



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

THIRD SECTION

CASE OF V.Y.R. AND A.V.R. v. BULGARIA

(Application no. 48321/20)

JUDGMENT

Art 8 • Family life • No shortcomings in authorities' decision to place child for adoption without the biological mother's consent • Decision based on child's best interests • Domestic authorities not responsible for the breaking of family ties and bond between mother and child • Margin of appreciation not overstepped • Possibility for mother to participate in decision-making process • Annulment of adoption placement possible, in principle, if a change in circumstances

STRASBOURG

13 December 2022

FINAL

13/03/2023

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

In the case of V.Y.R. and A.V.R. v. Bulgaria,

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

Pere Pastor Vilanova, *President*,
Georgios A. Serghides,
Yonko Grozev,
Jolien Schukking,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 48321/20) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Bulgarian nationals, Ms V.Y.R. and Ms A.V.R. (“the applicants”), on 26 October 2020;

the decision to give notice to the Bulgarian Government (“the Government”) of the complaints under Article 8 of the Convention, and to declare the remainder of the application inadmissible;

the decision not to disclose the applicants’ names;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Center for Humane Policy in Sofia, which was granted leave to intervene by the President of the Section;

Having deliberated in private on 22 November 2022,

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

INTRODUCTION

1. The case concerns the placement of a child for adoption without her biological mother’s consent.

THE FACTS

2. The applicants were born in 1983 and 2015 respectively and live in Sofia. They were represented by Ms N. Dobрева, a lawyer practising in Sofia.

3. The Government were represented by their Agents, Ms M. Dimitrova and Ms B. Simeonova of the Ministry of Justice.

I. BACKGROUND

4. The first applicant is the second applicant's biological mother. She suffers from opioid use disorder. She had been taking heroin until she learned that she was pregnant, after which she signed up for methadone treatment.

5. The second applicant was born in December 2015.

II. TAKING OF THE SECOND APPLICANT INTO ALTERNATIVE CARE

6. On 14 April 2016 the first applicant left the baby with the owner of a hostel where she was staying for a few days, in order to collect nappies and milk for her from a centre for social assistance (a non-governmental organisation offering support to parents and children in need). The owner of the hostel, seeing that the baby had nothing to eat, called social services who urgently placed the baby in the centre for social assistance for ten days, as a protection measure under the Child Protection Act ("the CPA" – see paragraphs 38-43 below). Before the placement, social workers spoke to staff from that centre who confirmed that the first applicant had been visiting them and had had difficulties taking care of her daughter, and that they had consulted her about finding alternative care.

7. On the same day – 14 April 2016 – social services drew up a report in which they noted that the mother had said that she was receiving welfare and childcare benefits and that she was enrolled in unemployment training. The applicants' doctor had stated that the mother was in need of support; however, despite her difficulties, she had regularly attended all scheduled consultations, the baby was developing well and had had all the necessary vaccines for her age.

8. Social services drew up an additional report on 15 April 2016. The document noted that after the child's birth, the first applicant had lived with a friend, who was also receiving methadone treatment, but she had left his house as the environment there had not been "beneficial". For about a week she had stayed in different hostels. She was aware that this had not been good for the baby, but had had "no choice".

9. On 20 April 2016, upon a request by the first applicant, the baby was placed with a family member for one month.

10. On 20 May 2016 the baby was placed in a social care institution. The order to that effect, issued by the local director of social assistance, was an administrative measure for child protection taken on the basis of section 27(1) of the CPA (see paragraph 41 below). The Sofia District Court confirmed that order on 13 December 2016. The first applicant did not participate in those proceedings and did not appeal against the Sofia District Court's decision.

11. On 27 May 2016 the social care institution drew up two documents – an assessment of the second applicant's needs and a planning sheet for the

care to be provided to her. The latter document indicated the first applicant among the people tasked with different types of care. Until the end of June 2016, the first applicant visited her daughter on a daily basis. After that the visits became less frequent (see below), and the last one was on 7 March 2017.

