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

FIRST SECTION

CASE OF ROENGKASETTAKORN ERIKSSON v. SWEDEN

(Application no. 21574/16)

JUDGMENT

Art 8 • Family life • Relevant and sufficient reasons by domestic courts for transfer of custody of applicant's child to foster parents and limitation of contact rights • No shortcomings in authorities' duty to facilitate family reunification when care order was in effect

STRASBOURG

19 May 2022

FINAL

10/10/2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Roengkasettakorn Eriksson v. Sweden,

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

Marko Bošnjak, *President,*
Péter Paczolay,
Alena Poláčková,
Erik Wennerström,
Raffaele Sabato,
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 21574/16) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Ms Siremon Roengkasettakorn Eriksson ("the applicant"), a Swedish and Thai national who was born in 1977, on behalf of herself and her children X and Y, who were born in 2007 and 2006 respectively, on 15 April 2016.

the decision to give notice to the Swedish Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 26 April 2022,

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

INTRODUCTION

1. The case concerns a complaint lodged under Article 8 of the Convention in relation to child-welfare measures adopted in respect of X, the applicant's youngest child.

THE FACTS

2. The applicant lives in Sweden and was represented before the Court by Mr K. Lewis assisted by Mr J. Södergren, lawyers practising in Stockholm. The Government were represented by their Agent, Ms H. Lindquist of the Ministry for Foreign Affairs.

3. The facts of the case may be summarised as follows.

A. Background

4. At 1 a.m. on 18 October 2007, when she was around two weeks old, X was admitted to a hospital's accident and emergency department, to which she had been taken by her father and the applicant, who were married at the time. A physician diagnosed several fractures to her body and skull, bruises

and cerebral haemorrhaging. Later that same day a consultant at a children's hospital reported the incident to the social services (*stadsdelsnämnden*), which opened an investigation and decided to place X and Y (the couple's one-year old son) in emergency care. X was placed in an emergency family home (*jourhem*) on 18 October 2007 and Y in the same home on the following day. Applications for care orders in respect of both children were consequently lodged. Both parents were remanded in custody from 18 to 20 October 2007 and again from 23 October to 19 November 2007.

5. X was examined on two occasions and the following injuries were found and documented: swelling and greenish-blue discolouration of the left upper and lower eyelids; a fresh fracture to the right upper-arm; an old fracture to the left clavicle; a complex (splinter) skull fracture on both sides of the head; severe swelling of the soft tissue outside the cranium on the left side of the crown and haemorrhaging on the corresponding part of the crown; an ankle fracture in the lower part of the tibia in both the right and left legs; fractures in the uppermost part of the right tibia; haemorrhaging in the retina of the right eye and fresh haemorrhaging under the dura mater in several places on both sides of the cranium as well as fresh haemorrhaging under the arachnoidea encephali under the fractures of the left parietal bone and also in adjacent grooves of the cerebrum. A medical opinion dated 9 November 2007 stated that the injuries presented by X had been inflicted through physical violence on at least two occasions and that most of the injuries could not be explained by normal care of a child. It also stated that all the documented injuries gave a picture of repeated blunt-force violence, possibly a mixture of severe shaking and direct violence. An indictment for abuse was lodged against the parents on 28 November 2007.

6. On 12 December 2007 the County Administrative Court (*länsrätten*, as of 15 February 2010 *förvaltningsrätten*) granted the social services' care-order applications, finding that an adult in X's family had caused X's injuries, more than likely in Y's presence. It concluded that by failing to protect X the parents had demonstrated that they lacked sufficient parenting skills, a fact which entailed concrete risks to the health and well-being of their children. The applicant and X's and Y's father appealed against the judgment in so far as it concerned the care order in respect of Y.

7. On 14 January 2008 the District Court (*tingsrätten*) acquitted the applicant on the criminal charges. X's and Y's father was convicted on several counts and sentenced to one year's imprisonment. He appealed against the judgment in so far as he had been found guilty. The prosecutor appealed against the applicant's acquittal and the partial acquittal of X's and Y's father.

8. On 15 January 2008 the social services decided to restrict the parents' contact rights with the children to two hours every month, in the presence of a contact supervisor, and telephone contact with Y once a week. The parents appealed against the decision. A meeting between the social services and the

parents and their network, including a number of friends and relatives, was held on 29 February 2008. According to documents submitted to the Court, the social services informed during the meeting that whether the circumstances giving rise to the public care persisted was to be examined every six months. On 7 March 2008 the social services wrote to the parents, stating that they thought that there had been too many people present at the meeting in order for it to function well, and proposed a new meeting with the parents and only two persons to support them, in addition to their counsel. On 10 March 2008 the social services informed the applicant that they could not offer therapy, but social counselling (*samtalskontakt*).

9. On 28 March 2008 the Administrative Court of Appeal (*kammarrätten*), having held on the same day a hearing on the appeal against the care order issued in respect of Y (see paragraph 6 above), delivered an interim decision to lift the care order in respect of him. Its judgment on the merits was then delivered on 21 April 2008. It overturned the County Administrative Court's judgment, as it considered that even in the event that X had been a victim of violence at home, that circumstance did not necessarily imply a similar risk in respect of Y.

10. On 20 May 2008 the social services decided to move X from her emergency family home to a foster home (*familjhem*) as of 13 June 2008. The proposed "plan" for the care arrangement (*vårdplanen*) stated that the social services had asserted that the placement would be long term and that a condition for its discontinuation was that it would have to be established that X's parents had not subjected her to violence and thereby caused her serious injuries or that if one of the parents had not done so, that parent could ensure that X would be protected from further abuse. X's and Y's father appealed against the decision, arguing that it would be better for X to remain where she was at that time, in particular as his criminal conviction would soon be examined on appeal (see paragraph 7 above). The applicant joined the appeal. X's and Y's father also requested that the decision not be implemented before it had become final.

