Government’s objection regarding the second applicant. It further notes that this complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

3.  The third, fourth and fifth applicants

(a)  The Government’s objection

84.  The Government submitted that since the third, fourth and fifth applicants (X’s sister Y and the grandparents) had not been part of the domestic proceedings, and the application to the Court did not specify or substantiate that those applicants’ own rights had been violated, or that X and the grandparents had shared a “family life”, their complaints should be declared inadmissible under Article 35 § 1 of the Convention as manifestly ill-founded or for failure to exhaust domestic remedies.

85.  No remarks in response to the Government’s objection were made on behalf of the third applicant. The fourth and fifth applicants submitted that it was “very clear” that they were victims of a violation of Article 8 of the Convention. They did not comment on the question of exhaustion of domestic remedies.

(b)  The Court’s assessment

86.  The Court reiterates that in order to be able to lodge an application in accordance with Article 34 of the Convention, “an individual must be able to show that he or she was ‘directly affected’ by the measure complained of”. This is “indispensable for putting the protection mechanism of the Convention into motion, although this criterion is not to be applied in a rigid, mechanical and inflexible way throughout the proceedings” (see, for example, Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], no. 47848/08, § 96, ECHR 2014). The applicants’ participation in the domestic proceedings has been found to be one of several relevant criteria when assessing their status as victims (see *Nölkenbockhoff v. Germany*, 25 August 1987, § 33, Series A no. 123; *Micallef v. Malta* [GC], no. [17056/06](http://hudoc.echr.coe.int/eng#{"appno":["17056/06"]}), §§ 48-49, ECHR 2009; and *Kaburov v. Bulgaria* (dec.), no. [9035/06](http://hudoc.echr.coe.int/eng#{"appno":["9035/06"]}), §§ 52-53, 19 June 2012).

87.  As to the scope of Article 8 of the Convention, the existence or non‑existence of “family life” is “essentially a question of fact depending upon the real existence in practice of close personal ties” (see, for instance, *K. and T. v. Finland* [GC], no. 25702/94, § 150, ECHR 2001‑VII, and Znamenskaya v. Russia, no. 77785/01, § 27, 2 June 2005).

88.  The domestic proceedings concerned the deprivation of the first applicant’s parental responsibility for the second applicant, X, and the authorisation for the foster parents to adopt him. The first and second applicants were therefore directly affected by the measures complained of.

89.  It goes without saying that, in general, other family members are also affected by such measures, whether directly or indirectly. Moreover, “family life” within the meaning of Article 8 of the Convention can also exist between siblings (see, *inter alia*, *Moustaquim v. Belgium*, no. 12313/86, § 36, 18 February 1991) and “includes at least the ties between near relatives, for instance those between grandparents and grandchildren” (see, among other authorities, *Scozzari and Giunta*, cited above, § 221). Within the meaning of Article 8, “family life” between grandparents and grandchildren may, accordingly, exist “where there are sufficiently close family ties between them ... While cohabitation is not a prerequisite, as close relationships created by frequent contact also suffice, relations between a child and its grandparents with whom it had lived for a time will normally be considered to fall within that category” (see *T.S. and J.J. v. Norway* (dec.), no. 15633/15, 11 October 2016, with further references).

90.  As regardsthe question of “interference”, it should be noted that, when a parent is denied access to a child taken into public care, this would constitute in most cases an interference with the parent’s right to respect for family life as protected by Article 8 of the Convention. However, this would not necessarily be the case where grandparents are concerned. In the latter situation, there may be an interference with the grandparents’ right to respect for their family life only if the public authority reduces access below what is normal, that is, diminishes contacts by refusing to grandparents the reasonable access necessary to preserve a normal grandparent-grandchild relationship (see, *inter alia*, *Price v. the United Kingdom*, no. 12402/86, Commission decision of 9 March 1988, DR 55, p. 224; *Lawlor v. the United Kingdom*, no. 12763/87, Commission decision of 14 July 1988, Decisions and Reports (DR) 57, p. 216; and *Kruškić*, cited above, § 110). Thus, the right to respect for family life of grandparents in relation to their grandchildren primarily entails the right to maintain a normal grandparent-grandchild relationship through contacts between them (see *Kruškić*, cited above, § 111). However, the Court reiterates that contacts between grandparents and grandchildren normally take place with the agreement of the person who has parental responsibility which means that access of a grandparent to his or her grandchild is normally at the discretion of the child’s parents (see *Price*, cited above; *Lawlor*, cited above; and *Kruškić*, cited above, § 112).

91.  Turning to the circumstances of the present case, the Court notes that the third applicant was born in October 2011, when X had already been placed in foster care. It also observes that, immediately after X’s birth in September 2008, the fourth applicant lived with the first applicant and X at the family centre for five days (see paragraph 7 above). She subsequently joined the first applicant in most of the visits with X, whereas the fifth applicant was present at some (see paragraph 8 above). However, the Court does not find it necessary to take a stand on whether this suffices to constitute “family life” within the meaning of Article 8 of the Convention, or whether, within the meaning of Article 34 of the Convention, the third, fourth and fifth applicants were thereby “directly affected” by the impugned measures, since in any event it finds that their complaints should be rejected for failure to exhaust domestic remedies.

92.  The Court reiterates that the purpose of the requirement of exhaustion of domestic remedies set out in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right – usually through the courts – the violations alleged against them before those allegations are submitted to the Court (see *Fressoz and Roire v. France* [GC], no. [29183/95](http://hudoc.echr.coe.int/eng#{"appno":["29183/95"]}), § 37, ECHR 1999‑I).

93.  As stated above, the domestic proceedings at hand concerned the removal of the first applicant’s parental responsibility for the second applicant and his adoption. The third, fourth and fifth applicants were not parties to those proceedings, and the first applicant did not maintain in those proceeding that the impugned decisions would impinge on their rights under Article 8 of the Convention. Nor does it appear that the third, fourth and fifth applicants complained, in form or substance, before any other domestic authorities that their rights under Article 8 had been violated. The Court therefore agrees with the respondent Government that the complaints by the third, fourth and fifth applicants must be declared inadmissible for failure to exhaust domestic remedies under Article 35 §§ 3 (a) and 4 of the Convention.

4.  Conclusion as to admissibility

94.  In conclusion, the Court declares the complaints by the first and second applicants admissible, and the remainder of the application inadmissible. The Court adds that it has observed that the applicants, in their observations, made a mention of “six” applicants and X’s “two siblings” – without providing any further information. For the Court it suffices to note that at no point in time has it received any application from any other sibling than Y.

B.  Merits

1.  The parties’ submissions

95.  The first and second applicants submitted in particular that the decision to remove the first applicant’s parental authority over X and to authorise that X be adopted had not been in accordance with the law and had not pursued a legitimate aim. They also argued that there had been no reasons to authorise the adoption of X.

96.  In order for interferences such as those in the present case to be justified under the second paragraph of Article 8, they would have to be required by a pressing social need and be proportionate. This called for an examination of two aspects; firstly, whether the reasons adduced to justify the interference were relevant and sufficient, and secondly, whether the decision-making process was fair and afforded due respect to the applicants’ rights under Article 8.