III. INTERACTION BETWEEN SOCIAL SERVICES AND THE FIRST APPLICANT

12. On 15 April 2016, a day after the second applicant's placement in alternative care, the first applicant applied to social services to have the child returned to her. Social workers met her on the same day and informed her of the documents she needed to present, but she did not proceed with her request.

13. In June 2016 a psychologist in the social care institution where the second applicant was living met with the first applicant for a psychological consultation and a parental capacity assessment. The ensuing reports described the applicant as "active and engaged", as well as motivated to have her daughter living with her. The psychologist stated that she "would support a positive assessment" of the first applicant's parental capacity, but recommended that before a decision for family reintegration was taken, social services seek a medical opinion on the first applicant's recovery from her substance dependency.

14. However, during the second half of 2016 the situation apparently changed for the first applicant. In a report of the director of the social care institution dated 18 November 2016, it was noted that her visits had become "less frequent" and "chaotic". The first applicant had been missing appointments, making unclear statements about her intentions for the child and about her employment, and providing different addresses and telephone numbers. The staff had been unable to contact her by telephone. On some occasions the first applicant had arrived to visit the baby while "visibly physically and mentally unwell". She lacked self-criticism and had "fantasy notions" about her role as a mother. The director's conclusion, supported by the same psychologist who had prepared the reports mentioned in the previous paragraph, was that, despite her apparent attachment to her daughter, the first applicant "was not capable and not willing to bring about a change in the circumstances having led to the placement of the child" in the institution.

15. In her submissions to the Court the first applicant stated that she had started visiting her daughter less frequently because a new director of the social care institution appointed at the end of 2016 had been "hostile" towards her.

16. In November 2016 the first applicant was admitted for treatment in a methadone programme in a mental-health centre in another city. She was

treated as an outpatient, visiting the health centre once a week. The treatment lasted until May 2019.

17. In December 2016 the first applicant requested to be allowed to take her daughter with her at the weekends. As a result, social services examined her personal circumstances and drew up a report dated 28 February 2017, which noted the following. The first applicant was living in a flat which, according to her, was owned by the parents of a friend of hers who had died. She stated that she had undergone an operation, which had required her restricting her contact with sick people, and that that had been the reason for her ceasing to visit her daughter. The first applicant was unemployed at that time. The social workers had informed her of the documents needed to proceed with her request, but she had failed to provide them. The social workers had been unable to reach her by telephone after that.

18. One year later, in December 2017, the first applicant requested once again to be allowed to take her daughter with her at the weekends. Social workers met with her on 20 December 2017 and she explained that she had been living outside of Sofia, but was back in the city. She had had a job for two weeks but had left it. Her stepmother was giving her food, and the parents of a friend had given her money and presents for her daughter.

19. Further examining the first applicant's personal circumstances, in February 2018 social workers visited the flat where she was living. A neighbour said that the flat had been constantly visited by people. Initially, the first applicant refused to let the social workers in, but eventually did so. She stated that the flat was hers, but did not have documents to prove this. She was living with a partner, who was allegedly prepared to help her and even to legally recognise her child; however, the social workers were unable to talk with the man, even though he was in the flat as well, because the first applicant did not allow them to. During that visit, the social workers informed the first applicant about her right to use social services.

20. The first applicant visited the local social assistance office on 26 February 2018. It was "visible" that she had been drinking alcohol. She stated that she wanted to take care of her daughter but needed time "to stabilise". She was informed of her daughter's placement in foster care and given the administrative order in that regard (see paragraph 24 below).

21. Since 26 February 2018 the first applicant has not attempted to have contact with her daughter, or to receive information about the child.

IV. PLACEMENT OF THE SECOND APPLICANT IN FOSTER CARE

22. A psychological assessment of the second applicant dated 7 November 2017 noted that the child was developing well for her age. It was nevertheless recommended to encourage her social inclusion, in particular by placing her in an appropriate family environment.

23. In January 2018 a professional foster parent expressed an interest in taking care of the second applicant, following which social services started the procedure for placing the child in that family.