11. On 30 May 2008 the County Administrative Court upheld the decision on contact rights of 15 January 2008 (see paragraph 8 above). It stated that the possibility to limit the contact between biological parents and children in public care should be used restrictively and that restrictions on contact should only be imposed where necessary in the light of the purpose of the public care. Furthermore, it emphasised that public care should not last longer than necessary and should be arranged so as to facilitate family reunification as soon as the child's well-being made it possible. In order to achieve that purpose, close and good contact between the child and his or her family during the care period was necessary. As to the case before it, the County Administrative Court took account of the circumstances as they had been when the social services had taken the decision under review and particularly the fact that it had been taken a very short time after the County

Administrative Court had issued the care order (see paragraph 6 above). Furthermore, the County Administrative Court considered that, taking account of the particular circumstances relating to X's injuries, health and development as well as her extensive care needs and the short time she had been in public care, the purpose of the care order could be jeopardised if the applicant and X's and Y's father were permitted more contact than that which had been decided in the decision of 15 January 2008. It therefore found no reasons to set that decision aside. The parents appealed against the County Administrative Court's judgment to the Administrative Court of Appeal (see paragraph 14 below).

12. On 9 June 2008 the County Administrative Court granted the request that the decision of 20 May 2008 not be implemented before it had become final (see paragraph 10 above). The Social Welfare Committee appealed against the County Administrative Court's decision and, on 13 June 2008, the Administrative Court of Appeal set it aside.

13. On 18 June 2008 the County Administrative Court upheld the decision concerning the placement of X in a foster home (see paragraph 10 above). According to domestic law, special reasons had to be present for a child to remain in an emergency foster home for a period longer than two months after the Social Welfare Committee had completed their investigation and the County Administrative Court did not find any such special reasons to be present. Neither the applicant nor X's father appealed against the County Administrative Court's judgment, which thus became final.

14. On 10 November 2008 the Administrative Court of Appeal upheld the County Administrative Court's judgment of 30 May 2008 concerning the decision of 15 January 2008 to restrict contact rights (see paragraph 11 above). The Administrative Court of Appeal noted that X had been developing well in her foster home, despite her lasting injuries. In the light of that and other considerations, it found that more frequent contact would risk impeding the attachment process in the foster home and have a negative impact on the peace and security of which X was in need.

15. On 23 March 2009 the Court of Appeal (*hovrätten*) decided on the appeals against the District Court's judgment in the criminal case (see paragraph 7 above). X's and Y's father was convicted on all counts, including the aggravated assault of X, and sentenced to four years' imprisonment. The Court of Appeal found that X's and Y's father had assaulted X in the period from 3 to 17 October 2007, either on his own or jointly and in collusion with someone else, by subjecting her to physical violence through which pain and injuries including bruising, haemorrhages in her head and brain and fractures to her skull, leg(s) and foot joints had been inflicted on her. It also found that he had assaulted X on 17 or 18 October 2007 by subjecting her to physical violence that had inflicted pain on her and fractured one of her arms. The assault was classified as grievous since life-threatening cranial injuries had

been inflicted on X and since her father had shown particular ruthlessness and brutality. The applicant's acquittal was upheld.

16. On 8 September 2009 the social services delivered a new decision on contact rights, in which it was decided to continue the arrangement of supervised monthly visits of two hours.

17. On 23 November 2009 the County Administrative Court, reviewing the social services' decision, increased the applicant's supervised contact rights to once every other week for two hours at a time. It noted that even though the care arrangement at that time appeared to be long term it was nonetheless important that the child and her parents maintain meaningful contact.

18. On 20 April 2010 the Supreme Court (*Högsta Domstolen*) refused X's and Y's father leave to appeal against the Court of Appeal's judgment in the criminal case (see paragraph 15 above).

19. On 13 July 2010 the applicant filed for divorce from X's and Y's father.

20. On 15 July 2010 X's and Y's father started serving his sentence (see paragraph 15 above).

21. On 19 July 2010 the social services received an application from the applicant to have the public care of X terminated. In the alternative, she applied for a decision that X be cared for in her home instead. She stated that the grounds for taking X into public care no longer existed, as she had applied for a divorce from X's and Y's father and for sole custody of the children, and that she was capable of protecting X from further abuse. On 29 October 2010 the social services referred X to an assessment at a unit for child psychiatry in order to assess her development as part of its examination of her possible return to the applicant's care. Several meetings between the applicant and the social services were also conducted as part of that same examination, including in her home.

22. On 17 February 2011 the District Court issued a divorce decree in respect of the applicant and the children's father.

23. On 22 March 2011 the social services opened an investigation under the Social Services Act (see paragraph 54 below). It was stated, among other things, that doubts had emerged regarding the applicant's ability to protect X based on how she had responded previously to the offences to which X had been subjected and on her present thinking about X's future needs. Furthermore, the social services considered that it had emerged that there were serious deficiencies in the applicant's caregiving skills regarding her ability to understand and meet X's needs. Those difficulties had emerged both in her contact with X and in assessments of their interaction. The investigation also referred to opinions from two child psychiatric and psychological services, which had found that X had a strong attachment to and dependence on her foster parents, and that removing her from her foster home would risk seriously harming X's health and development.

24. On 5 April 2011 the social services refused the applicant's application to have the care order in respect of X lifted (see paragraph 21 above). The child's appointed representative had filed written submissions on the matter.