97.  Particularly far-reaching measures had been adopted in the instant case, measures which could be applied only in truly exceptional circumstances and when motivated by an overriding requirement pertaining to the child’s best interests. It was in the child’s best interest that his ties with his family be maintained except in cases where the family has proved particularly unfit. Moreover, it was in the child’s best interest to ensure his development in a safe and secure environment. For family ties to be severed, very exceptional circumstances had to be present and everything must be done to preserve personal relations and, where appropriate to rebuild the family. It was not enough to show that a child could be placed in a more beneficial environment for his upbringing. In the present case, nothing could justify the adopted measures. The applicants lived like a normal family.

98.  The Government submitted in general that the area of child welfare services was surrounded by procedural safeguards and that even far‑reaching measures were justifiable when motivated by an overriding requirement to the child’s best interest. The interference in the instant case had been adopted in accordance with domestic law that reflected the Court’s case law. Reference was in that respect particularly made to the Court’s judgment in Aune, cited above).

99.  A crucial element in the assessment of X’s best interests was the fact that he was a vulnerable child with special care needs. The first applicant had continued to display a grave lack of understanding of this fact and her conduct and X’s reactions during the times that they had seen each other in contact sessions, had highlighted the deficiencies in the first applicant’s abilities as a carer for a vulnerable child. Moreover, no psychological parent-child relationship had developed between the first applicant and X. Although the foster parents had been open to letting X contact the first applicant on his own volition, the first applicant had not taken any initiatives to establish contact with X and his foster parents after adoption.

100.  X’s best interests had been assessed several times and balanced against the legitimate interests of his biological mother. The removal of the first applicant’s parental responsibility and the authorisation of the adoption had its background in a long history of compulsory care measures. All necessary steps that could reasonably be demanded to facilitate the reunion of X and his biological mother had been taken. A considerable period of time had passed since X was taken into care in 2008, and his interests in not having his *de facto* family situation changed, overrode the first applicant’s interest to be reunited with him.

2.  The Court’s assessment

(a)  Lawfulness and legitimate aim

101.   Based on the material presented to it, the Court is satisfied that domestic proceedings complained of were in accordance with the 1992 Child Welfare Act (see paragraph 65 above) and were adopted in pursuance of “the protection of health or morals” and the “rights and freedoms” of X in accordance with Article 8 § 2 of the Convention.

(b)  Proportionality

(i)  General principles

102.  The Court reiterates that in determining whether an impugned measure was “necessary in a democratic society”, it 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 v. Italy [GC], no. 25358/12, § 179, 24 January 2017). The essential object of Article 8 is to protect the individual against arbitrary action by the public authorities (see, for example, Wagner and J.M.W.L. v. Luxembourg, no. 76240/01, § 118, 28 June 2007). Moreover, it must be borne in mind that the decisions taken by the courts in the field of child welfare are often irreversible, particularly in a case such as the present one where an adoption has been authorised. This is accordingly a domain in which there is an even greater call than usual for protection against arbitrary interferences (see, for example, Y.C. v. the United Kingdom, no. 4547/10, § 136, 13 March 2012, with further references).

103.  According to the Court’s established case-law, the notion of necessity 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. In determining whether an interference was “necessary in a democratic society”, the Court will take into account that a margin of appreciation is left to the national authorities, whose decision remains subject to review by the Court for conformity with the requirements of the Convention (see Paradiso and Campanelli, cited above, § 181).

104.  The margin of appreciation so 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. 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. The Court thus recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care. However, 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, § 155).

105.  The Court also recalls the guiding principle whereby a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child. The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child (see, for example, K. and T. v. Finland, cited above, § 178).

106.  In cases where the authorities have decided to replace 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 have been broken, the Court will still apply its case-law according to which “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 should also be reiterated that in *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000 IX; see also *Görgülü v. Germany*, no. 74969/01, § 48, 26 February 2004), the Court held:

“it is clear that it is equally in the child’s interest for its ties with its family to 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 the interest of the child dictates 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.”

107.  As to the decision-making process under Article 8, 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. Thus it is incumbent upon the Court to ascertain whether the domestic courts conducted an in‑depth examination of the entire family situation and of a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature, and made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what would be the best solution for the child. In practice, there is likely to be a degree of overlap in this respect with the need for relevant and sufficient reasons to justify a measure in respect of the care of a child (see, *inter alia*, Y.C. v. the United Kingdom, cited above, § 138).

 108.  Where children are involved, their best interests must be taken into account. 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 interest must come before all other considerations (see Jovanovic v. Sweden, no. 10592/12, § 77, 22 October 2015, and *Gnahoré*, cited above, § 59).

109.  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. 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 of the Convention 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). When a “considerable period of time” has passed since the child was first placed in care, the child’s interest in not undergoing further *de facto* changes to its family situation may prevail over the parents’ interest in seeing the family reunited (see*K. and T. v. Finland*, § 155, cited at paragraph 104 above, and, for instance, *Kutzner*, cited above, § 67). It is also recalled that, in *R. and H. v. the United Kingdom*, no. 35348/06, § 88, 31 May 2011, the Court held:

“... 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 she be placed permanently in a new family. Article 8 does not require that domestic authorities make endless attempts at family reunification; it only requires that they take all the necessary steps that can reasonably be demanded to facilitate the reunion of the child and his or her parents (*Pini and Others v. Romania*, nos. 78028/01 and 78030/01, § 155, ECHR 2004‑V (extracts)). Equally, the Court has observed that, when a considerable period of time has passed since a 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, *mutatis mutandis*, *K. and T. v. Finland*, cited above, § 155; *Hofmann v. Germany* (dec.), no. 66516/01, 28 August 2007). Similar considerations must also apply when a child has been taken from his or her parents.”

110.  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 local authority 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).

(ii)  Application of those principles to the present case

(α)  The procedures

111.  As to the domestic procedures, the Court notes that the impugned measures were first decided by the County Social Welfare Board, comprised of three persons – one jurist, one psychologist and one layperson – which heard the case over three days. The first applicant was present and represented by counsel. Twenty-one witnesses were heard(see paragraph 40 above). The case was later heard during another three days by the City Court, similarly composed of one professional judge, one psychologist and one lay person. Again, the first applicant was present and represented by counsel, and twenty-one witnesses were heard, including several experts (see paragraph 47 above). An additional review was inherent in the two levels of leave to appeal-proceedings (see paragraphs 62-64 above).

112.  One of the experts, psychologist K.M., who had examined, consulted and treated the first applicant, disagreed with the need to authorise the adoption (see paragraph 53 above). The City Court was thus presented with diverging professional opinions as to which decision would be in the best interests of X. It examined and assessed the different reports and testimonies, and provided reasons for finding that it could not attach decisive weight to the views of the psychologist who had testified in favour of discontinuing the foster care, namely that they were not based on up-to-date research (see paragraph 53 above). Taking additional account of the first applicant’s full involvement in the proceedings, seen as a whole, the Court is satisfied that the domestic decision-making process was fair and capable of safeguarding the first and second applicants’ rights under Article 8 of the Convention.

(β)  The decision not to discontinue foster care

113.  Turning to the question of whether relevant and sufficient reasons were adduced for the decision not to discontinue X’s foster care, the Court observes from the outset that no allegations have been made before the Court that the foster parents were not suitable to raise X. The first applicant has, however, maintained that she could provide appropriate care for X herself. She submitted that prior to the adoption of X, she had given birth to another child, Y, that she had married, and that no child welfare measures had been decided in respect of Y.