24. On 9 February 2018 the director of social assistance issued an order placing the second applicant with the foster family. The order, received by the first applicant on 26 February 2018 (see paragraph 20 above), explained that a child could be placed for adoption if the parents had not requested the termination of a placement outside of the family within six months, referring in that regard to Article 84 § 2 and Article 93 § 2 of the Family Code (see paragraphs 44-45 below). The first applicant did not apply for judicial review. The order was enforced immediately.

25. The Sofia District Court confirmed the second applicant's placement in foster care on 1 August 2018. In doing so it noted that the bond between the child and her biological family was broken and that the child's mother had not expressed a wish to care for the child in a family environment. No relatives or close family members who were willing to and capable of caring for the child had been found. Given that the child was in need of care and attention, she had to be placed with the foster family (who were named explicitly, including their address). It was ordered that the measure should be in place until the second applicant turned five, or until such time as a lawful ground to modify it arose.

26. The first applicant did not participate in the judicial proceedings, as it had not been possible to summon her at the address provided by her.

27. Different documents concerning the care to be provided to the second applicant by the foster family were prepared during her placement there, which envisaged, in particular, meetings with her biological mother. However, a report of the social services of 8 May 2018 noted that no work towards reintegration with the mother had been undertaken, since the mother had failed to cooperate.

V. PLACEMENT OF THE SECOND APPLICANT ON THE REGISTER FOR ADOPTION

28. On 3 September 2019 social services drew up another report, noting that the first applicant had not contacted them for an assessment of her parental capacity or to enquire about her daughter. She was not employed, had no permanent income, frequently changed residence and was enrolled in a methadone programme. According to the most recent information, she had left the country. The report ended with a recommendation that the second applicant be placed on the Register for adoption as that was the only way to provide her with long-term care in a family environment.

29. A further report dated 7 November 2019 noted that the second applicant had no recollection of and could not recognise her mother. The bond between them was broken.

30. On 10 September 2019 the director of social assistance issued an order placing the second applicant on the Register for adoption. The order was based on Article 84 §§ 2 and 6 of the Family Code (see paragraphs 44 and 46 below). The order stated that the first applicant had permanently lost interest in her child. She had likewise not requested to be provided with assistance by social services, despite having been informed of such a possibility. The mother was not in a position to provide for the basic needs of her daughter, she had no permanent address, no financial stability or supportive environment, and there were no relatives or close family members who were willing or able to care for the child.

31. The order was notified to the first applicant, who lodged an application for judicial review on 3 October 2019. While she did not attend any of the court hearings in the ensuing judicial proceedings (see below), she was legally represented.

32. The first applicant argued before the Sofia City Administrative Court (“the SCAC”) that Article 84 § 2 of the Family Code (see paragraph 44 below) did not apply if the parent had valid reasons for not seeking to retrieve his or her child from the foster family within six months. She pointed out that she suffered from a chronic disability (opioid use disorder) which, while under control at that point in time following the completion of the methadone programme, manifested itself strongly at other times. She had been fighting to overcome her withdrawal symptoms and had been attending therapy with a psychologist. There was evidence that she did not want to lose the connection with her daughter. The first applicant argued further that the ultimate purpose of the Child Protection Act was the keeping together of the biological parent and the child, not adoption. When a living biological parent was making efforts to increase her parental capacity, it was not in the child’s interests to definitively sever the links with that parent.

33. In a judgment dated 9 December 2019, the SCAC confirmed the order placing the second applicant on the Register for adoption, referring to Article 84 § 2 and Article 93 § 2 of the Family Code (see paragraphs 44-45 below). The SCAC noted that between November 2016 and May 2019 the mother had been undergoing treatment with methadone and had been suffering from psychological and behavioural disturbances as a result of taking opioids. There was no evidence, however, of whether the treatment had been successful. Furthermore, more than six months had passed since she had ended her treatment; consequently, there no longer existed valid reasons for her not requesting an end to the child-protection measure. The first applicant had not shown that she had been making efforts to improve her parental capacity. On the contrary, the evidence pointed to the conclusion that she was not in a position to permanently care for her child, to raise her and educate her. The order placing the child on the Register for adoption corresponded to the fundamental principle of the Child Protection Act, namely to ensure the child’s best interests. In the instant case that meant the

child having a family and a home, after almost four years spent in alternative care. The child's adoption at an early age would beyond doubt facilitate her rapid and problem-free adaptation to the new family environment.