25. On 8 July 2011 the County Administrative Court, reviewing the social services' decision of 5 April 2011, found that the care order could not be lifted. It based its judgment in part on findings concerning the applicant's attitude towards and behaviour in relation to the abuse of which it considered X to have been the victim, concluding that those factors meant that it was too early to conclude that the applicant would be capable of protecting X from abuse.

26. On 5 December 2011 the Administrative Court of Appeal reversed the Administrative Court's judgment of 8 July 2011, concluding that the care order could be lifted. It noted that X had been placed in care because she had been the victim of ill-treatment at home and that her father had been convicted on that account. However, her father was serving a lengthy prison sentence at the time, her parents had divorced and the applicant had sole custody of X (see paragraphs 15 and 18-22 above). There was therefore no longer any reason to uphold the care order.

27. On 21 May 2012 X's and Y's father lodged an application with the Supreme Court to have the criminal case reopened on the ground that substantial new evidence had been produced, notably medical information and opinions relevant to the question of X's injuries.

28. On 29 June 2012 the Supreme Administrative Court (*Högsta förvaltningsdomstolen*) upheld the Administrative Court of Appeal's judgment on lifting the care order (see paragraph 26 above).

29. The Supreme Administrative Court's judgment stated that the social services had emphasised that they had carried out examinations which demonstrated that X had particular care needs. She had a physical handicap which, together with the trauma that had been inflicted on her previously, had made her more fragile and sensitive than other children. It was furthermore stressed by the social services that X was very closely attached to her foster home and of an age at which breaking off her attachment would be very sensitive. In their assessment, it would entail a serious risk to X's health and development if she were separated from her foster family. They contended that the applicant had numerous deficiencies in her parenting capacities with regard to understanding and meeting X's particular needs. Moreover, X had no attachment to her. The child's own lawyer also opposed the application to have the care order lifted. On behalf of X he submitted that it would obviously be harmful to remove her from her foster parents, whom X perceived as her own parents. According to her lawyer, X felt safe in the foster home and was attached to her foster parents, whereas she had not formed an attachment to the applicant, who, the lawyer maintained, lacked parenting skills and did not understand her needs.

30. In its judgment, the Supreme Administrative Court emphasised that possible risks of harm to children in connection with being removed from their foster homes could not be taken into account to justify the continuation of a care order. The court set out that if such risks were present in a case they had instead to be countered by way of other legal measures, such as prohibitions on being removed or transfers of custody. As to whether the grounds for a care order were still present, the Supreme Administrative Court found that there was no longer any reason to believe that X's health and well-being were at risk owing to physical ill-treatment or to a lack of parenting skills on the applicant's part and held that the care order should therefore be lifted.

31. At a meeting on 12 July 2012, the applicant came with one of the child's grandparents, a friend and another person with a movie camera and a tripod. The social services presented a care "plan" and the applicant was informed that they were considering applying for a transfer of custody, to which the applicant would not respond since her lawyer was not present. The social services proposed to follow up with another meeting the next day. It also reads in the social services' case file that the services during the meeting indicated to the applicant that it would be better for X if the applicant did not bring others when they met, to which the applicant had responded that she would continue to bring X's grandparent and by asking why the social services wanted to pressure her into being alone with X.

32. At a meeting with the social services on 22 August 2012, the applicant came with a psychologist, a friend, her lawyer and a person who intended to record the meeting as part of his making a film about X's life as a present to her. It emerged that the applicant did not consent to the plan presented – she demanded a plan that set out X's return to her care and that was limited in time until 31 October 2012. The social services stated that they could not consent to such a plan as they would apply for a transfer of custody (see the preceding paragraph). Furthermore, the applicant stated that she wanted to have her contact with X increased from every other week to every week. On 23 August 2012 it was decided to begin a new investigation under the Social Services Act (see paragraph 54 below) with a view to the Social Welfare Committee applying for a removal prohibition under section 24 of the Act with Special Provisions on the Care of Young Persons (see paragraph 56 below).

33. On 30 August 2012 the social services decided in the interim to prohibit the applicant from removing X from the foster home. The Government have maintained that that was decided against the background of Y, during a contact session in July 2012, telling X that she would soon be moving back in with him and the applicant, which, according to the social services, had made X sad, worried, afraid. She had started to cry and her foster parents had had to console her.

34. On 12 September 2012 the County Administrative Court confirmed the social services' interim decision, prohibiting X's removal from her foster home. It found it probable that a removal prohibition regarding X might be needed. Furthermore, it noted that X had been living in the foster home since she was eight months old and that she would soon turn five. She had formed an attachment to her foster parents and became worried and saddened by the idea of moving away from them. She had only met the applicant a limited number of times.

35. On 26 September 2012 the Social Welfare Committee decided to apply to the County Administrative Court for a removal prohibition, as it deemed there to be a clear risk of harm to X's health and development if she were removed from her foster home.

36. On 19 October 2012 the County Administrative Court granted the social services' application for a prohibition on X's removal. In its judgment, the County Administrative Court reiterated that the applicant's contact with X had initially been set at two hours per month with a contact person present, before later being increased to two hours every other week with a contact person present, and that contact had only taken place without a contact person present during the two months between the judgment of the Supreme Administrative Court of 29 June 2012, in which the care order was lifted (see paragraphs 28-30 above), and the decision of 30 August 2012 imposing a temporary removal prohibition (see paragraph 33 above). In the reasoning provided for its judgment, the County Administrative Court noted that X was five years old and that she had lived in the foster home since she was just over eight months old. Furthermore, it noted that X had had fairly limited contact with the applicant and that the investigation in the case showed that X had put down roots in her foster home and regarded her foster parents as her family. The County Administrative Court found that it was apparent that there was a clear risk that X's health and development would be harmed if she was uprooted from the foster home, and since it was her attachment to the foster family that was important to X, a gradual removal also entailed a risk of harm. The County Administrative Court found that it was obvious that no change should be made to X's residential circumstances pending the ruling of the general court on the question of custody.