114.  The Court notes that the City Court reasoned, on the basis of the evidence presented to it, that unlike X, Y did not have special care needs (see paragraph 49 above). As to X, the City Court concluded that he was a vulnerable child with special needs and that there would be a “considerable risk of abnormal development” if his needs were not met. The court’s conclusion was supported by relevant evidence, including the testimony of several professionals (see paragraph 49 above). Whilst the Court is aware, as emphasised by the first applicant, that no measures were adopted with respect to Y, it concurrently notes that the City Court provided reasonable justification as to why that factor could not be decisive with respect to the decision concerning X. In principle, the Court does not consider such an individualised approach as problematic.

115.  Furthermore,it is not for the Court to assess whether there were relevant and sufficient reasons supporting the initial decision to place X in foster care in 2008 or the High Court’s judgment upholding the decision to issue a care order in 2010. The Court observes, however, that in its judgment of 22 February 2012, the City Court found that the evidence had “clearly shown” that the “fundamental limitations” with respect to the first applicant and her parenting skills that had existed when the High Court decided that X was to be placed in care, still applied almost two years later (see paragraph 51 above). It substantiated that finding by reference to relevant evidence, including the negative development with respect to the contact sessions (see paragraphs 50-51 above).

116.  In addition, the Court takes account of the fact that compulsory measures concerning the care of X had been decided and implemented since 17 October 2008, when the first applicant withdrew her consent to stay at the family centre (see paragraph 8 above). After that date, X remained in the foster home continuously until the Board on 8 December 2011 authorised the foster parents to adopt him (see paragraph 41 above). In general, the child’s interest in not undergoing further *de facto* changes to its family situation may prevail over the parents’ interest in seeing the family reunited when a “considerable period of time” has passed since the child was first placed in care (see paragraphs 104 and 109 above). In the present case X had lived with his foster parents for approximately three and a half years when the City Court considered the case (see paragraph 57 above), which in the Court’s view amounts to a considerable period of time. Moreover, he was in his early childhood, a period in which it was particularly important to secure his rights (see also, *inter alia*, the General Comment no. 7 (2005) on implementing child rights in early childhood, paragraph 75 above).

117.  Against the above background, the Court is satisfied that the City Court had the best interests of X in mind, and that its conclusion that X should remain in care, in the light of his particular care needs, was not arbitrary. Given the circumstances of the case, the Court considers that the domestic authorities, when finding that discontinuing the public care for X would not be in his best interests, did not exceed the margin of appreciation afforded to the respondent State, and that the reasons for that decision were relevant and sufficient.

*(γ)  The decision to remove the first applicant*’*s parental authority and to authorise the adoption*

118.  The Court observes that the reason for removing the parental authority from the first applicant was only that it would then be transferred to the authorities, so that consent to adoption could be given. It is therefore appropriate to examine the two elements of the decision simultaneously.

119.  At the outset, the Court recalls that the decisions to remove the first applicant’s parental authority over X and to authorise that he be adopted by his foster parents, were, by their nature, measures which could “totally deprive... the [first] applicant of her family life with the child and were inconsistent with the aim of reuniting them” (see *Johansen*, cited above, § 78). The measures in question, accordingly, fall to be tested against the standard reiterated in paragraph 106 above, namely 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”.

120.  The City Court took as its general starting point that there had to be “strong reasons” and a “high degree of certainty” that adoption would be in the child’s best interests (see paragraphs 55 and 56 above). It also stated that the decision would have to be based on a concrete assessment of the instant case, and in the light of general experience from child psychology research (see paragraph 56 above). Furthermore, the City Court expressly referred to the decision in *Rt.* 2007 page 561, in which the Supreme Court had elaborated on the standard applicable to adoption cases in light of the Court’s case-law (see paragraph 69 above), and it concluded that there were “particularly weighty reasons” in favour of allowing that X be adopted (see paragraph 60 above). The Court understands these statements to imply that the City Court intended to apply the relevant domestic legislation in line with the general principles set out in the Court’s case-law under Article 8 of the Convention, in conformity with the Supreme Court’s jurisprudence (see paragraphs 67-72 and 106 above). Emphasising that adoption would mean that the legal ties to the biological family would be broken (see paragraph 58 above), but that it would strengthen the relation with the foster family (see paragraph 57 above), the City Court found that it would be in the best interests of X that a decision to that extent be made (see paragraph 60 above). The Court reiterates from its case-law that it recognises that, in reaching decisions in so sensitive an area, local authorities and courts are faced with a task that is extremely difficult (see, for example, *Y.C. v. the United Kingdom*, cited above, § 136).

121.  When turning to the facts in X’s specific case, the Court recalls that the City Court’s decision to authorise the adoption of X was taken on the basis that it had already found that a discontinuation of the public care of X would not be in his best interests (see paragraphs 48-54 above). The Court has concluded that this decision was adopted within the respondent State’s margin of appreciation (see paragraph 117 above). Accordingly, the examination of whether the circumstances of the present case were exceptional and whether the adoption was motivated by an overriding requirement pertaining to X’s best interest (see paragraphs 106 and 119 above) must in the present case be carried out taking account of the alternative that lay in continued foster care.

122.  Authorising the adoption meant that X would lose his legal ties to his biological mother. In that respect, the City Court took account, however, of how, despite the first three weeks with the first applicant and the many subsequent contact sessions, X had not bonded psychologically with the first applicant, despite having been told that she was his biological mother (see paragraph 58 above). Moreover, the City Court emphasised that X was three and a half years old at the time of the decision to authorise adoption and had lived in his foster home since he was three weeks old. His fundamental attachment in the social and psychological sense was to his foster parents (see paragraph 57 above).

123.  In essence, the above remarks show that the City Court found that the social ties between X and the first applicant were very limited. The Court has previously held that a finding to that effect had to have implications for the degree of protection that ought to be afforded to the applicant’s right to respect for her family life under paragraph 1 of Article 8 when assessing the necessity of the interference under paragraph 2 (see *Aune*, cited above § 69, with further references to, *inter alia*, *Johansen* *v. Norway* (dec.), cited above). In the instant case, the City Court also emphasised that if the adoption were not authorised, it was in any event envisaged that X’s placement in foster care would be long-term (see paragraph 57 above and also *Aune*, cited above, §§ 70-71).

124.  As to the specific issue of contact between X and the first applicant, the Court has observed that the City Court did not fix any such legal rights, nor was it competent to do so (see paragraph 61 above). The adoption thus implied that the first applicant and X no longer had any legal rights to access each other. The City Court took into account, however, that although the established access arrangements had been far from successful, the foster parents were nevertheless willing to let X contact the first applicant if he so wished (see paragraph 59 above). In the Court’s view, it is less certain what may be inferred from the foster parents “openness to continued contact” in the present case compared to in that of *Aune*, cited above, §§ 74-78. The Court still considers that it was not an irrelevant matter.

125.  Turning to the City Court’s assessment relating to the alternative of a continued stay in foster care, the Court observes that the City Court emphasised that X was a vulnerable child and that an adoption would help to strengthen his sense of belonging with his current foster parents, whom he regarded as his parents, and provide him with security in the years ahead (see paragraphs 49 and 57 above and, *mutatis mutandis*, *Aune*, cited above, § 70). It referred in particular to a statement from a professional at the Children’s and Young People’s Psychiatric Out-Patient Clinic that had explained how X was easily stressed and needed a lot of quiet, security and support (see paragraph 49 above). Also the County Social Welfare Board in its decision of 8 December 2011 had described him as a “particularly vulnerable child” and based that on the findings of the psychologist, M.S. (see paragraph 41 above).

