



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

THIRD SECTION

CASE OF R.M.S. v. SPAIN

(Application no. 28775/12)

JUDGMENT
(Extracts)

STRASBOURG

18 June 2013

FINAL

18/09/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of R.M.S. v. Spain,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Corneliu Bîrsan,

Luis López Guerra,

Nona Tsotsoria,

Johannes Silvis,

Valeriu Grițco, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 28 May 2013,

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

PROCEDURE

1. The case originated in an application (no. 28775/12) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Spanish national, Ms R.M.S. (“the applicant”), on 2 May 2012. The President of the Section decided of his own motion that the applicant's identity should not be disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Ms M.J. López Góngora, a lawyer practising in Granada. The Spanish Government (“the Government”) were represented by their Agent, Mr F. de A. Sanz Gandasegui, Government legal adviser, Head of the Legal Department of Human Rights, Ministry of Justice.

3. The applicant alleged a violation of Articles 8 and 14 of the Convention, contending that she had been deprived of all contact with her daughter and separated from her without valid reason.

4. On 9 July 2012 the Government were given notice of the application. It was also decided that the Chamber would rule on the admissibility and merits at the same time (Article 29 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and lives in La Porrosa (Chiclana de Segura, Jaén).

A. Background to the case and placement of child G. in a children's home

6. The applicant, the daughter of a Guinean father and a Spanish mother, was living at the time of her daughter G.'s birth, on 3 October 2001, within a mutually supporting extended family. The family unit comprised her grandmother, her great-uncle (her grandmother's brother, a lawyer by profession), and the applicant's other two children. Also living temporarily in the family home (two adjoining houses) were a Guinean priest and the godfather of two of the applicant's children. The property is situated on an olive-producing farm belonging to and run by the applicant's grandmother. The applicant is also regularly hired by the Government of the Autonomous Region of Andalusia as an agricultural worker, an activity which she combines with other farm work, particularly grape-picking in France.

7. In order to avoid having to take her two eldest sons to France with her, the applicant appointed her great-uncle to look after them until her return. The two children are officially under the guardianship of the Jaén provincial office and placed in the foster care of their mother's great-uncle, within the extended family. The applicant has not objected to this situation, as the children live in practice with her and the remainder of the extended family on the farm.

8. On 23 August 2005 the applicant and her partner, accompanied by their minor daughter G., visited the social services department of the municipality of Motril (Granada) looking for "work, food and housing". The same day – at the request of A.L.N., a social worker with the child protection services of the Granada provincial office for equality and social welfare (hereafter "the provincial office"), who had called the police because of the applicant's agitated state – child G., then aged three years and ten months, was taken away from her mother and placed in the *Nuestra Señora del Pilar* children's home in Granada. Her mother was taken to hospital on account of her nervous state following the separation from her daughter.

9. On 25 August 2005 the provincial office began the administrative procedure to have G. declared legally abandoned, and issued a provisional declaration to that effect. The decision cited, among other factors, the applicant's lack of funds (her state of extreme financial hardship), the child's situation and lack of hygiene, the fact that she was inappropriately dressed

for the summer weather, her dry skin, marked with scars and scratches, and her anxiety about food. The provincial office assumed guardianship of the child, ordered her placement in the aforementioned children's home and informed the applicant that she could apply for legal aid if she wished to appeal against that decision to the first-instance judge.

10. On 26 August 2005 the applicant requested the Motril social services department to return her daughter to her. She also visited the department the following day and again on 30 August. The child protection services informed her that contact with her daughter would not be recommended until such time as the applicant began psychiatric treatment. The applicant claimed that the social workers had offered her money (see paragraph 16 below).

11. A report dated 29 August 2005 prepared by the *Nuestra Señora del Pilar* children's home stated that the child's "overall condition [was] acceptable", noting simply that her skin was dry, with minor scars and cuts caused by scratching. According to a subsequent report dated 1 September 2006 prepared by the *San Ramón y San Fernando* children's home in Loja (Granada) (see below), the child was suffering from atopic seborrhoeic dermatitis.

12. On 30 August 2005 the applicant was informed that the provincial office was assuming guardianship of G. and that she was being placed in the *Nuestra Señora del Pilar* children's home in Granada. The applicant was also informed of the possibility of appealing against that measure to the first-instance judge. She was told that no contact visits with her daughter would be recommended until such time as she began psychiatric treatment. The mental health team told her on 5 September 2005 that she was not in a position to look after her daughter, but that supervised visits could be arranged.

13. According to the "observation and initial reception" report drawn up by the *San Ramón y San Fernando* children's home in Loja on 30 October 2005, G. had been moved to the home on 14 September 2005. The applicant was not informed and did not give her consent. Some witnesses claimed that the child had been moved there on 13 September 2005.

14. On 23 September 2005 the applicant requested the provincial office to transfer her daughter to the Linares (Jaén) children's home, which was closer to where the applicant lived.

15. The last of three supervised meetings between the applicant and her daughter following the latter's placement was held on 27 September 2005. The meetings took place away from the children's home and were supervised by carers and by the police. The applicant stated that the other two meetings had taken place on 6 and 20 September 2005. According to the applicant's account, her daughter told her at one of these meetings that she had been taken to a house with a swimming pool. The applicant has not seen her daughter since.