34. The first applicant appealed against the SCAC judgment. She argued that the lower court had wrongly determined the object of the proceedings, which had been the alleged unlawfulness of the order placing the child on the Register for adoption, notably in view of the omissions and breaches by the administrative authorities in the process for issuing that order. The object of the case had not been the assessment of the mother's parental capacity, or the child's placement back with her biological family.

35. In a final judgment of 23 June 2020, the Supreme Administrative Court upheld the lower court's judgment, in essence reiterating its findings and concluding that the administrative order placing the second applicant on the Register for adoption had to stand.

VI. ADOPTION OF THE SECOND APPLICANT

36. The second applicant was adopted in December 2020.

37. The first applicant submitted that she had requested to be heard in the adoption proceedings, in a request dated 20 July 2020 and addressed to the regional social assistance directorate. She had not, however, been contacted to participate in the proceedings.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. NATIONAL LAW

A. The Child Protection Act ("the CPA")

38. Under section 3 of the CPA, child protection is based, among other things, on the following principles: the provision of care in a family environment and support for the family in that context; ensuring the best interests of the child; the temporary character of any protection measure; and the immediate applicability of protection measures.

39. Section 4 of the CPA lists the different types of protection available under the CPA, namely: assistance, support and provision of various social services to the family; placement of the child with relatives or close family members; adoption; placement in foster care; provision of social services in a social care institution; police protection; specialised protection in public places; informing parents and children of their respective rights and obligations; undertaking preventive measures for the child's safety and protection; providing State legal aid; undertaking special measures for the protection of children with disabilities; and undertaking temporary protection measures under the 1996 Hague Convention.

40. Under section 24 of the CPA, child protection measures are taken by the respective social assistance directorate, including upon its own initiative.

41. Under section 27(1) of the CPA, the social assistance directorate issues an order for the placement of a child for care outside of the family (with relatives, in a foster family or in a social care institution). In accordance with section 25(1)(3), such a measure is taken where, in particular, the parents are permanently unable to care for the child.

42. Section 26(1) of the CPA provides that a child's placement outside of the family is to be confirmed by the territorially competent district court.

43. Foster care is regulated under sections 31 to 34a of the CPA. Section 33 provides that the foster family is under the obligation to provide information about the child to the parents and to facilitate contact between them. The territorially competent district court may put in place a contact regime between the child and the parents, if this is in the interests of the child.

B. The Family Code and placement on the Register for full adoption

44. Under Article 84 § 2 of the Family Code, in cases where a child has been placed for care outside of the family under the CPA, and the parents have not requested an end to the placement or a change in the protection measure without a valid reason, the child may be placed on the Register for children available for adoption, if it is in the child's interests.

45. Under Article 93 § 2, the above measure may be taken where the parents have not sought to end the placement outside of the family within six months of its beginning, without having a valid reason for that omission. When adopted in 2009, this provision aimed to put an end to situations which had arisen previously where parents had abandoned their children in social care institutions for lengthy periods of time, but had not given consent and had thus blocked any chances of adoption.

46. Under Article 84 § 6 of the Family Code, the placement or refusal to place a child on the Register of children available for adoption is done by order of the director of the regional social assistance directorate. The order is subject to judicial review.

47. A 2010 Ordinance by the Minister for Labour and Social Policy (*Наредба № РД-07-7 от 5.10.2010 г. за условията и реда за водене и съхраняване на регистрите за пълно осиновяване*) details further the conditions and procedure for placement on the Register for full adoption. More specifically, this is to be done while guaranteeing the protection of the child's interests.