126.  In this regard, the Court observes that in justifying its decision not to discontinue X’s public care, the City Court took account of how the foster parents and supervisor had described X’s emotional reactions after contact sessions with his mother in the form of “inconsolable crying and his needing a lot of sleep” (see paragraph 50 above). It considered that a possible reason for that could be that the boy was “vulnerable to inexpedient interaction and information that was not adapted to his age and functioning. The first applicant’s emotional outbursts in situations during the contact sessions, for example when X had sought out his foster mother and called her “mummy”, were seen as potentially frightening and not conducive to X’s development” (see paragraph 50 above).

127.  In *Aune*, where the Court considered that the adoption did not violate Article 8 of the Convention, it found that there was still a “latent conflict which could erupt into challenges to A’s particular vulnerability and need for security”, and that adoption “would seem to counter such an eventuality” (ibid. § 71). In the present case, the conflict had been a recurring theme in all the proceedings (see, *inter alia*, paragraph 18, 29, 41 and 46 above) and the City Court’s judgment states that the first applicant had said in court that she would fight until X was returned to her and that she did not consider that public exposure and repeated legal proceedings could be harmful for X in the long term (see paragraph 52 above). Even though it is to be expected that a biological parent will oppose a placement order, the mother’s behaviour, leading to X’s emotional reactions, was clearly a relevant factor.

128.  Whilst the City Court found that the first applicant’s situation had improved in some areas – she had married, the couple had another child and there had been progress in her material situation (see paragraph 48 above) – the evidence presented to that court led it to conclude that it had been clearly shown that the “fundamental limitations” still applied and that she had not shown any positive development (see paragraphs 42, 34 and 51 above). In this connection the Court also notes that the County Social Welfare Board, after emphasising the need for the first applicant having “a great capacity to empathise with and understand” X and his problems in the event of a return, described her as “completely devoid of any such empathy and understanding” (see paragraph 41 above).

129.  Against the above background, the Court observes that the City Court was faced with the difficult and sensitive task of striking a fair balance between the relevant competing interests in a complex case. It was clearly guided by the interests of X, notably his particular need for security in his foster-home environment, given his psychological vulnerability. Taking also into account the City Court’s conclusion that there had been no positive development in the first applicant’s competence in contact situations throughout the three years in which she had had rights of access (see paragraph 51 above); that the decision-making process was fair (see paragraph 112 above), and having regard to the fact that the domestic authorities had the benefit of direct contact with all the persons concerned (see paragraph 110 above), the Court is satisfied that there were such exceptional circumstances in the present case as could justify the measures in question and that they were motivated by an overriding requirement pertaining to X’s best interests (see paragraphs 106 and 119 above).

(iii)  Conclusion as to merits

130.  In light of the foregoing (see, in particular, paragraphs 112, 117 and 129 above), there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT

1.  *Declares*, unanimously, the complaints by the first and second applicants admissible and the remainder of the application inadmissible;

2.  *Holds*, by four votes to three, that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 30 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Milan Blaško Angelika Nußberger
 Deputy Registrar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Grozev, O’Leary and Hüseynov is annexed to this judgment.

A.N.
M.B.

JOINT DISSENTING OPINION OF JUDGES GROZEV, O’LEARY AND HÜSEYNOV

I.  Introduction

1.  A majority of the chamber has found that the decision authorising the adoption of the second applicant by foster parents was not in violation of his or his biological mother’s right to family life under Article 8 of the Convention.[[1]](#footnote-1)

2.  Given the particular circumstances of the present case, the information provided in support of the decisions by the domestic authorities and the respondent Government and the legal standards established in the Court’s case-law in this field, we respectfully disagree with the majority.

3.  It is well-established that in cases relating to placement of children in care, the domestic authorities enjoy a wide margin of appreciation. The margin narrows when parental rights are restricted or removed.[[2]](#footnote-2) Furthermore, the national authorities enjoy direct contact with the persons whose rights are affected by any decision alleged to violate Article 8 of the Convention. As a result, it is clearly not for the Court to don the mantle of a fourth instance tribunal and, advertently or inadvertently, substitute its own assessment for that of the domestic authorities in such a sensitive field.[[3]](#footnote-3) By dissenting in the present case we do not lose sight of these necessary and fundamental strictures.

4.  Nevertheless, it cannot be forgotten that the Court’s case-law recognises that adoption against the wishes of a biological parent, with the consequent breaking of *de facto* and *de jure* ties between parent and child and the termination of access rights, is an irreversible and far-reaching interference with the right to family life of both parent and child. The “severing of those ties means cutting a child off from its roots”.[[4]](#footnote-4) It is for this reason that the Court has held that the interest of the child dictates that “family ties may only be severed in *very exceptional circumstances*”.[[5]](#footnote-5)

5.  Subsidiarity and the margin of appreciation dictate particular caution in a case such as this. However, they do not absolve the Court from a forensic examination of the facts, of whether the reasons provided by the domestic authorities were both relevant and sufficient and, lastly, of whether the aforementioned exceptional circumstances standard was met.

II.  Circumstances of the case

6.  As our disagreement with the majority turns not only on the manner in which they have presented and applied the relevant jurisprudential standards under Article 8 of the Convention, but also the manner in which they have considered, or perhaps distanced themselves, from the concrete circumstances of the present case, it is necessary to recapitulate the facts in some detail.

7.  The first applicant’s child was born on 25 September 2008. The first applicant and the child moved to a family centre four days later, the mother having agreed, given her recognised need for guidance and support in early motherhood, to stay in such a centre for three months.[[6]](#footnote-6)

1.  Emergency placement in care

8.  On 17 October 2008, when the child was three weeks old, the first applicant withdrew her consent to stay in the family centre and, on the same date, the child was placed in emergency care due to weight loss during the first weeks of life and the mother’s reported failure to understand or respond to his needs. It appears from the majority judgment that the first applicant had sought assurances that after the three month stay she would be allowed to return home with her child. When such assurances were not forthcoming she had sought to leave (see § 33 of the majority judgment). In her appeal to the County Social Welfare Board, the first applicant indicated that she and X could live with her parents, that her mother was willing to provide support and that she was willing to accept the help of the child welfare authorities. Both the County Social Welfare Board and the City Court rejected the first applicant’s appeal, referring to the report of the family centre which had considered that the mother was incapable of taking care of her child without support or follow up, as well as a psychological report, based on an evaluation of X between ten days old and two months, which had pointed to his early delayed development and the fact that he had been a child at high risk when first sent for evaluation. That report went on to state that by two months old, after placement, X was “functioning as a normal two-month-old baby [with] the possibility of a good normal development” (see § 12 of the majority judgment).