16. In a report dated 4 October 2005, social worker A.L.N. noted the applicant's inappropriate attitude – described as disrespectful, “violent” and aggressive – and stated that the applicant had attempted to harm herself and had had to be taken to hospital when her daughter was taken from her. A.L.N. said that the applicant had been informed of the steps likely to be taken to ensure her daughter's welfare on account of the applicant's lack of means. A.L.N. expressed the view that the temporary fostering of G.'s two brothers by the applicant's great-uncle should be discontinued on the (unsubstantiated) grounds that the latter was not suited to the task. She noted in her report that the applicant travelled every day to the vicinity of the *Nuestra Señora del Pilar* children's home, where the child protection services had put in place a provisional arrangement consisting of three visits supervised by carers and by the police, away from the home, “in anticipation of possibly violent conduct” on the part of the applicant. The social worker stated in her report that the applicant had been given an unspecified sum of money in order to travel to Majorca and to Madrid. According to the social worker, the applicant had at first asked for the money but then refused it, throwing it on the ground. She had subsequently asked for money again, this time to travel to Granada, but had returned it three hours later out of a sense of pride. According to the report, during the three supervised visits the applicant had encouraged G. to continue crying and shouting in order to get what she wanted, had constantly accused the professionals of not providing her daughter with the appropriate assistance, had spoken to her daughter in a compulsive and incoherent manner, had not accepted the visiting hours and had screamed when the end of the visits approached, threatening also to take photographs in order to publicise the situation in a television programme. Describing the applicant's conduct during her visits to the *Nuestra Señora del Pilar* children's home as “violent”, and taking the view that it was disrupting the child's stability and development, A.L.N. proposed suspending the visits and moving G. to a different home, the address of which should not be disclosed to the applicant.

17. On 5 October 2005 the provincial office took a decision confirming G.'s provisional legal status as an abandoned minor and placing her in the *San Ramón y San Fernando* children's home in Loja (see paragraph 13 above). It was also decided to seek a court order suspending visits, and, pending the order, to temporarily suspend all communication between the applicant and her daughter, in the latter's interests, and not to provide the applicant with any information on G.'s whereabouts. The decision informed the applicant of the possibility of applying for legal aid should she wish to appeal against the decision to the first-instance judge.

18. On 4 October and 22 November 2005 the applicant again applied to the provincial office seeking to have her daughter moved to the Linares children's home and requesting contact rights.

19. Between 22 November 2005 and 31 January 2006 the applicant approached the provincial office on at least seventeen occasions asking to see her daughter. She complained of the lack of information concerning her daughter, and in particular of the refusal of the lawyer representing the provincial office to explain the reasons behind the declaration that her daughter had been abandoned. The applicant was not allowed any contact with her daughter and has not received any information about her since.

B. Administrative procedure leading to declaration of abandonment and placement with a foster family

20. On 27 October 2005 the Government of the Autonomous Region of Andalusia applied to the Granada first-instance judge no. 3 to have the contact visits suspended (a provisional decision having already been taken).

21. On 2 November 2005 the administrative proceedings were stayed at the request of the Granada Bar so that a legal-aid lawyer could be appointed to represent the applicant. A lawyer was appointed on 20 January 2006 and made representations on the applicant's behalf on 23 January 2006.

22. In a decision of 1 February 2006 the provincial office officially declared the child to have been abandoned, in view of “the poor prospects for improvement [of the family's situation] and hence for reunification of mother and child”, and decided to initiate the procedure for placing G. in pre-adoption foster care. The decision stressed (without citing any supporting reports) that the applicant's great-uncle was not a suitable candidate for fostering G., and reiterated the findings made in the previous reports. It also referred, without elaborating further, to the “mother's mental health” and her “moderately manic state”, and considered it significant that the applicant, on the numerous occasions when she had visited, “[had] displayed no interest, either orally or in writing, in the child's well-being”. The prohibition on contact visits was kept in place. The applicant was informed of the possibility of applying for legal aid should she wish to appeal against the decision.

23. On 2, 6 and 15 February 2006 the applicant again requested the provincial office to allow her to visit her daughter and expressed her opposition to G.'s placement in pre-adoption foster care, arguing that the reasons given for taking her daughter from her had no basis in reality. On the last of these dates she reported the situation to the Spanish Ombudsman's Office.

24. On 16 February and 2 March 2006 the applicant again approached the provincial office requesting contact with and information about her daughter.

25. On 10 January 2007 the provincial office's protective measures committee upheld the provisional declaration that G. had been abandoned.

26. On 22 January 2007 the social worker A.L.N. sent an e-mail to the Red Cross asking them to trace the applicant and to check on the situation of her fourth child, a baby. She stated that the applicant's eldest two children had been placed in foster care with one of the applicant's great-uncles and that G. had "been adopted" by a family who were also prepared to adopt the applicant's baby. She estimated the latter to be around nine months old, noting that the applicant "[had been] pregnant over a year ago". She said that the applicant had "undiagnosed mental health problems" and was likely to "be in France, with the baby and her current partner, a French citizen".

C. Judicial proceedings to appeal against the declaration of abandonment and the suspension of contact visits (no. 1278/05)

27. On 31 January 2006 the Granada first-instance judge no. 3 decided to join the proceedings concerning the appeal against the child protection measures and the proceedings on the suspension of contact visits.

28. On 28 November 2006 the applicant, represented by a lawyer, contested the legal declaration of abandonment adopted by the provincial office, claiming that she was living in France with her partner and receiving monthly payments of 836.87 euros.

29. On 3 May 2007 a hearing was held before the Granada first-instance judge no. 3 concerning the declaration of abandonment. The prosecutor responsible for minors requested the judge to uphold the declaration that G. had been abandoned.