B. Transfer-of-custody proceedings

37. In December 2012 the social services initiated proceedings before the District Court to transfer custody of X from the applicant to X's foster parents. They deemed it necessary to act since, after the care order had been lifted, the applicant had increased the frequency of her visits with X to an extent which had become harmful to her.

38. On 7 February 2013 the Administrative Court of Appeal reversed the County Administrative Court's judgment of 19 October 2012 concerning the

prohibition on X's removal (see paragraph 36 above). It noted that X had been in continuous contact with the applicant throughout her placement in care and knew that she was her biological mother. In conclusion it found that it had not been established with sufficient clarity why a step-by-step return to the applicant would harm X and, if so, what the concrete risks to her were. However, in the course of the custody proceedings before it, the District Court, on 23 July 2013, decided in the interim to grant the social services' application, as it considered it important not to make changes to X's situation before the case had been examined on the merits.

39. On 25 October 2013, after holding an oral hearing at which several expert witnesses were heard, the District Court granted the social services' application to have custody of X transferred to her foster parents. The applicant was granted contact rights with X on a fortnightly basis and on certain holidays. The court noted that X had lived in the foster home for more than five years, since she was about eight months old; that she was developing very well there; that she had settled in very well and considered it her home; and that she had expressed the wish to remain there. Furthermore, it noted that the increased frequency of the applicant's visits after the lifting of the care order had become harmful to X. The court found that it was very important for X to know if she was to continue to live in the foster home or move in with the applicant. Moreover, it took into account that during the first weeks of her life, X had been abused in her home and had sustained lifelong injuries, and that this made it especially important for her to feel the safety she did with her foster parents.

40. On 27 December 2013 the Supreme Court reopened the criminal case against X's and Y's father and remitted it to the Court of Appeal for a fresh examination on the merits. It found that in the light of new evidence and expert statements, notably relating X's vitamin levels and the circumstances of her birth, the courts' prior conclusion that X's injuries could not have any explanation other than grave violence could be called into question.

41. On 17 March 2015 the Court of Appeal acquitted X's and Y's father on the charges of assault against X, finding that, in the light of the new evidence presented, the case had not included any examination capable of explaining what had caused X's injuries.

42. On 23 March 2015, on an appeal by the applicant in the transfer-of-custody proceedings, the Court of Appeal, after holding an oral hearing, slightly amended the applicant's contact rights, primarily by granting contact every second weekend, including an overnight stay, with effect from 10 October 2015, but upheld the lower court's judgment concerning the transfer of custody (see paragraph 39 above).

43. In its judgment, the Court of Appeal noted at the outset that the relevant provisions in the Parental Act (see paragraph 53 below) had to be applied in accordance with the case-law of the European Court of Human Rights, and referred in particular to the cases of *Görgülü v. Germany*

(no. 74969/01, 26 February 2004), *R. v. Finland* (no. 34141/96, 30 May 2006) and *Levin v. Sweden* (no. 35141/06, 15 March 2012). It further stated that the case required a complex assessment weighing X's need for stability and continuity against the right to respect for private and family life. The critical issue was which solution would be best for X under the circumstances at the time of its judgment. The Court of Appeal went on to examine in detail different aspects of the case relevant to the question of the transfer of custody.

44. Firstly, the Court of Appeal examined X's ties to her foster parents. It noted that she had been placed in the emergency foster home when she was only 16 days old and had gone to her foster home at the age of eight months. She had accordingly in effect lived there almost her entire life (six years and ten months at that time). She had settled in well with her foster parents and felt such stability and security there that she regarded it as her home. Furthermore, it found that X had very strong bonds with her foster parents, considering them her real parents. They gave her the care and comfort that she needed and she was developing in a positive manner. The court concluded that X's strong bonds with her foster parents weighed heavily in favour of a transfer of custody.

45. Secondly, the court assessed the contact between X and the applicant. It noted that they had had regular contact since January 2008, although for short periods each time. Up until the District Court's judgment in October 2013 (see paragraph 39 above), there had been contact supervisors and foster parents present, but for approximately one and a half years thereafter their contact had not been subject to any type of supervision. X and the applicant had had good contact and interplay; they had enjoyed each other's company during the visits and their relationship had developed in a positive manner. The Court of Appeal also noted, however, that the applicant had been accompanied by other adults during practically every visit, she had not spent any longer periods of time alone with X and had usually video-recorded the visits. The Court of Appeal found that the extent and nature of X's and the applicant's contact had not been such that a transfer of custody was not viable for that reason in itself.

46. Thirdly, the court examined the risk of separating X and her biological parents. It noted that X and the applicant had had regular contact while the former had lived in the foster home; the foster parents agreed that this should continue in the future and X had also expressed that wish. In view of this, it concluded that there was no noteworthy risk that X would lose contact with the applicant or be prevented from establishing contact with her father if custody were to be transferred to the foster parents. Instead, it considered that a transfer of custody would ensure that X was given the opportunity to develop her relationship with her biological family at an appropriate pace (*i lugn och ro*).

47. Fourthly, regarding X's attitude towards a transfer of custody, the court noted that the issue was of a rather legal nature which a child would

naturally not be able to fully understand. The child could however have an opinion as to with whom he or she wanted to live, and according to the examinations that had been carried out by the social services, X had expressed the desire to remain in the foster home and was worried about having to move in with the applicant. The applicant had argued that the examinations had not been carried out neutrally. The court found however that X, at the age she was then, was too young to form an opinion to which any noteworthy importance could be attached. It observed that X, who was seven and a half years old at the time, had lived in the foster home since she was eight months old and had developed strong emotional bonds with her foster parents and regarded their home as her own. In view of this, it concluded that moving in with the applicant would appear rather alien to X. In this connection, it held that she was torn between two families and her negative reaction to the increase in the frequency of visits during the first half of 2013 and thereafter had more than likely been caused by uncertainty as to where she was going to live and her unwillingness to disappoint anyone. Therefore, it was deemed of the utmost importance for X's well-being to know with whom she would live in the future.