48. Under section 13 of the Ordinance, the director of the regional social assistance directorate may order the deletion of the entry in the Register concerning a child if, among other things, the child is reintegrated into its biological family.

C. Prevention of the abandonment of children

49. An Ordinance adopted in 2003 by the Council of Ministers (*Наредба за условията и реда за осъществяване на мерки за предотвратяване изоставянето на деца и настаняването им в институции, както и за тяхната реинтеграция*) provides for measures aimed at preventing the abandonment of children and aiding their reintegration into the family.

50. Measures to prevent abandonment are to be taken in particular where the parents do not have a dwelling or a steady income (section 4). If social services establish that there is a risk of abandonment, they are to take protection measures, taking into account the needs of the child and the individual circumstances of the family.

51. At the relevant time section 17(1) of the Ordinance provided that measures for reintegration into the family of a child placed in alternative care were to be undertaken where one or more of the following circumstances were present: the connection between the child and the parents had not been broken; the parents had shown that the circumstances having led to the placement outside of the family had changed; the parents were capable of providing for the physical and psychological development of the child; the family did not have other children at risk of abandonment; or other circumstances required the return of the child to the family.

52. Under section 20(1) and (3) of the Ordinance, the social worker in charge of a case was to propose the child's return to the family where the aims set in an action plan for reintegration had been achieved, or where the parents were cooperating to achieve them. On the other hand, the social worker was to propose that the child remain in alternative care where the aims set in the action plan had not been achieved, or where the risk for the child having resulted in its placement in such care persisted.

53. Section 36 of the Regulations for the application of the Social Assistance Act (*Правилник за прилагане на Закона за социално подпомагане*), in force until 2020, provided for the social service "Mother and Baby Unit". Such units provided temporary accommodation, as well as social, psychological and legal advice and assistance, to mothers with children aged up to three who were at risk of abandonment. The social and psychological work was aimed at facilitating the bond between the mother and the child and increasing the mother's parental capacity.

II. INTERNATIONAL MATERIALS

54. Under the reporting system of the Revised European Social Charter ("the Charter"), ratified by Bulgaria on 7 June 2000 and specifically accepting the obligation under the provision below, the European Committee of Social Rights, which decides whether situations pertaining in States Parties comply

with the Charter, made the following statements when addressing questions to States Parties to the Charter for Conclusions 2021:

“Part I – 14. RESC Everyone has the right to benefit from social welfare services.

...

The provision of social welfare services concerns everybody who find themselves in a situation of dependency, in particular the vulnerable groups and individuals who have a social problem. Social services must therefore be available to all categories of the population who are likely to need them. The Committee has identified the following groups: children, the elderly, people with disabilities, young people in difficulty or in conflict with the law, minorities (migrants, Roma, refugees, etc.), the homeless, persons suffering from substance use disorders, women victims of violence and persons in conflict with the law, including those deprived of their liberty and former detainees. This is not, however an exhaustive enumeration of persons entitled to access and benefit from social welfare services.

The State has an obligation to take every appropriate measure to ensure that no one is left behind. Therefore it is required to implement apposite outreach arrangements. Meeting this obligation will often require proactive service-oriented action, with the competent authorities taking the initiative rather than merely responding to applications and requests. It should be recalled that fundamental rights are mirrored by fundamental obligations for the duty bearers.”

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

55. The applicants complained under Article 8 of the Convention that the authorities had placed the second applicant for adoption against the will of the first applicant, without having pursued measures towards preserving the family bond between mother and child, and without having assisted the first applicant in improving her parental capacity.