30. In a judgment of 18 May 2007 reiterating the arguments set out in the provincial office's decision of 25 August 2005 concerning G.'s abandonment, issued two years previously, the Granada first-instance judge no. 3 rejected the appeal against the declaration of abandonment and held that the child could return to the family home if the family's situation improved. The judge upheld the guardianship order and the order placing the child in residential care. He stated as follows:

"... 2. In the light of the submissions, it is apparent that when the authorities intervened there were ample grounds for declaring child G. to have been abandoned. It is clear beyond dispute from the administrative file that, whether as a result of ignorance, other impediments, lack of social skills or any other reason, including possible mental illness (although it should be said that the mother did not cause or seek to bring about this situation), the child was in a state of wholesale physical and psychological neglect. Her appearance was very dirty, she wore clothes that were inappropriate for the summer weather and her skin was dry and marked with scars and scratches. She said that she lived among the reeds (*en las cañas*), speaking of them as if they were her house; she also displayed anxiety about food and was receptive to any sign of affection. This provided ample justification for automatically placing her under guardianship and declaring her to have been abandoned. The child's situation is not new since both her older brothers are in foster care with a great-uncle owing to the risks to which they were being exposed. The file does not contain any objective evidence to suggest that the appeal [against the declaration of abandonment] should be

allowed, particularly bearing in mind that a possible error could be damaging to the child, who deserves all possible protection, and that this consideration must prevail over any other interests.”

The judge refused to put in place the schedule of contact visits requested by the applicant, on the grounds of “the child's lack of emotional attachment to her mother and [the fact that] the latter's violent conduct during the visits [was] disruptive to the child's stability and development.”

31. Following an appeal by the applicant, the Granada *Audiencia Provincial*, in a judgment of 27 June 2008, upheld the impugned judgment. The court pointed out that the aim of the proceedings had been to uphold or overturn the decision by the administrative authorities declaring G. to have been abandoned. The child's placement in care could be reviewed in the course of the appropriate administrative or judicial proceedings, which the applicant could institute if her situation changed. The judgment upheld the prohibition on contact visits between the applicant and her daughter and the residential care order.

D. Judicial proceedings concerning G.'s placement in pre-adoption foster care (no. 74/07) and the appeal against the placement order (no. 2188/07)

32. On 1 February 2006 the provincial office submitted its report setting out the reasons for the proposal to place the child in pre-adoption foster care. The same day the proceedings were stayed pending the appointment of a lawyer for the applicant.

33. On 2 April 2006 a couple was chosen as foster parents for the child. On 9 June 2006 the provincial office's protective measures committee began the administrative procedure to have G. placed with a foster family.

34. On 14 February 2007 the provincial office ordered G.'s temporary placement in pre-adoption foster care, on the following grounds:

“ On 25 August 2005 it was decided to issue a provisional declaration that the child had been abandoned, and a residential care order, on the grounds set out above.

In view of the seriousness of the allegations against the child's mother, the fact that the father's whereabouts are unknown, the mother's provocative and aggressive attitude and the inconsistency of her statements on her visits to our departments, a report on her state of health was requested in order to assess the possibility of putting contact arrangements in place. On 5 September 2005 it was decided that the mother was not capable of looking after her daughter but that she could meet her under supervision.

Three visits took place away from the centre where the child is living, under the supervision of carers and police officers. The incidents occurring during those visits, the fact that the mother is frequently seen in the vicinity of the home, her behaviour, the assessment of the mother-daughter relationship and the overall developments in this case led to a decision being taken on 4 October 2005 to suspend contact visits on a temporary basis and to move the child to a different home.

The documents in the file show that the child's mother has two other children who have been abandoned and are under the guardianship of the Jaén provincial office, that no member of the extended family (up to the third degree of kinship) is able to take care of the child and that the great-uncle who was put in charge of the other two children, first on a temporary basis and then as a foster carer, is overburdened. The information in the file leads us to conclude that the prospects for improvement in the family's situation and reunification of the child with her mother are poor.

The mother regularly complains to our departments about all kinds of irregularities on the part of the officials who are involved or have been involved in this case (health care workers, members of the judiciary, police officers, municipal social services, the protection service, children's homes, etc.), while at the same time refusing to sign acknowledgements of receipt, to submit the documents requested and to prove or seek proof that the information in the file is inaccurate. Furthermore, she denies all of the above as well as the failings identified, the risks run by the child and her own instability. She does not attend her appointments at the mental health centre. It is significant that in the course of her repeated visits she has never attempted to find out, either face-to-face or in writing, how her daughter is getting on.

We are thus dealing with a child whose father cannot be traced, who cannot be taken care of by the person already looking after her two brothers, and whose mother – who appears to have another child under the guardianship of the French authorities – is once again pregnant. The prospects for reunification of the birth family in the foreseeable future are poor. All of the above considerations, in addition to the need for the child to live in an appropriate family environment and to avoid a prolonged stay in institutional care, justify continuing the procedure and making lasting foster care arrangements with a view to adoption ... ”

35. As the applicant refused to consent to G.'s placement, the child protection services issued a proposal on 23 March 2007 for the foster care arrangements to be put in place by means of a court order, with the child being placed in temporary foster care in the meantime.

36. On 2 October 2007 the applicant, represented by a lawyer, brought judicial proceedings to appeal against the decision of 23 March 2007 to place her daughter in pre-adoption foster care.