48. Lastly, the court examined the likelihood of returning X to the applicant's care. It stated in that context that the European Court of Human Rights had in several cases emphasised that States were under the obligation to strive for reunification when children had been temporarily taken into public care, where that was deemed to be in the child's best interests. Moreover, it emphasised that the Court required long term and extensive efforts to have been made to achieve family reunification before transferring custody could become an option. The Court of Appeal also observed that, as the child's best interests were the paramount concern in custody cases, the child's need for continuity might prevail over the possibility of reuniting the child with his or her biological parents. In this connection it noted that the applicant had been deemed suitable to have custody of X and that she planned to introduce her daughter to her home in a gradual manner. However, owing to the rather short time that X had lived with her biological parents, she could not have experienced any family life or acquired a sense of belonging with them. She had developed strong emotional bonds with her foster parents and regarded them as her parents. The Court of Appeal noted in particular that two of the expert witnesses had been of the opinion that even a gradual transfer of X would entail risks for her health and development. In view of these circumstances, and with particular regard to X's best interests, the court concluded that reunification was not realistic in the foreseeable future.

49. Having concluded that it would be in X's best interests to transfer custody of her to her foster parents, the Court of Appeal went on to state that her keeping contact with her biological mother and brother was also in her best interests, and that close and good contact between the three of them would be beneficial to X's development. It decided that, following an initial

transition period, X would thereafter stay with the applicant essentially every second weekend. It emphasised that it was too early to decide how exactly further increases in contact, such as to include school breaks or major holidays, were to be carried out and that therefore it would not at that time take any decisions in that respect. It also emphasised that the foster parents, in cooperation with the applicant, had a responsibility to strive for increased and flexible contact between X and the applicant.

50. On 22 October 2015 the Supreme Court refused the applicant leave to appeal against the Court of Appeal's judgment.

51. On 15 April 2016 the applicant lodged her application with the Court.

52. In a judgment of 3 October 2017, which became final, the Stockholm District Court decided that X should have the right to a certain amount of contact with her father.

RELEVANT LEGAL FRAMEWORK

53. Section 8 of Chapter 6 of the Parental Act (*föräldrabalken*; 1949:381) provides that if a child has been permanently cared for and brought up in a private home other than his or her parental home and if it is obviously in the best interests of the child that the prevailing relationship continue and that custody be transferred to the person or persons who have cared for the child or to one of them, the court will appoint the said person or persons to exercise custody of the child as specially appointed guardians. Section 2a of that Chapter provides that the best interests of the child are decisive for all decisions on care, custody and contact. Section 15 of the same Chapter provides that a specially appointed guardian has a responsibility to ensure that, as far as possible, the child's need for contact with his or her parents is met.

54. The work of the social services in respect of child-welfare measures such as those in issue in the instant case is governed in particular by the Social Services Act (*socialtjänstlagen*; 2001:453) and the Act with Special Provisions on the Care of Young Persons (*lag med särskilda bestämmelser om vård av unga*; 1990:52).

55. Section 13 of the Act with Special Provisions on the Care of Young Persons provides that when the child has been placed in the same foster home for a period of three years after the implementation of a placement, the Social Welfare Committee must give special consideration to whether there are reasons to apply for a transfer of custody under section 8 of Chapter 6 of the Parental Act (see paragraph 53 above). Section 14 provides that if a young person has been taken into care, the Social Welfare Committee must ensure that the young person's need for contact with parents or other persons having custody of them is met in so far as possible. Under section 21, when care under the Act is no longer needed, the Social Welfare Committee must order

that the care be terminated. It must make careful preparations for the young person's reunification with his or her guardian/guardians.

56. Under section 24 of the Act with Special Provisions on the Care of Young Persons, upon application by the Social Welfare Committee, the County Administrative Court may prohibit, for a specified period or until further notice, the removal of a minor from a foster home, if there is a substantial risk of harm to the young person's health or development if removed from the foster home.

57. Pursuant to its section 33, proceedings under the Act with Special Provisions on the Care of Young Persons must be expedited promptly. Under section 36, the young person concerned must be given relevant information and be presented with the opportunity to express an opinion on matters that concern him or her. If the young person does not express an opinion, their position must nevertheless be clarified in some other way to the extent possible. The opinion and position of the young person must be accorded weight in relation to his or her age and maturity. If the young person has reached the age of 15, they have the right to represent themselves in matters under the Act. Persons under the age of 15 may be heard during the proceedings, if it is not considered likely that they may suffer harm as a result (section 36 as of 1 January 2013). Pursuant to section 39, public counsel should be appointed for the young person and for their guardian, *inter alia*, in cases concerning public care, and it follows from section 36 that a person appointed as public counsel for a person aged under 15, but not for the guardian, is the young person's representative in the case or matter in question.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

58. The applicant complained that there had been a violation of both her and her children's right to respect for their family life as provided 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."

A. Admissibility

59. In their additional observations, the Government, without making an objection as such to the admissibility of the application lodged on behalf of the applicant's children, stated that the children were not applicants and that the Court should therefore only examine the application from the viewpoint of the applicant mother. The Government contended, also, that the application should be declared inadmissible as manifestly ill-founded.