56. Article 8 of the Convention 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. Temporal scope of the case

57. The present case concerns most notably the decision to place the second applicant for adoption, which became final on 23 June 2020 (see paragraphs 35 and 55 above), namely less than six months before the lodging of the application on 26 October 2020. It was preceded by other decisions, in particular concerning the placement of the second applicant in different types

of alternative care. Those decisions were taken more than six months before the lodging of the application, and were not, moreover, contested by the first applicant at the domestic level (see paragraphs 6, 10 and 24 above). Thus, normally they would fall outside the scope of the Court's jurisdiction (see *Strand Lobben and Others v. Norway* [GC], no. 37283/13, §§ 145-47, 10 September 2019, and *Roengkasettakorn Eriksson v. Sweden*, no. 21574/16, § 68, 19 May 2022). However, the Court has to examine the decision to place the second applicant for adoption, as upheld by the national courts, in context, which inevitably means that it must to some degree have regard to the former proceedings and decisions (see *Strand Lobben and Others*, cited above, § 148). It is in fact relevant in a case such as the present one whether the competent domestic authorities considered from the very outset all the relevant requirements of Article 8 of the Convention (see *Abdi Ibrahim v. Norway* [GC], no. 15379/16, § 133, 10 December 2021).

B. Admissibility

58. The Government pointed out that the first applicant no longer had parental authority over the second applicant since the child's adoption, and that the bond between mother and child had been broken a long time ago. They thus argued that the first applicant could not validly lodge an application with the Court on behalf of the second applicant, and that the latter's complaints were therefore incompatible *ratione personae* with the Convention.

59. The first applicant argued that the second applicant had been a direct victim of the alleged violation of Article 8 of the Convention, as her relationship with her biological mother had been severed as a result of the actions of the authorities. In addition, even if after the adoption the second applicant was legally represented by the adoptive parents, they could not be expected to maintain her complaints, seeing as they were part of the breach of the applicants' rights.

60. A person who is not entitled under domestic law to represent another may nevertheless, in certain circumstances, act before the Court in the name of that person. In particular, minors can apply to the Court even, or indeed especially, if they are represented by a parent who is in conflict with the authorities and criticises their decisions and conduct (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 138, ECHR 2000-VIII; *M.D. and Others v. Malta*, no. 64791/10, § 27, 17 July 2012; and *T.A. and Others v. the Republic of Moldova*, no. 25450/20, § 32, 30 November 2021). In the event of a conflict over a minor's interests between a natural parent and the person appointed by the authorities to act as the child's guardian, there is a danger that some of those interests will never be brought to the Court's attention and that the minor will be deprived of effective protection of his or her rights under the Convention (see *Scozzari and Giunta*, cited above,

§ 138). Where an application has been lodged before it by a biological parent on behalf of his or her child, the situation may nonetheless be that the Court identifies conflicting interests between parent and child (see *Strand Lobben and Others*, cited above, § 158).

61. Consequently, despite the fact that the second applicant in the case at hand has been adopted and the legal ties with her biological mother have been severed, it is only the first applicant who is able to argue, on her own behalf as well as on behalf of the second applicant, that the severing of these family ties interfered with both applicants' right to family life (see *A.K. and L. v. Croatia*, no. 37956/11, § 49, 8 January 2013). The second applicant's complaints, brought by the first applicant, cannot therefore be dismissed as being incompatible *ratione personae* with the provisions of the Convention.

62. The Court notes additionally that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

1. The parties' submissions

(a) The applicants

63. The applicants argued that they had had a family life together during the first year of the second applicant's life: they had had regular contact, a bond, and positive prospects to be reunited. However, the State authorities had interfered with this relationship, limiting the first applicant's contact with her daughter, and thus preventing them from preserving their emotional ties.

64. The applicants further argued that social services had erred in their approach from the outset. The urgent placement of the second applicant outside of the family in April 2016 had been a measure designed for children who were victims of violence, which had not been the case. The most appropriate measure in their case would have been the placement of the two applicants in a Mother and Baby Unit (see paragraph 53 above), but this had never been proposed. Nor had the authorities taken measures under the 2003 Ordinance for the prevention of the abandonment of children (see paragraph 50 above). The applicants also pointed out that "poverty [was] not a reason for family separation".

65. The applicants considered that the second applicant's placement on the Register for adoption had been "unexpected", seeing that at that time she had already been placed in foster care and had thus been benefiting from a family environment. The domestic courts had not duly examined "whether it was better for the second applicant to be adopted than to grow up as a foster child".