37. After a long series of procedural setbacks, a hearing took place on 28 July 2009 before the Granada first-instance judge no. 16. The applicant objected to any form of pre-adoption foster care for her daughter and instead requested that G. be placed in permanent foster care with the applicant's great-uncle and that she should have contact rights. The applicant also challenged the declaration that G. had been abandoned, approved by the first-instance judge no. 3.

38. The prosecutor responsible for minors supported the applicant's appeal against G.'s placement in pre-adoption foster care.

39. In a judgment of 4 September 2009 the Granada first-instance judge no. 16 upheld the foster care arrangements proposed by the child protection services on 23 March 2007. He did not allow the applicant's great-uncle to appear as a witness, and rejected the alternative proposal to place the child in foster care with him, taking the view that the applicant's great-uncle was not a suitable candidate for fostering children. As to the declaration of

abandonment in respect of G. issued by the Granada first-instance judge no. 3 and upheld on appeal, the judge did not examine it and pointed out that the decision of the first judge was final and that proceedings would have to be brought in the event of a change in circumstances. However, with regard to the alleged change in circumstances since the time of the declaration of abandonment, the judge noted that the applicant had stated “[that she] grew olives, worked on the land and worked for part of the year in France, was a good mother and could live with her children, was capable of it and had family very close by”. The judge took the view, referring to “technical reports” which he did not cite, that “this testimony, given by members of [the applicant's] family and neighbours, [did] not by itself demonstrate that [she was] once again competent to raise the child”. The judge noted the following:

“... the child, who is almost eight, has had no contact with her mother for several years, as contact visits were suspended following a court order. All this indicates that in the interests of the child the most suitable guardianship measure is the one already adopted, consisting of pre-adoption foster care, notwithstanding the fact that the prosecutor responsible for minors supported the applicant's claims and requested that [her] objections be taken into account.”

40. The applicant, represented by her lawyer, appealed against the judgment of 4 September 2009.

41. The prosecutor responsible for minors supported the applicant's appeal.

42. On 18 December 2009 the applicant submitted a psychological expert report stating that she was capable of looking after her daughter.

43. In a judgment of 18 June 2010 the Granada *Audiencia Provincial* upheld the first-instance judgment. It pointed out that the object of the appeal against the foster care decision had not been to challenge the declaration of abandonment, but to demonstrate that the reasons for it had ceased to exist and that a radical change had occurred in the behaviour, habits and lifestyle of the birth parents which justified returning full parental responsibility to them, and at the same time to provide irrefutable evidence that the child's return to the family would be clearly beneficial to her. The judgment referred to the assessment of the evidence by the first-instance judge no. 16 and noted, among other things, that the psychological expert report submitted by the applicant on 18 December 2009 contained only information provided by the applicant herself, such as her supposed ability to look after her children, without explaining why two of her other children had been placed in foster care with her great-uncle. The judgment further observed that the report, while stating that the applicant did not suffer from any mental illness or disability, had noted her impulsive and irascible nature. Likewise, notwithstanding her assertion that she spoke three languages, the applicant had not attempted to make use of those skills, living in a situation of social and professional isolation which forced her to

emigrate or move around in order to find work. In any event, the *Audiencia Provincial* took the view that there was no “convincing evidence in the report that the risk of a recurrence of the lack of attention to her minor daughter which led to the declaration of abandonment [had] ceased to exist”. The court considered that the witnesses called by the applicant to testify to her capacity to have her children living with her “[had] not provide[d] any evidence of her social and professional stability and of an absence of risk for the child, still less [had] they demonstrated how the child would benefit from being returned to her original family”.

44. The applicant appealed on points of law. The appeal was declared inadmissible by the Granada *Audiencia Provincial* on 27 July 2010.

45. Relying on Article 15 (right to physical and moral integrity) (in relation to her daughter) and Article 24 (right to a fair hearing) of the Constitution, and on Articles 8 and 14 of the Convention, the applicant lodged an *amparo* appeal with the Constitutional Court. In a decision of 27 October 2011, served on 3 November 2011, the Constitutional Court declared the appeal inadmissible as lacking the special constitutional significance required by section 50(1)(b) of the Constitutional Court Act.

46. In the meantime, in decisions dated 18 October and 1 December 2010, the Granada first-instance judge no. 16 confirmed the status of G.'s foster parents as her pre-adoption foster family.

47. A follow-up report on the foster family dated 29 March 2011 noted that G. was fully integrated within the family, with whom she had been living since 16 February 2007, and within the extended family. The report noted that G. had attained the level of physical and motor development appropriate for her age and had made progress in terms of her maturity and adaptation as well as her ability to concentrate, and that there had been no deterioration in her school performance. She was in a normal and secure environment within her foster family, who met all her material and emotional needs.

E. Adoption proceedings (no. 599/2011) and proceedings to appeal against the child protection measures (no. 156/2010)

48. On 11 April 2011 the Granada child protection services submitted a proposal to the Granada first-instance judge no. 16 for G. to be adopted by her foster family.

49. On 14 April 2011 the judge declared the adoption proceedings open.

50. On 14 June 2011 the proceedings were stayed at the applicant's request. On 13 March 2012 the same judge set case no. 156/2010 down for hearing on 24 April 2012.

51. In a report of 28 September 2012 addressed to the Government after they had been given notice of the present application, the Granada child protection services summed up the background to the separation and G.'s

placement in the children's homes and subsequently in pre-adoption foster care, reiterating the arguments set forth in the original report of 4 October 2005 (see paragraph 16 above) and noting, among other things, “the defiant and provocative attitude of the applicant during her numerous visits to the child protection services, her persistent complaints against officials of the health services, the police, the social services and the protection centres ..., refusing to submit the documents requested by our departments and showing no interest in the child's well-being”. They also referred to the report of 25 March 2011, stating that “the emotional and family ties that have been created and continue to develop must be reflected in and consolidated by the legal situation, with the result that adoption would be the most appropriate means of ensuring the child's needs and interests”.