60. The applicant noted that the Government's objection to the admissibility of the application on the grounds that it was allegedly ill-founded was closely linked to the merits and made no further observations.

61. With regard to the Government's submissions as to who had applied to the Court, the Court notes that in the application lodged with the Court the applicant expressly asserted that there had been violations of her own as well as X's and Y's rights under Article 8 of the Convention. The Court also reiterates that, though there may be exceptions, for example where conflicts of interests are identified (see, *inter alia*, *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 158, 10 September 2019), normally a natural parent has the requisite standing to complain on behalf of his or her minor children in a case such as the present one (see, for example, *mutatis mutandis*, *Iosub Caras v. Romania*, no. 7198/04, § 21, 11 December 2006). The Court finds no reason to proceed on any other basis in the present case and considers that, in the absence of any objections from the Government and in the light of the information available, there are no grounds for carrying out any further examination of this matter. Furthermore, the Court finds that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

62. The applicant maintained that the social services had "overused" legal measures in a manner that had led to limitations in the contact between the applicant and her daughter and ultimately to the transfer of custody. Even if the Court were to find that the Court of Appeal's judgment of 23 March 2015, in which the transfer of custody was finally confirmed, had not in and of itself entailed a violation of Article 8 of the Convention, there would nonetheless have been a violation in so far as the Court had to review the situation as a whole, including the actions of the social services and previous proceedings and decisions. It was rather a flaw in domestic law that the Court of Appeal had limited itself to taking account only of the situation at the time of its judgment and not carrying out a review of the whole case history in the light of Article 8 when deciding on the transfer of custody, similar to the review

that it would now be incumbent on the Court to carry out. The applicant also argued that the restrictions on contact had been far too strict to comply with Article 8, especially during the first period, which had contributed to X putting down roots in her foster home.

63. According to the applicant, the social services should have taken action to reunite the family when the acquittal of the applicant, on 23 March 2009, had been upheld and X's and Y's father had been sentenced to several years of imprisonment. The social services should also have taken such action following the applicant obtaining sole custody of X and Y and filing for divorce from their father in August 2010. In any event, action to reunite the family should have been taken following the Supreme Administrative Court's judgment of 29 June 2012, in which the care order had been lifted. Instead of taking such action, the social services had initiated repeated legal proceedings and it was for that reason that the whole case had lasted from October 2007 to March 2015. In 2015 one could perhaps legitimately hold that X had settled in well in her foster home, but that had not been the case at the said times in 2009, 2010 or 2012.

64. The applicant also maintained that there had been an "overuse" of legal measures in connection with the transfer of custody as such. According to her, it was a telling fact that as soon as the social services had failed in one set of legal proceedings – namely, when the care order had been lifted – they had initiated new legal proceedings – to transfer custody. The initiation of the removal-prohibition proceedings provided yet another example of an overuse of legal measures; whereas the Supreme Court had set that measure aside in February 2013 – thus refuting the social services' argument that a measure to that effect had been justified at that point in time – the District Court had subsequently granted the social services' request for an interim removal prohibition solely on the grounds that transfer-of-custody proceedings had been instituted and that X should not be moved before those proceedings had been decided on the merits.

(b) The Government

65. The Government did not dispute that the Swedish authorities' decisions to transfer custody and restrict the applicant's contact rights had amounted to an interference with the applicant's right to respect for her family life within the meaning of Article 8 of the Convention. They argued, however, that the interference had been justified under the terms of Article 8 § 2. Thus, in the Government's view, the interference had been "in accordance with the law", pursued one or more of the legitimate aims enumerated in that provision, and, in particular, it had been "necessary in a democratic society" in order to achieve those aims.

66. In the Government's view, the domestic authorities' decision to transfer custody to the foster parents had been taken in the best interests of the child and had been based on reasons that – in the light of the case as a

whole – were both relevant and sufficient for the purposes of Article 8 § 2 of the Convention. Hence, having regard to their margin of appreciation, the relevant decisions and judgments of the domestic authorities relating to the transfer of custody had in the Government's view been proportionate to the aim pursued, that is, the protection of the child.

67. The Government maintained, moreover, that it was clear that the domestic authorities involved had consistently sought to find the correct balance between, on the one hand, the applicant's interest in having contact with X and, on the other hand, X's interest in being protected from negative impact on her health and development. Throughout the entire process, the best interests of the child had been duly considered by the national authorities, who had had the benefit of direct contact with the persons concerned. The Government maintained that the social authorities and domestic courts had been in a very good position to express a well-informed opinion on X's situation and needs. They considered that sufficient regard had been had to the positive duty to take measures to facilitate family reunification as soon as reasonably feasible. The Government maintained in that connection that while they were of the view that the domestic proceedings that had taken place prior to the Court of Appeal's judgment of 23 March 2015 had also been in conformity with Article 8 of the Convention, there were limitations as to how far the Court could have regard to the questions relating to the care orders, prohibition of removal and contact rights because they had been handled in proceedings separate from those concerning custody, all of which had ended more than six months before the applicant lodged her application with the Court. Nor was the question before the Court whether the Court of Appeal should have examined the previous measures' conformity with the Convention or not.

2. *The Court's assessment*

(a) Scope of the case

68. The Court observes that the case before it concerns the proceedings regarding the transfer of custody of X. Those proceedings ended with the Supreme Court's decision of 22 October 2015 refusing the applicant leave to appeal against the Court of Appeal's judgment of 23 March 2015 (see paragraphs 42-50 above). In the absence of any application relating to the previous proceedings concerning X's placement in care and the decisions concerning the applicant's contact rights taken in that context lodged with the Court within six months from the dates of the final decisions, those issues fall outside the scope of the Court's jurisdiction (see, similarly, *Strand Lobben and Others*, cited above, §§ 146-47). In order for the Court to examine the transfer-of-custody proceedings properly, it must, however, place those proceedings in context, which inevitably means that it must to some degree have regard to the prior proceedings relating to the public-care measures

adopted in respect of X (ibid., § 148). Furthermore, while the Court cannot examine and rule on the compatibility with Article 8 of the Convention of the prior proceedings separately, it must nevertheless assess the case and the proceedings as a whole (ibid., §§ 203 and 212).