2.  Extended placement in care

9.  The emergency placement order was transformed into a more long-term one in March 2009 when the child was just over five months. The first applicant’s contact rights were from that moment reduced to six two-hour visits per year under supervision. The extension of the placement was justified by the risk of serious physical and psychological deficiencies in his care-giving were he returned to his mother and the impossibility of remedying that risk through assistance measures. The first applicant’s appeal – in which she had complained of a failure to examine alternative measures to placement and a lack of sufficient evidence for extended placement – initially succeeded. The City Court, which handed down its decision when X was almost eleven months old, held that he should be returned to the first applicant after a period of readjustment and that the weight loss in the early weeks of his life might have been due to an infection. Increased access was granted to the first applicant but it was reported that both she and her parents, who attended several of the visits, demonstrated hostility towards the foster mother and the child welfare authorities. At no point in the file is it explained why all supervised visits with the child occurred in the presence of the foster mother. The child welfare authorities appealed the City Court judgment and enforcement of the latter was suspended until the case could be heard by the High Court. Psychologists and a family expert were appointed by the child welfare authorities and the High Court. In its decision of 22 April 2010, the High Court confirmed the decision of the Board that X should be taken into compulsory care and reduced the first applicant’s visits to four two-hour visits per year. At this stage X was almost one year and seven months old. The High Court based its decision on the early report from the family centre which detailed the lack of care during the first three weeks of X’s life, as well as reports by a family therapist and a psychologist, M.S. The behaviour of the first applicant during the contact sessions with X, which were viewed negatively by the appointed supervisors, also played an important role. According to the psychologist M.S., those sessions were so negative the mother should be given no access to her child. Furthermore, she relied heavily on the aforementioned report established by the family centre which had documented the neglect of X during the first three weeks of his life and previous reports detailing the biological mother’s medical history and medical difficulties as a child. The High Court concluded that a care order was necessary and that assistance measures for the mother would not be sufficient to allow X to be returned to her care. The High Court also gave weight to the attachment that X had by then formed with the foster parents, particularly the foster mother. It is worth noting that by the date of the High Court judgment on 22 April 2010, the first applicant’s access to X had been restricted from when he was three weeks old and highly restricted from the age of five months.[[7]](#footnote-7)

3. Adoption proceedings

10.  In July 2011, when the child was two years and ten months old, the authorities sought to deprive the first applicant of her parental responsibility with a view to authorising X’s adoption by his foster parents. In the alternative, they sought to deny her contact rights. For her part, the first applicant sought termination of the care order or extended contact rights.

11.  By a decision of 8 December 2011, the County Social Welfare Board held that the first applicant should be deprived of her parental responsibility for X and that the latter’s foster parents should be allowed to adopt him.

12.  The formal procedure followed by the Board to reach that decision is not at the heart of this dissent, albeit how and what expert and other evidence it considered is relevant.[[8]](#footnote-8)

13.  What is of more importance is the basis for the Board’s decision – the statements of the first applicant during the hearing attesting to continued tension between her and the child welfare authorities, the contact sessions which continued to be influenced by tensions between the biological and foster mothers and the maternal grandmother, the reasonable assumption of the Board that X was “a particularly vulnerable child”, his circumstances since soon after he was born, the expert opinion of M.S., consulted a year and a half previously in the context of the child placement proceedings and the fact that the alternative to adoption would have been long-term care, which would not have been in X’s interests or those of his foster parents, who were his primary caregivers.

14.  When the Board adopted its decision in 2011, the first applicant had since married and given birth to a second child Y. She relied on this change in her personal circumstances and on the fact that her competence as a care-giver had been examined and not called into question as regards her second child. The Board took note of this information but deemed the first applicant’s capacity to care for her second child, Y, insufficient to demonstrate her capacity to care for her first child, X, given the latter’s special needs.

15.  The Board’s decision was upheld by the City Court on 22 February 2012.

III.  General principles under Article 8 of the Convention in relation to child placement and adoption

16.  The majority judgment reproduces the general principles established in the Court’s case-law on Article 8 in relation to child placement and adoption proceedings.[[9]](#footnote-9) Distinguishing between the two, as the case-law of the Court requires us to do, those principles and the legal standards which derive from them can be summarised as follows:

- When assessing whether a child needs to be taken into care, domestic authorities enjoy a wide margin of appreciation. The margin tightens however depending on the nature of the issues and the seriousness of the interests at stake. Where access rights are restricted or removed, the margin is indisputably narrower and the Court’s scrutiny stricter.[[10]](#footnote-10)

- The Court has repeatedly recognised that perceptions as to the appropriateness of the intervention by public authorities in a child’s care vary from one State to the next. Furthermore, as the domestic authorities have direct contact with the persons concerned by an impugned decision, the Court must be careful not to substitute itself for the domestic authorities in the exercise of their responsibilities in this field.[[11]](#footnote-11)

- When it comes to assessing whether the process leading to a decision impugned under Article 8 reaches the Convention standard, the Court will look at the process as a whole, whether a parent was sufficiently involved and fully able to present his or her case, whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of other factors (factual, emotional, psychological, material and medical), whether there was a balanced and reasonable assessment of the respective interests of each person and whether relevant and sufficient reasons were provided for the impugned decisions.[[12]](#footnote-12)

- A distinction is drawn in the case-law between placement decisions and those relating to adoption. As regards the former, the Court has repeatedly stated that care should be regarded as a temporary measure, that it should be discontinued when circumstances permit and measures implementing temporary care orders should be consistent with the ultimate aim of reuniting the natural parents and the child. The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child.[[13]](#footnote-13)

- As regards, once again, placement in care, passage of a considerable period of time may mean that the interest of the child not to have his or her *de facto* family situation changed may override the interest of the biological parents to have the family reunited.[[14]](#footnote-14)

- In contrast, where decisions relating to childcare are irreversible, such as when adoption is authorised, resulting in the breaking of *de facto* and *de jure* ties between a biological parent and a child, the Court’s case-law points to “an even greater call than usual for protection against arbitrary interferences”.[[15]](#footnote-15) Stricter scrutiny is required of additional restrictions on parental rights of access; scrutiny which becomes even stricter when it comes to deprivation of parental responsibilities and the authorisation of adoption. As the majority judgment points out “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”.[[16]](#footnote-16)

- Consideration of what lies in the best interest of the child is of crucial importance in every case of this kind. The domestic authorities must strike a fair balance between the interests of the child and those of the parents and, in the balancing process, particular importance should be attached to the best interests of the child which, depending on the circumstances, may override those of the parents.[[17]](#footnote-17)

IV.  Whether in the present case the standards established in the case-law were met?

17.  In our view, it has not been demonstrated in the instant case that the relevant standards in relation to adoption have been met.

18.  As a preliminary point, it is stated in the majority judgment that it is not for the Court to assess whether there were relevant and sufficient reasons for placing X in care first as an emergency measure and subsequently for a longer period. While this is, strictly speaking, true (the first applicant’s complaint relates to the child’s adoption), it cannot be forgotten that those decisions fed inexorably into the decisions leading to adoption, created the passage of time so detrimental to the reunification of a family unit, influenced the assessment over time of the child’s best interests and, crucially, placed the first applicant in a position which was inevitably in conflict with that of the authorities which had ordered and maintained the placement and with the foster parents, whose interest lay in promoting the relationship with the child with a view ultimately to adopting him. It is not our purpose, in this dissent, to call into question the decisions of the domestic authorities regarding placement given the evidence that the first applicant, particularly as the aforementioned conflict spiralled, had difficulty placing the interests, experience and perceptions of the child above her own loss. However, it is not possible to ignore the sequence of events which preceded and led to the adoption and in the context of which that conflict appeared to grow.[[18]](#footnote-18) As the general principles outlined above clearly state, a care order should be regarded as a temporary measure to be discontinued as soon as possible where circumstances permit and States have a positive duty to facilitate reunification.[[19]](#footnote-19)

19.  As regards the deprivation of the first applicant’s parental responsibility with a view to authorising adoption, the majority judgment endorses the City Court decision of 22 February 2012 according to which there were “particularly weighty reasons” to allow the latter (§ 120 of the majority judgment). Those reasons emerge in the majority judgment as follows:

20.  Firstly, the fundamental and psychological attachment of X to his foster parents given the length of time spent with them and the lack of psychological attachment to his mother despite the many contact sessions is considered important (§ 122 of the majority judgment). Relying on *Aune v. Norway*, the majority held that those limited social ties between biological mother and child “had to have implications for the degree of protection that ought to be afforded to the first applicant’s right to respect for her family life” (§ 123 of the majority judgment).