52. The Court was not informed of the subsequent progress of the adoption proceedings. According to the information provided by the Government on 5 February 2013, the child had not yet been adopted.

...

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

56. The applicant alleged that she had been deprived of all contact with her daughter and separated from her without valid reason. She maintained that the administrative authorities had decided to place her daughter in pre-adoption care before the domestic courts had even ruled on whether she had been abandoned. She relied on Article 8 of the Convention, which provides:

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

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

...

B. Merits

1. The parties' submissions

(a) The applicant

64. The applicant contested the reasons given by the administrative authorities for taking her child away from her. She submitted that she had always worked and that she and her partner had sufficient income to meet her daughter's needs.

With regard to her daughter's health, the applicant submitted that since September 2006 at least, the administrative authorities had known that G. had atopic seborrhoeic dermatitis (see paragraph 11 above); she and her two other children also had very dry skin in spite of treatment with various creams. In her view, therefore, the authorities' acceptance of that argument in approving G.'s placement with a foster family had been spurious. The applicant also furnished a vaccination certificate showing that G.'s vaccinations were up to date.

As to her two sons, the applicant referred to the information set out at paragraph 7 above and denied that she had abandoned them.

With regard to her conduct on her visits to the Granada children's home, as described in the decision of 5 October 2005, the applicant noted that even if the description were accurate – which she denied – it was of no relevance, since the child had in any case been in the Loja children's home (58 km from Granada) since 13 September 2005. Lastly, she asserted that the undiagnosed mental illness attributed to her was non-existent, referring in that regard to the report of 18 December 2009 which she had submitted in the domestic proceedings (see paragraph 40 above). In view of the foregoing, the applicant submitted that some of the administrative officials had been biased in favour of separating her from her daughter and even taking her unborn child from her. Her feelings of despair, powerlessness and anxiety were therefore understandable. Even assuming that problems had been observed in the way in which she was bringing up her child, the applicant took the view that the administrative authorities should have assisted her in overcoming them.

65. In the applicant's view, the administrative authorities had unjustly deprived her of all contact with her daughter, attempting to sever the ties between them. She further complained that the domestic courts had refused to examine the irregularities in the administrative proceedings, and pointed out that the prosecutor responsible for minors had supported her appeals.

(b) The Government

66. The Government conceded that the right of parents not to be separated from their children, unless this was justified in the child's interests, formed part of the right to respect for private and family life. They

cited in that connection the judgment in *K.A.B. v. Spain* (no. 59819/08, 10 April 2012, §§ 95-96). They further observed that the Court's task was not to take the place of the domestic authorities, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation. They referred in that regard to the case-law set forth in paragraph 71 below.

67. The Government noted that, having become aware of the child's situation, the administrative authorities had requested the courts to declare her to have been abandoned. Referring to the first-instance judgment of 18 May 2007, the relevant parts of which are set out at paragraph 30 above, they submitted that the administrative authorities had not taken that decision in an arbitrary manner or without justification. The Government observed that the administrative inquiries had shown that G.'s mother was not in a position to look after her. The possibility of placing the child in foster care within the extended family, which had at first been considered, had subsequently been rejected because the applicant's great-uncle was already overburdened. In the absence of any other options the administrative authorities had taken the decision to place the child with a foster family, a decision that had subsequently been endorsed by the courts. The mother had been represented by a lawyer throughout the judicial proceedings and her testimony had been taken into consideration, as had the evidence that had been adduced. The facts had been examined by the domestic courts in a completely non-arbitrary manner and all the decisions had been duly accompanied by reasons. In the Government's view, the child's abandonment had been genuine and had warranted the intervention of the administrative authorities, a fact subsequently acknowledged by the domestic courts. That situation had been unchanged when the applicant's appeal against her daughter's placement had been examined.

2. The Court's assessment

68. The Court reiterates that the enjoyment by parent and child of each other's company constitutes a fundamental element of family life (see *Buscemi v. Italy*, no. 29569/95, § 53, ECHR 1999-VI, and *Saleck Bardi v. Spain*, no. 66167/09, § 50, 24 May 2011, § 49).

(a) General principles concerning the positive obligations of the respondent State under Article 8 of the Convention

69. As the Court has repeatedly held, although the object of Article 8 is essentially to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference. While a decision by the competent authority resulting in a child being taken into care constitutes interference with a parent's right to respect for his or her family life (see *W. v. the United Kingdom*, 8 July 1987, § 59, Series A no. 121), the positive obligations inherent in the right to

effective respect for private life may involve the adoption of measures even in the sphere of the relations of individuals between themselves (see *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no. 91, and *Mincheva v. Bulgaria*, no. 21558/03, § 81, 2 September 2010). In both cases, regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole, and in both contexts the State enjoys a certain margin of appreciation (see *Saleck Bardi*, cited above, § 50, and *K.A.B. v. Spain*, cited above, § 95).

70. The Court reaffirms the principle, well-established in its case-law, according to which the Convention is intended to guarantee rights that are practical and effective (see, *mutatis mutandis*, *Artico v. Italy*, § 33, Series A no. 37). It reiterates that its task is not to substitute itself for the domestic authorities, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation.