(b) Existence of an interference "prescribed by law" and pursuing a "legitimate aim"

69. As concerns the proceedings for the transfer of custody of X and the decision adopted therein, the Court finds that they entailed an interference with the applicant's and her children's right to respect for their family life under Article 8 of the Convention. It accepts that that interference was prescribed by law and pursued the legitimate aim of protecting X's "health" and her "rights". The question remains whether the interference was "necessary in a democratic society" within the meaning of the second paragraph of Article 8.

(c) Necessity of the interference "in a democratic society"

70. The Court notes that the general principles applicable to cases involving child-welfare measures (including measures such as those in issue in the present case) are well established in the Court's case-law and were extensively set out in *Strand Lobben and Others* (cited above, §§ 202-13), to which reference is made. The principles have since been reiterated and applied in a number of cases, including *Abdi Ibrahim v. Norway* ([GC], no. 15379/16, § 145, 10 December 2021). For the purpose of the present analysis, the Court particularly emphasises the general principle that a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child if and when appropriate (see *Strand Lobben and Others*, cited above, §§ 207-08).

71. In applying those principles to the facts of this case, the Court notes, firstly, that the proceedings in question were extensive. The question of the transfer of custody of X was examined on the merits by domestic courts at two levels of jurisdiction (see paragraphs 39 and 42-49 above), which held oral hearings, had expert assistance, and in their decision-making process benefited from direct contact with the persons involved. The applicant was given every opportunity to present her case and to be fully involved in the decision-making process, and X's opinions also appear to have been sought in so far as possible in the light of her age (see paragraph 47 above). The Court does not find any basis for considering that the proceedings were not conducted in a satisfactory manner or were not accompanied by safeguards commensurate with the gravity of the interferences and the seriousness of the interests at stake (contrast, in particular, *Strand Lobben and Others*, cited above, § 225).

72. The Court notes, furthermore, that in its judgment the Court of Appeal extensively examined X's and the applicant's individual circumstances. This included X's ties to her foster home – which weighed heavily in favour of allowing her to remain there – and the contact between her and the applicant – which was good, but not to the extent that it hindered a decision to transfer custody (see paragraphs 44-45 above). Moreover, it examined whether there was a risk that X and the applicant would become separated if custody were transferred, and found that there was not – instead, it essentially considered that a transfer of custody would be a means to aid X in developing her relationship with her biological family at her own pace (see paragraph 46 above). Furthermore, it examined X's attitude to the decision, in so far as that could be inferred, finding that she preferred to stay in the foster home (see paragraph 47 above). Lastly, it examined the possibility of returning X to the applicant's care, finding, by reference to several expert witnesses, that such a transfer would be unfeasible even if carried out gradually over a prolonged period (see paragraph 48 above).

73. In the Court's assessment, the reasons advanced by the Court of Appeal were relevant for its decision, according to the Court's case-law (see, for instance, *Johansen v. Norway* (dec.), no. 12750/02, 10 October 2002, and *Aune v. Norway*, no. 52502/07, §§ 76-78, 28 October 2010, which both concerned the more far-reaching measure of adoption). The Court takes particular note of the fact that the impugned decision to transfer custody of X to her foster parents was not intended to entail a severance of the family ties between X, the applicant and Y (see paragraph 46 above). While the Court of Appeal only granted limited contact rights, it is clear from the decision on that point that it was intended to be the beginning of a gradual increase of contact between the applicant and X. The specific amount of contact set between X and the applicant after the transfer of custody (see paragraph 49 above) does not feature in the applicant's complaint lodged with the Court, and as such will not be examined here.

74. Moreover, the Court considers that the reasons advanced by the Court of Appeal show that it strove to strike a reasonable balance between the competing interests at stake, while at the same time being guided by the best interests of the child, who in this case clearly enjoyed "family life" with her foster parents at the time that the impugned decision was taken – an approach which is in accordance with the Court's case-law (see paragraph 70 above).

75. In conclusion thus far, the Court finds that the reasons given by the Court of Appeal were, if viewed in isolation, both relevant and sufficient to justify the impugned decision to transfer custody of X to her foster parents and limit the applicant's contact rights (see, similarly, as concerns transfer-of-custody proceedings, *Eriksson v. Sweden*, no. 16702/90, Commission decision of 16 January 1992, unreported, and *Olsson v. Sweden*, no. 22747/93, Commission decision of 5 April 1995, unreported).

76. As reiterated above (see paragraph 68), the Court must examine the decision brought before it in the light of the case as a whole and, as regards the decision ultimately taken by the Court of Appeal to transfer custody in respect of X to her foster parents (see paragraphs 42-49 above), the Court bears in mind that it was intrinsically linked to how the child-welfare case had proceeded until then (see, *mutatis mutandis*, *Hernehult v. Norway*, no. 14652/16, § 64, 10 March 2020). It also observes that it was indeed a key submission of the applicant in this particular case that, even if one were to consider the reasons advanced by the Court of Appeal sufficient if viewed in the light only of the factual situation as it was at the time of that court's decision, there had been a failure on the competent authorities' part with regard to the positive duty to facilitate family reunification when circumstances so permit – according to the applicant, there had even been an "overuse" of legal remedies to the opposite effect – leading up to the Court of Appeal's ultimate decision.