21.  Although the adoption meant that the first applicant and X no longer had any legal rights to access each other, the majority pointed secondly to the City Court’s reference to the willingness of the foster parent’s “to let X contact the first applicant if he so wished” (§§ 59 and 124 of the majority judgment). For the majority, this did not correspond to the guaranteed access at issue in *Aune*, where no violation of Article 8 in an adoption context had been found.[[20]](#footnote-20) However, the willingness of the foster parents is nevertheless considered either a relevant or a sufficient reason in the instant case.

22.  Thirdly, throughout the decisions of the domestic authorities and the majority judgment, X’s vulnerability is referred to. In the Board’s decision of 2011 authorising adoption, it is stated that the Board “finds it reasonable to assume that X is a particularly vulnerable child” (§ 43 of the majority judgment). The child welfare authorities, in their opposition to the first applicant’s appeal against the adoption report him as being a vulnerable child (*ibid*, § 46), a description also used by the City Court (*ibid*, §§ 49 and 57). The majority judgment refers to these sources and concludes that the City Court was guided by the interests of X, notably his particular need for security in the foster-home environment given his “psychological vulnerability” (*ibid*, §§ 125 and 129).

23.  Finally, the tension and conflict during contact sessions between the first applicant, the authorities and the foster mother and the child’s reaction to the latter, which were relied on by the domestic authorities to extend the placement in care, are also relied on to justify deprivation of parental responsibilities and adoption. Once again relying on *Aune*, adoption was seen as a means to counter such risks of latent conflict.

24.  Given the legal and social effects of adoption, its irreversibility and the exceptional circumstances standard announced in the Court’s case-law and ostensibly adhered to in the instant case, do these factors suffice? In addition, are there other factors absent from the majority’s assessment given the material in the case file?

(1)  As regards the lack of social and/or psychological ties between the biological mother and the child, while the former was clearly at least partly responsible for the quality of the contact sessions which took place, a mother who has been deprived of access to her child, aged three weeks, albeit for legitimate reasons, is held solely responsible for the inevitable decrease and even degradation in their social ties. Norwegian access rights are notably restrictive[[21]](#footnote-21) and limited access rights have a particularly detrimental impact in the first weeks, months and years of life.[[22]](#footnote-22) By April 2010, the first applicant’s contact rights had been reduced to four two-hour visits per year. In addition, reliance on *Aune v. Norway* is relevant only to a certain extent and should have been very clearly qualified in our view. In that case the child who was later the subject of adoption proceedings aged 12 years had been placed in care aged six months following serious physical and psychological abuse which had culminated in a brain haemorrhage. His parents, both drug users, continued to abuse drugs after his placement. His biological mother frequently failed to attend contact sessions and disappeared entirely for one year. In contrast, while there is no doubt that the first applicant neglected her child in the first weeks of its life, it is difficult not to see very fundamental differences between the factual matrix in *Aune*, where some of the legal principles applied by the majority in this case were developed, and the actions of the first applicant and her extended family since X was first removed from their care.[[23]](#footnote-23)

(2)  It is undisputed that the adoption put an end to the legal ties between the biological mother and the child and the access rights of both. It therefore seems extraordinary that the foster parents’ willingness to contemplate contact “if the child so wished” is factored into the legal assessment given that this willingness had no legally binding force and that the child in question was aged three and a half years at the relevant time. Reference is made to the provision in Norwegian law for a form of open adoption but there is no discussion of the need for the formal consent of the adoptive parents to such an arrangement or their ability to withdraw it. *Aune* is once again relied on, this time to highlight a fundamental difference between the two cases – in *Aune* contact had been guaranteed and willingness proved. However, this difference is dismissed as not relevant.

(3)  There is no doubt that when X was admitted to emergency care he was a vulnerable new-born child whose basic needs were not being cared for. However, at two months he is described in the report of the family care centre as functioning as a normal two-month old and as bearing “the mark of good psychosocial and cognitive development”. The reports before the domestic authorities highlight the difficulties created for the child by tense contact sessions. However, his special care needs are never explained.[[24]](#footnote-24) In the Board’s decision of 8 December 2011 it is stated that X suffered “serious life-threatening neglect during the first three weeks of his life” and that he had been through a lot having “lived in the foster home for three years and not [knowing] his biological mother”. The former statement is not explained or necessarily supported by the evidence.[[25]](#footnote-25) Once again, it is not our intention to call into question the authorities’ decision to place the child in care and, crucially, the consequences for his care arrangements flowing from the passage of time. As the Court has repeatedly held, passage of time essentially means that the interest of a child not to have his or her *de facto* family situation changed may override the parent’s interest in reunification. However, the irreversible severing of legal ties is different. It requires exceptional circumstances and these appear to be assumed as reasonably existing in the instant case rather than being concretely demonstrated.

(4)  Nowhere in the file does it emerge clearly that the domestic authorities considered the long-term effects on the child of the permanent and irreversible cutting of *de facto* and legal ties with his biological mother.[[26]](#footnote-26) The Court has repeatedly held that severing such ties cuts a child off from its roots, which is a measure which can be justified only in exceptional circumstances. Regarding the preservation of such roots, it has in other circumstances held that domestic authorities could legitimately deprive a minor, against the latter’s will, of his filiation with the person who he considered to be his father and with whom he had a strong emotional bond, in order to recognise the minor’s filiation with his biological father as the child’s interests lay primarily in knowing the truth about his origins. According to the Court in that case – *Mandet v. France* – it was reasonable for the domestic authorities to determine that the child’s interests lay not where he perceived them but rather in ascertaining his real paternity.[[27]](#footnote-27) Each Article 8 case must be assessed individually, in relation to its own facts and the crucial margin of the domestic authorities referred to above. However, the only thread of legal logic holding these cases together appears to be the margin itself, with the Court a bystander, by virtue of the principle of subsidiarity, to the disintegration of familial relationships and the destruction of roots depending on how that margin is exercised in any given case.