71. The Court takes into consideration the fact that it is an interference of a very serious order to split up a family. Such a step must be supported by sufficiently sound and weighty considerations in the interests of the child (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 148, ECHR 2000-VIII). It has repeatedly held that Article 8 includes a parent's right to the taking of measures with a view to his or her being reunited with the child and an obligation on the national authorities to take such action (see, for example, *Eriksson v. Sweden*, 22 June 1989, § 71, Series A no. 156, and *Olsson v. Sweden (no. 2)*, 27 November 1992, § 90, Series A no. 250). Taking a child into care should normally be regarded as a temporary measure to be discontinued as soon as circumstances permit, and any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child (see *K. and T. v. Finland* [GC], no. 25702/94, § 178, ECHR 2001-VII). The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child. Furthermore, the positive obligations are not confined to ensuring that children can rejoin their parents or have contact with them, but also extend to all the preparatory steps to be taken to that end (see, *mutatis mutandis*, *Kosmopoulou v. Greece*, no. 60457/00, § 45, 5 February 2004, and *Amanalachioai v. Romania*, no. 4023/04, § 95, 26 May 2009).

It is the Court's task to assess whether the Spanish authorities acted in breach of their positive obligations under Article 8 of the Convention (see *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A; *Mikulić v. Croatia*, no. 53176/99, § 59, ECHR 2002-I; *P., C. and S. v. the United Kingdom*, no. 56547/00, § 122, ECHR 2002-VI; *Evans v. the United Kingdom* [GC], no. 6339/05, § 76, ECHR 2007-IV; and *K.A.B. v. Spain*, cited above, § 98).

72. Each Contracting State must equip itself with an adequate and sufficient legal arsenal to ensure compliance with the positive obligations imposed on it under Article 8 of the Convention, and it is for the Court to ascertain whether the domestic authorities, in applying and interpreting the applicable legal provisions, secured the guarantees set forth in Article 8 of the Convention, particularly taking into account the child's best interests (see, *mutatis mutandis*, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 141, ECHR 2010, and *K.A.B. v. Spain*, cited above, § 115).

(b) Application of these principles in the present case

73. The Court notes that on 23 August 2005 the applicant's daughter, G., who was aged three years and ten months at the time, was separated from her mother, who had visited the Motril social services department with her partner and their daughter to request assistance because of their difficult financial circumstances. Two days later, on 25 August 2005, the provincial office made a provisional finding that the child had been abandoned. On 30 August 2005 the applicant was informed that the provincial office was assuming guardianship of her daughter and that the latter was being placed in the *Nuestra Señora del Pilar* children's home in Granada. The Court observes that the child was transferred to a children's home in Loja (see paragraph 13 above) without the applicant being informed and without any response being given to the applicant's requests for her daughter to be transferred to a home closer to where she lived. It notes that the applicant saw her daughter for the last time on 27 September 2005.

74. In a case such as the present one the courts are faced with interests that are often difficult to reconcile, namely the interests of the child and those of its mother. In the pursuit of a balance between these different interests, the child's best interests must always be a paramount consideration (see *Moretti and Benedetti*, no. 16318/07, § 67, 27 April 2010).

75. In the instant case the Court observes that the administrative authorities, in finding that the child had been abandoned, cited the lack of resources of the applicant, who was experiencing extreme financial hardship (see paragraph 9 above). On the basis of these considerations, on 25 August 2005, the provincial office initiated an administrative procedure culminating in a provisional declaration that G. had been legally abandoned. The child was placed under the guardianship of the administrative authorities and placed in a children's home. According to the information available to the Court, the decision to place the child in the home, and the subsequent decisions to withdraw the applicant's contact rights once and for all and transfer the child to another home, were taken on the basis of the report of 4 October 2005 by the social worker A.L.N. (see paragraph 16 above). That report referred to the inappropriate and disrespectful attitude of the applicant, who had been taken to hospital on learning that her daughter was to be taken away from her because of her situation of extreme financial

hardship. A.L.N. stated in her report that the applicant was seen on a daily basis in the vicinity of the home where her daughter was staying. The social worker proposed suspending the provisional supervised contact arrangements that had been put in place, and her proposal was acted upon. The applicant was not informed of that measure nor was she told to which home her daughter had been transferred. A.L.N. added that the mother had been given a sum of money.

76. The Court observes that the decision adopted by the provincial office on 1 February 2006 (see paragraph 22 above), endorsing the finding that the child had been abandoned, reiterated word for word the arguments set out in its previous decision of 25 August 2005 and in the report of 4 October 2005 by the social worker A.L.N. The decision stated in that regard that the mother “[had] displayed no interest, either orally or in writing, in the child's well-being”. However, the Court notes that it is not disputed that the applicant went to the Granada children's home on at least seventeen occasions, despite the fact that the home was some distance from where she lived, and observes that she was not even informed that her daughter had left there on 13 or 14 September 2005 (see paragraph 13 above).

77. The administrative procedure for the child's placement in foster care commenced on 9 June 2006, the foster parents having been selected on 2 April 2006. However, the Court observes that, according to the applicant, her daughter had told her of being taken to a house with a swimming pool, which suggests that the foster parents had entered into contact with the child long before the date that was mentioned, that is to say, a few days after she was separated from her mother, and at all events prior to 27 September 2005, the date on which the applicant and her daughter saw each other for the last time. The applicant further stated that the social workers had offered her money, a circumstance also referred to in A.L.N.'s report of 4 October 2005 (see paragraph 16 above). The Court finds it strange that the report referred to the money, thus confirming the applicant's statements, without specifying the reasons why the money had been offered to her.