77. The applicant's arguments thus relate in part to the alleged failure of the domestic authorities to take actions in order to reunite the family throughout the period during which child-welfare measures were in place. In particular she has pointed to the following as key events which should have led the authorities to commence a reunification process: her acquittal and X's and Y's father's conviction (see paragraphs 15 and 18 above); her divorce from X's and Y's father and her gaining sole custody of the children (see paragraphs 19 and 21-22 above); and ultimately the lifting of the care order (see paragraph 28 above).

78. In that context the Court notes, firstly, that there are no indications of the competent authorities having at any early stage abandoned reunification of the child and the natural parents as the ultimate goal in the instant case. The Court observes that the applicant was informed that whether grounds for continued public care existed was subject to review every six months (see paragraph 8 above) and that from early on the care "plans" specified the circumstances which would permit the care order to be lifted (see paragraph 10 above) – and it was actually lifted when it had been established that those circumstances had come about (see paragraphs 26 and 28 above). Moreover, the Court observes that the authorities ensured regular contact between the applicant and X over the years and the decisions on contact rights during the period when X was in public care indicate that the domestic authorities attached importance to the need for close and good contact in order not to render reunification impossible (see paragraph 11 above). Other assistance measures such as social counselling were also offered to the applicant (see, for example, paragraph 8 above) and the Court lastly notes that the possibility of returning X to the applicant's care was in fact subject to a broader examination shortly after the applicant had divorced from X's and Y's father (see paragraph 21 above), which is one of the points in time highlighted by the applicant (see the preceding paragraph). Indeed, this set of proceedings

ended in the lifting of the care order by the appellate courts (see paragraphs 26 and 28 above). In view of the foregoing, the Court does not find that it has basis for considering that the case has revealed shortcomings in the authorities' duty to facilitate family reunification at the stage when the care order was in effect.

79. The applicant's arguments also relate to the manner in which the social services acted after the care order had been lifted, notably the measures taken and the initiation of proceedings concerning first a removal prohibition, and subsequently a transfer of custody.

80. On that point, the Court emphasises, firstly, that its task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for the regulation of the care of children and the rights of parents whose children have been taken into public care, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see, for example, *Strand Lobben and Others*, cited above, § 210). It notes that various domestic authorities do indeed appear to have assessed differently essentially the same questions: the social services initiated the transfer-of-custody proceedings in December 2012 and an interim decision to that effect was taken by the District Court on 23 July 2013; in the meantime, however, the Administrative Court of Appeal had, on 7 February 2013, held that there should not be any prohibition on X's removal from her foster home and quashed the decision taken to that effect on 19 October 2012 (see paragraphs 36-38 above).

81. As to the applicant's argument that responsibility for the alleged violation of Article 8 of the Convention should be attributed to the Government on the basis that the social services excessively used legal remedies in order to obtain the final result that X was to stay in her foster home, the Court is aware that sometimes there may be a risk of an assumption that social services, following a placement in care for which the same services have applied, follow-up and co-operate in a manner closer with the child's foster family than with the biological parents, whose interests may often include, first of all, a return of the child to their care. In the instant case, however, the Court takes note that already during the preceding proceedings on whether the care order was to be lifted, the social services, as well as the child herself through her representative, opposed the application to lift the care order on grounds relating to concerns about removing X from her foster family (see, in particular, paragraph 29 above). The Court reiterates that, according to its case-law, "when a considerable period of time has passed since the child was originally taken into public care, the interest of a child not to have his or her *de facto* family situation changed again may override the interests of the parents to have their family reunited" (see, for example, *Strand Lobben and Others*, cited above, § 208), and thus finds no indication that the social services attempted to pursue any other aim in the proceedings relating to the lifting of the care order than to ensure X's best interests in a

manner which was, in principle, compliant with the Court's case-law on what may be in a child's best interests. The Court also notes that concrete reasons were advanced, including the child's particular care needs and her physical handicap which, along with the trauma that had been inflicted on her previously, had made her more fragile and sensitive than other children (see paragraph 29 above). In response, however, the courts at the time found that those were concerns that had to be addressed by way of a prohibition on removal or a transfer of custody and were irrelevant to the question of lifting the care order (see, in particular, paragraph 30 above). Against that background, the Court cannot find that the respondent authorities failed in their obligations under Article 8 of the Convention owing to the fact that the social services did not take steps to remove X from her foster home and return her to the applicant despite the care order having been lifted, but instead took measures to ensure that she continued to live in the foster home by instituting the types of proceedings appropriate to deal with their claim that a removal would be harmful to the child.

82. In that connection, the Court finds no concrete indication, as such, in the Court of Appeal's ultimate judgment of 23 March 2015 of either the interim decision taken on 30 August 2012 (see paragraph 33 above) or any subsequent measure having had a decisive impact on the outcome of the Court of Appeal's decision because of the effluxion of time until the end of the transfer-of-custody proceedings, during which X had remained in her foster home. It notes that the Court of Appeal in its final judgment did indeed take as its starting-point the fact that, according to this Court's case-law, a transfer of custody could only be decided after long term and extensive efforts had been made to achieve family reunification (see paragraph 48 above). The Court has no basis for concluding that the domestic authorities overstepped their margin of appreciation when reaching the conclusion that in the circumstances of the instant case, the point had been reached where maintaining the status quo by letting X continue to live with her foster family was necessary in order to take sufficient account of her best interests, which according to the Court's case-law are paramount in cases such as the present one (see, among many other authorities, *Strand Lobben and Others*, cited above, § 204).

83. On the basis of the above assessment of the case as a whole, the Court concludes that there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 19 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Marko Bošnjak
Deputy Registrar	President