(5)  As the Court has repeatedly stated, not only do the circumstances justifying the severing of all ties have to be exceptional, but the reasons justifying their existence have to be relevant and sufficient. In challenging the deprivation of parental responsibility and adoption, the first applicant set considerable store by the change in her personal circumstances since X was first born and taken into care and since her competence as a carer had first been assessed. She had married and had a second child, Y, and an investigation into her care of the latter had found no shortcomings. A third child was born after the domestic adoption proceedings had ended and her care for that child has not been questioned either. The advice of an expert who spoke in support of the first applicant’s care-giving, who had counselled her in relation to the trauma of losing her first child to placement and who argued in favour of the restoration of her rights was dismissed as based on outdated research. The evaluation of the municipality in which she now lives is passed over by the majority in silence.[[28]](#footnote-28) In the individual assessment required and the balancing of the interests of the child and the biological parent, nowhere does the severing of X’s ties with his other sibling (and subsequently a second sibling) or his grandparents appear to feature. The domestic authorities held that the needs of the second child, Y, could not be confused with the unexplained special needs of X. The favourable change in the first applicant’s personal circumstances therefore had no bearing on the adoption assessment and X’s best interests in that regard. In *Johansen*, where the Court found no violation as regards placement but a violation of Article 8 as regards adoption, it held that the domestic authorities had provided relevant reasons for the impugned adoption decision but not sufficient ones. A failure to take into consideration the changed and better circumstances of the biological mother in that case appeared key in this regard.[[29]](#footnote-29) In a recent Norwegian case, *I.D.*, which concerned access rights, the Court found the complaint of a biological mother to be manifestly ill-founded but emphasised that access rights could and should be kept under review: “[the mother] has the possibility for regular review of these measures *where the authorities will need to take into account any changes and developments in the applicant’s and X’s circumstances*, including eventual further improvements of the applicant’s care abilities or increased emotional robustness of X.”[[30]](#footnote-30) In the instant case, the first applicant appealed to the High Court in relation both to the assessment of evidence and the failure to obtain an expert witness concerning her and her husband’s ability to provide adequate care. Despite the rejection by the City Court of the expert evidence in favour of the first applicant, the High Court refused leave to appeal and held that the first applicant had not explained why it was necessary to appoint an expert before the High Court (see § 63 of the majority judgment). There would appear to be a contradiction between supposing the mother’s care-giving problems were of a fundamental nature and her potential for change limited, as argued by the respondent Government and the domestic authorities (§ 128 of the majority judgment and the paragraphs referred to therein), and the absence of any care arrangements as regards her subsequent children.[[31]](#footnote-31) To sever the child’s ties with his mother and siblings the family had to be proved to be particularly unfit; yet there is evidence that, over time, it had proved itself not to be.[[32]](#footnote-32)

(6)  Furthermore, it is difficult to avoid the impression that assessment of the first applicant’s competence and conduct was influenced throughout by the very fact of her conflict with the child welfare authorities and foster mother. The City Court highlighted the fact that “nothing had emerged (...) to indicate that the first applicant had developed a more positive attitude to the child welfare authorities or to the foster mother”.[[33]](#footnote-33) However, conflict of this nature is hardly exceptional.[[34]](#footnote-34) Since both the foster parents and domestic authorities were deemed to be acting in the best interests of the child, by challenging or being in conflict with them the first applicant was perceived to be doing the opposite.[[35]](#footnote-35) The mother’s behaviour in relation to the authorities and her express determination to fight until her child was returned were factors which played against her (see § 127 of the majority judgment). It is noteworthy that neither of these factors are counterbalanced in the majority judgment by her repeated indications that, if her parental responsibility were preserved, access rights increased or the child returned, she would work with the child welfare authorities.[[36]](#footnote-36) In the instant case, the authority charged with balancing the different interests involved was itself in conflict with one of the persons whose interests were being balanced. This is a very delicate situation.

(7)  Finally, the conflict which created tension during contact visits was between the first applicant, her extended family, and the foster mother and child welfare authorities. No explanation is given why arrangements were not attempted which removed the child and allowed visits to proceed outside the sphere of tension created when the biological and foster mothers met.[[37]](#footnote-37) In other cases in this field the Court has pointed to the need to give due consideration to possible alternatives and to safeguard parental rights while finding a means to allow children to regain their emotional balance.[[38]](#footnote-38) In addition, while the Court has recognised the difficult position domestic authorities find themselves in when faced with strained (parental) relationships; it has held that such a lack of cooperation does not exempt the authorities from their positive obligations under Article 8.[[39]](#footnote-39)

V.  The need to respect existing jurisprudential standards

25.  We have attempted to explain why, factually and legally, we do not share the assessment of our colleagues in the circumstances of the present case, conscious throughout of the limits rightfully dictated by subsidiarity and the margin of appreciation.

26.  We are acutely aware not only of the direct contact enjoyed by the authorities with the persons affected by their decisions but also of their expertise in questions relating to child placement, access rights and adoption. This case demonstrates that there is a marked preference in Norway for adoption rather than long-term foster care and that the former is considered in the best interests of the child. Policy decisions of that nature and the assessments which underpin them are legitimate and fall within the margin of appreciation of the domestic authorities.

27.  However, a review of the Court’s case-law demonstrates the existence of legal standards – the need to establish particularly weighty reasons, to limit the breaking of *de facto* and *de jure* ties to exceptional circumstances and to apply stricter scrutiny when the latter occurs. They are standards with legal meaning and which should, in our view, have legal consequences. The majority judgment takes cognizance of these legal standards in an abstract manner but only partly applies them to the circumstances of the present case.

28.  The general principles outlined in Section III reflect the case-law as it stands and clearly point to procedural and substantive requirements which must be met in a case like this. Once it comes to the concrete application of those principles to the circumstances of the individual case, it would appear that the focus becomes almost exclusively procedural. However, an excessive focus on procedures risks rendering banal what are far-reaching intrusions in family and private life. In addition, the Court’s general principles when read in the abstract risk providing false hopes of reunification which, as this case demonstrates, are unlikely to be fulfilled once a child has been taken into care, access rights have been significantly limited, time has passed and domestic proceedings formally meet Article 8 procedural standards.