78. In so far as the applicant complained that the domestic courts had not examined the irregularities in the administrative proceedings, the Court observes that the question whether a parent's interests have been sufficiently protected in the decision-making process will depend on the specific circumstances of each case. It notes in that regard that during the proceedings before the first-instance judges and the *Audiencia Provincial*, the applicant was able to present submissions in support of her case, in the context of judicial proceedings in which she was represented by a lawyer, at least from 1 February 2006 onwards (see paragraph 32 above; see also paragraph 21 above as regards the administrative proceedings). Accordingly, the Court does not discern any failings attributable to the domestic courts in that regard.

79. The Court observes that, in cases concerning family life, the breaking-off of contact with a very young child may result in the progressive deterioration of the child's relationship with his or her parent (see, among other authorities, *Pini and Others v. Romania*, nos. 78028/01 and 78030/01, § 175, ECHR 2004-V (extracts), and *K.A.B. v. Spain*, cited above, § 103). This also holds true in the present case.

80. In view of these considerations, while reiterating that it is not its role to substitute its assessment for that of the relevant national authorities regarding the measures which should have been taken, since the authorities are in principle better placed to carry out such an assessment, the Court notes a serious lack of diligence in the procedure implemented by the authorities responsible for the child's guardianship, placement and possible adoption (see *K.A.B. v. Spain*, cited above, § 104).

81. In this connection and with reference to the obligation on the State to take positive measures, the Court has consistently held that Article 8 includes a parent's right to the taking of measures with a view to his or her being reunited with the child and an obligation on the national authorities to take such action (see, for example, *Eriksson*, cited above, § 71, Series A no. 156, and *Margareta and Roger Andersson v. Sweden*, 25 February 1992, § 91, Series A no. 226-A). In this kind of case, the adequacy of a measure is to be judged by the swiftness of its implementation (see *Maumousseau and Washington v. France*, no. 39388/05, § 83, 6 December 2007, and *Mincheva*, cited above, § 86).

82. The crucial question in the present case is thus whether the national authorities took all the necessary and appropriate measures that could reasonably be expected of them to ensure that the child could lead a normal family life within her own family, before placing her with a foster family with a view to her adoption.

83. In the circumstances of the case it is understandable that the social worker A.L.N. may have decided, in view of G.'s situation, to take the child into care and place her in a home. While this is an extremely serious step which has repercussions for both the child and his or her mother, the urgency of the situation and the best interests of the child may make such a decision necessary. However, the decision in question should have been followed swiftly by appropriate measures to examine in depth the child's situation and her relationship with her parents, while complying with the rules in force. The child was separated from her mother against the latter's wishes and immediately transferred to a home on the basis of a decision taken by the social worker A.L.N. This situation was especially serious given the age of the child, who was still under four. The Court is not persuaded by the reasons considered by the administrative authorities and the domestic courts as "ample justification for automatically placing [G.] under guardianship and declaring her to have been abandoned", in particular the child's allegedly serious condition, her supposed "lack of emotional

attachment” to her mother, and the claim that the latter's “violent conduct during contact visits [was] disrupting the child's stability and development” (see paragraph 30 above). The Court notes that no consideration was given at any stage of the administrative procedure to the fact that the child had been very young when she was separated from her mother, to the existing emotional bond between mother and child or to the length of time that had elapsed since their separation and the attendant consequences for both of them.

84. In contrast to other cases which the Court has been called upon to examine, the applicant's child in the present case had not been subjected to violence or to physical or psychological ill-treatment (see, conversely, *Dewinne v. Belgium* (dec.), no. 56024/00, 10 March 2005, and *Zakharova v. France* (dec.), no. 57306/00, 13 December 2005), or to sexual abuse (see, conversely, *Covezzi and Morselli v. Italy*, no. 52763/99, § 104, 9 May 2003). The courts did not note any lack of emotional development (see, conversely, *Kutzner v. Germany*, no. 46544/99, § 68, ECHR 2002-I), or any worrying health problems on the part of the child or psychological instability on the part of the parents (see, conversely, *Bertrand v. France* (dec.), no. 57376/00, 19 February 2002, and *Couillard Maugery v. France*, no. 64796/01, § 261, 1 July 2004). While it is true that in some cases declared inadmissible by the Court, the children concerned may have been placed in care because of unsatisfactory living conditions or material deprivation, this was never the sole reason on which the decision of the domestic courts was based, since other factors such as the psychological state of the parents or their inability to provide their child with emotional and educational support were also considered (see *Rampogna and Murgia v. Italy* (dec.), no. 40753/98, 11 May 1999; *M.G. and M.T.A. v. Italy* (dec.), no. 17421/02, 28 June 2005; and *Wallová and Walla v. the Czech Republic*, no. 23848/04, §§ 72-74, 26 October 2006).

85. In the present case the applicant's ability to provide her minor daughter, G., with educational and emotional support was not formally at issue, despite the fact that her two eldest children had been placed in the foster care of their mother's great-uncle within the extended family (see paragraph 7 above). The care order in respect of the applicant's child was made because of the applicant's difficult financial situation at the time, without any account being taken of subsequent changes in her circumstances. The Court considers that the applicant had simply been faced with a shortage of funds, a situation which the national authorities could have helped remedy by means other than the complete break-up of the family, a measure of last resort to be applied only in the most serious cases.

86. In the Court's view, the Spanish administrative authorities should have considered other less drastic measures than taking the child into care. The role of the social welfare authorities is precisely to help persons in difficulty who are not sufficiently familiar with the system, to provide them

with guidance and to advise them on matters such as the different types of benefits available, the possibility of obtaining social housing and other means of overcoming their difficulties, such as those originally sought by the applicant (see paragraph 8 above). The Court also observes that both the Granada first-instance judge no. 3, in his judgment of 18 May 2007, and the Granada *Audiencia Provincial*, in its judgment of 27 June 2008, refused to take into account the change in the applicant's financial circumstances which she sought to invoke in order to appeal against the declaration that her daughter had been abandoned (see paragraph 28 above), confining themselves instead to upholding the declaration adopted by the administrative authorities.

87. The Court further notes that the initial finding that G. had been abandoned was reproduced automatically throughout the subsequent procedure, during which the intention of the administrative authorities to place the child elsewhere was clearly expressed. The Court finds it surprising, to say the least, that the social worker who set the procedure in motion should have requested the Red Cross to trace the applicant, stating that the family who had “adopted” G. were also “prepared to adopt [her] baby”, whom she estimated to be around nine months old since the applicant “[had been] pregnant over a year ago” (see paragraph 26 above). It observes that the decision of 14 February 2007 by which the Granada provincial office placed G. in pre-adoption foster care (see paragraph 34 above) took into account the fact that the applicant's two eldest children were in foster care with her great-uncle, as well as the possibility referred to by the social worker that the French authorities had assumed guardianship of the applicant's baby. In the Court's view, the administrative authorities simply reproduced the successive decisions without making any new findings or assessing how the circumstances might have changed on the basis of tangible evidence.

88. As regards the child's placement, the Court observes that the applicant consistently opposed the move, with the support of the prosecutor responsible for minors (see paragraphs 38 and 41 above), and that her alternative proposal for her daughter to be placed in foster care with her great-uncle was rejected by the judgment of 4 September 2009 of the Granada first-instance judge (see paragraph 39 above). The Court notes that the judge rejected this proposal on the grounds that the applicant's great-uncle was not a suitable candidate for fostering minors, without giving any reasons for this assertion, but simply stating that the applicant's great-uncle would be “overburdened” since he was already taking care of the applicant's other two children (see paragraph 34 above). As the applicant's great-uncle was not granted leave to take part in the proceedings, he did not have an opportunity to express his views on the subject.

89. The Court refers to its case-law, cited in paragraph 81 above, to the effect that Article 8 includes a parent's right to the taking of measures with a

view to his or her being reunited with the child and an obligation on the national authorities to take such action. It observes that, despite the fact that the prosecutor with responsibility for minors supported the applicant in opposing the child's placement in pre-adoption foster care, that option was chosen on the sole ground of the lack of contact between the child and her mother over a period of several years, although the contact between them had ceased precisely as a result of the administrative and judicial decisions taken. The Court notes that in arriving at the conclusion, in its judgment of 18 June 2010, that the psychological expert report submitted by the applicant was not sufficient to demonstrate her capacity to look after her children, and in finding that there was no convincing evidence that the lack of attention initially observed in relation to the child would not recur, the appellate court did not deem it necessary to commission other reports or expert findings on the applicant's psychological state or her ability to raise her child. The Court considers that taking a child into care should normally be regarded as a temporary measure to be discontinued as soon as circumstances permit and that any measures of implementation of temporary care should be consistent with the ultimate aim of reuniting the natural parent and the child (see *Johansen v. Norway*, 7 August 1996, § 78, *Reports of Judgments and Decisions* 1996-III). It notes, however, that the applicant was forced to prove that she was a good mother to her child and that when she submitted evidence to that end the competent courts considered, without any supporting arguments, that it was insufficient to outweigh the assessment of the administrative authorities, which in the meantime had been upheld by a judicial decision.

90. The Court considers that, had the applicant's vulnerability at the time her daughter was taken into care been taken into consideration, this might have played an important role in understanding the situation of the child and her mother. Likewise, the subsequent change in the applicant's financial circumstances does not appear to have been taken into consideration by the judge, who simply referred in his judgment of 4 September 2009 to "technical reports", without giving any details as to their content, and found that it had not been proven that the applicant was "once again competent to raise the child", although it had never been alleged that the applicant had ill-treated her daughter.

91. The Court further notes that the follow-up report issued on 29 March 2011 by the child protection services showed that, almost six years after being separated from the applicant, the child had settled well in her foster family, with whom she had lived since 16 February 2007 and who met all her material and emotional needs. The Court observes in that regard that the passage of time made it very difficult to reverse a situation which could have been remedied by means other than separating the child from her mother and declaring her to have been abandoned.

92. Hence, the length of time that elapsed – a consequence of the administrative authorities' inaction – coupled with the inaction of the domestic courts, which did not consider to be unreasonable the grounds advanced by the authorities for depriving a mother of her daughter for financial reasons alone (the applicant's mental health, which was referred to initially, was not made the subject of any expert report) were decisive factors in precluding any possibility of the applicant and her daughter being reunited as a family. The applicant and her daughter last saw each other on 27 September 2005, and since then the applicant has constantly sought access to her daughter, both before the competent administrative bodies and before the domestic courts.

93. In view of these considerations and notwithstanding the margin of appreciation enjoyed by the respondent State in the matter, the Court concludes that the Spanish authorities failed to undertake appropriate and sufficient efforts to secure the applicant's right to live with her child, in breach of her right to respect for her private and family life under Article 8.

94. Accordingly, there has been a violation of Article 8.

...

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

...

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

...

Done in French, and notified in writing on 18 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President