1. The complaints of the biological mother (the first applicant) and the child (the second applicant, X) who was the subject first of placement and then adoption proceedings were deemed admissible. The complaints by the first applicants’ second child and her parents were deemed inadmissible (§§ 78-94 of the majority judgment). The first applicant’s third child was not born until after the end of the adoption proceedings. [↑](#footnote-ref-1)
2. See, for example, *Gnahoré v. France*, no. 40031/98, § 54, CEDH 2000-IX; *Sahin c. Allemagne* [GC], no 30943/96, § 65, CEDH 2003-VIII and the authorities cited in Section III below. Those authorities make clear that the margin narrows and the Court’s scrutiny is strict as regards restriction or deprivation of access rights. [↑](#footnote-ref-2)
3. See, for example, *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 70, ECHR 2001-V and the authorities cited in Section III below. [↑](#footnote-ref-3)
4. See *Görgülü v. Germany*, no. 74969/01, 26 February 2004, § 48; *Gnahoré v. France*, cited above, § 59, ECHR 2000-IX, or *Johansen v. Norway*, judgment of 7 August 1996, Reports of Judgments and Decisions 1996-III, § 78. [↑](#footnote-ref-4)
5. *Görgülü*, cited above, § 48 (emphasis added). [↑](#footnote-ref-5)
6. It was not disputed at domestic level or before the Court that the first applicant had considerable medical difficulties to surmount as a child, that these difficulties had had consequences for her social and psychological development and that her feelings about the pregnancy were conflicted. [↑](#footnote-ref-6)
7. 1.5 hour weekly sessions were reduced to six two-hour sessions per year and then further reduced to four two-hour sessions per year. For a brief period after the City Court had upheld the first applicant’s claim, they had been extended to 3 hours 3 times weekly. [↑](#footnote-ref-7)
8. It is not disputed that, formally, the procedure before the Board (composition of the board, holding of an oral hearing, presence of the first applicant who was legally represented, number of witnesses heard - § 40 of the majority judgment) and the City Court (§ 47 of the majority judgment) complied with the implicit procedural requirements of Article 8 of the Convention (§§ 111 – 112 of the majority judgment). See further below, however, on the assessment of evidence. [↑](#footnote-ref-8)
9. See, in particular, §§ 102 – 110 of the majority judgment. [↑](#footnote-ref-9)
10. See note 2 above, *Görgülü*, cited above, § 50 or *Anayo v. Germany*, no. 20578/07, 21 December 2010, § 66. [↑](#footnote-ref-10)
11. See, for example, *K and T. v. Finland*, no. 25702/94, 12 July 2001, §§ 154-155; *Görgülü*, cited above, § 42, or *Johansen*, cited above, § 64. See also §§ 104 and 110 of the majority judgment. [↑](#footnote-ref-11)
12. See, for example, *Y.C. v. the United Kingdom*, no. 4547/10, 13 March 2012, § 138, and §§ 102, 107 and 110 of the majority judgment which refer to the need for relevant and sufficient reasons. [↑](#footnote-ref-12)
13. See *Scozzari and Giunta v. Italy*, no. 39221/98, 13 July 2000, § 169 and *K. and T. v. Finland*, cited above, § 178. On the best interests of the child, see further below. [↑](#footnote-ref-13)
14. *K. and T. v. Finland*, cited above, § 155. [↑](#footnote-ref-14)
15. See *Y.C*., cited above, § 136. [↑](#footnote-ref-15)
16. See, variously, *Johansen*, cited above, § 78; *Gnahoré*, cited above, § 59, or *Pontes v. Portugal*, no. 19554/09, 10 April 2012, § 79. [↑](#footnote-ref-16)
17. *Görgülü*, cited above, § 41 and § 43. [↑](#footnote-ref-17)
18. See also *Johansen*, cited above, § 79. Indeed the majority judgment appears later to recognise this and relies on the legitimacy of placement in care as a basis for suggesting adoption could have legitimately been considered by the domestic authorities as preferable to continued, long-term foster care (§§ 121 and 123). [↑](#footnote-ref-18)
19. See, inter alia, *K. and T. v. Finland*, cited above, § 178. [↑](#footnote-ref-19)
20. In *Aune v. Norway*, no. 52502/07, 28 October 2010, §§ 76-78, where the Court referred to the domestic courts’ findings regarding the “great, almost absolute, certainty” that the openness of the adoptive parents to contact would continue. That openness, which had already been established, meant that the biological mother was therefore not prevented from maintaining a relationship with her child. [↑](#footnote-ref-20)
21. See, for example, *I.D. v. Norway* (dec.), 4 April 2017 (visiting rights of 4 hours, 3 times a year); *T.S. and J.J. v. Norway* (dec.), no. 15633/15, § 5, 11 October 2016 (visiting rights of 4 hours, twice a year, albeit for a grandmother but one who had to travel from Poland to visit the child of her deceased daughter), or *J.M.N. and C.H. v. Norway* (dec.), 11 October 2016 (visiting rights of 2 hours, 3 times a year). [↑](#footnote-ref-21)
22. See, in this regard, *Görgülü*, cited above, §§ 46 and 48; *Pontes*, cited above, § 80; *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 102, CEDH 2000-I, or *Maire v. Portugal*, no 48206/99, § 74, CEDH 2003-VI. [↑](#footnote-ref-22)
23. See the facts described in Section II above and §§ 7 – 18 of the majority judgment. [↑](#footnote-ref-23)
24. Contrast with the clear description of the vulnerabilty of the adoptive child in *Aune*, cited above; the special needs of the child placed in care in *T.S. and J.J.*, cited above, § 5, or the vulnerability and special needs of both parents and child in *J.M.N. and C.H*., cited above, §§ 3-10. [↑](#footnote-ref-24)
25. Contrast the statements of the Board, reproduced at § 41 of the majority judgment, with the reports from the family centre, § 10, the child psychiatry clinic, § 12 and the testimony of the family consultant, § 25. [↑](#footnote-ref-25)
26. See the assessment of the Court in *Görgülü*, cited above, §46: “that court does not appear to have examined whether it would be viable to unify [X] and the applicant under circumstances that would minimise the strain put on [X]. Instead, the Court of Appeal apparently only focussed on the imminent effects which a separation from his foster parents would have on the child, but failed to consider the long-term effects which a permanent separation from his natural father might have on [X]. The solution envisaged by the District Court, namely to increase and facilitate contacts between the applicant and [X], who would at an initial stage continue to live with his foster family, was seemingly not taken into consideration. The Court recalls in this respect that the possibilities of reunification will be progressively diminished and eventually destroyed if the biological father and the child are not allowed to meet each other at all, or only so rarely that no natural bonding between them is likely to occur”. See also *Anayo*, cited above, § 71. [↑](#footnote-ref-26)
27. *Mandet v. France*, no. 30955/12, 14 January 2016, §§ 56-57. [↑](#footnote-ref-27)
28. See §§ 62-63 of the majority judgment. [↑](#footnote-ref-28)
29. See *Johansen*, cited above, §§ 83-84 and also *Pontes*, cited above, § 96 for the need to reconsider changed family circumstances. [↑](#footnote-ref-29)
30. See *I.D.*, cited above, § 65 (emphasis added). [↑](#footnote-ref-30)
31. See similarly *Pontes*, cited above, § 96 for a contradictory assessment of a family situation. [↑](#footnote-ref-31)
32. See *Görgülü*, cited above, § 48 and other authorities. [↑](#footnote-ref-32)
33. See § 51 of the majority judgment. [↑](#footnote-ref-33)
34. The fact that this conflict is unexceptional is also reflected in the fact that the first applicant can introduce a complaint on behalf of her biological child before a Court whose judgment confirms the ending of their social and legal relationship. As § 81 of the majority judgment recognises in the context of admissibility, citing *Scozzari and Giunta*, “minors can apply to the Court even, or indeed especially, if they are represented by a mother who is in conflict with the authorities and criticises their decisions and conduct as not being consistent with the rights guaranteed by the Convention.” [↑](#footnote-ref-34)
35. For a depiction of similar opposing interests which also proved fatal to a biological parent’s claim (although the circumstances of the case were very different) see *R. and H. v. the United Kingdom*, no. 35348/06, 31 May 2011, § 88: “once the domestic courts had concluded that adoption was in N’s best interests, they were also entitled to conclude that any reasonable parent who paid regard to their child’s welfare would have consented to the adoption”. [↑](#footnote-ref-35)
36. See, *inter alia*, the first applicant’s submissions to the City Court, § 45 of the majority judgment. [↑](#footnote-ref-36)
37. See also the arguments of the applicant in *Johansen*, cited above, § 74. [↑](#footnote-ref-37)
38. See, for example, *Vojnity v. Hungary*, no. 29617/07, 12 February 2013, §§ 42-43, although the case concerned a complaint relating to Article 14 and 8 combined. [↑](#footnote-ref-38)
39. See, for example, *Kacper Nowakowski v. Poland*, no. 32407/13, 10 January 2017, § 89. [↑](#footnote-ref-39)