66. The first applicant complained also of the authorities' failure to summon her to participate in the proceedings concerning the second applicant's adoption (see paragraph 37 above).

(b) The Government

67. The Government contended that the guiding principle of the authorities in the applicants' case had been the best interests of the child, and that adoption had been envisaged only after all possibilities for the second applicant's reintegration into the biological family had been exhausted. Before the child's placement on the Register for adoption the authorities had undertaken different measures to support the mother, had taken into account her vulnerability owing to her previous substance abuse, and had been prepared to assist her in establishing contact with the child. In fact, in April 2016 the first applicant had already been benefiting from social services, delivered by the centre for social assistance she had been attending. Further services had been provided in the weeks after the baby's placement in alternative care, and during that period the mother and the social workers had seemed to be in agreement on the measures to be taken. Eventually, however, the first applicant had failed to cooperate with the authorities: she had often provided addresses and telephone numbers where it had not been possible to reach her, and she had not sought contact with her daughter after the latter's placement in foster care. She had thus ultimately rendered futile the authorities' efforts to ensure the reintegration of the second applicant into the family.

68. In addition, the first applicant had not contested the measure placing her daughter in different types of alternative care or applied for its discontinuation. She had not taken any action in that regard up to the moment when the second applicant had been placed on the Register for adoption.

69. Moreover, even if the judicial-review proceedings concerning the second applicant's placement on the Register for adoption had been initiated by the first applicant, she had never attended the court hearings to present her version of events. Even at that point she had failed to request the reintegration of her daughter into the family, seeking only for the measure placing the second applicant in foster care to be kept in place for an indefinite period of time. On the whole, the first applicant had never explained in a plausible manner why she had ceased to visit and seek contact with her daughter; in particular, the treatment she had received as an outpatient in another city had not been an obstacle to maintaining contact, because it had required her visiting that city only once a week.

70. The Government pointed out that social services had been able to provide information to the first applicant and to assist her, but had not been able to force her to maintain or re-establish contact with her daughter. The Government rejected the allegation that the second applicant had been taken from her mother only because the latter was poor.

71. Lastly, the Government expressed doubts as to whether the first applicant's request to participate in the adoption proceedings (see paragraph 37 above), which bore no stamp showing that it had been received by the authorities, had indeed been submitted to them. In any event, she had not been entitled to be heard in those proceedings.

(c) The third-party intervener

72. The Center for Humane Policy in Sofia made submissions on the situation of drug addicts in Bulgaria and in particular that of addicted parents. According to them, specialised services providing social and psychological support to parents with substance-abuse problems were lacking, and it was the practice of social services to remove a child from the family of such parents immediately and place it in a social care institution or a foster family. Thus, parents with substance-abuse problems were often separated from their children, without receiving any support from the social protection system.

73. The third-party intervener stated further that each year approximately 30,000 pregnant women in Europe used opioids, but "pregnancy and motherhood can be a strong motivator in a woman's pathway to recovery". The authorities had to be proactive in proposing social services to drug users, as such people were "notorious for not using such services".

2. The Court's assessment

74. It is not in dispute between the parties that the interference with the applicants' rights, namely the second applicant's placement for adoption without her mother's consent, was "in accordance with the law", as required under Article 8 § 2 of the Convention. In particular, the measure was provided for under the Child Protection Act ("the CPA") and the Family Code (see paragraphs 38-46 above).

75. Furthermore, the interference pursued legitimate aims, namely the "protection of health and morals" and the "rights and freedoms" of the second applicant (see *Strand Lobben and Others*, cited above, § 214).

76. The dispute in the present case relates therefore to whether the interference was "necessary in a democratic society". The general principles applicable in that respect are well established in the Court's case-law and were extensively set out in *Strand Lobben and Others* (cited above, §§ 202-13).

77. In particular, the Court has held that the child's ties with its family must be maintained, except in cases where the family has proved particularly unfit. This means that family ties may only be severed in very exceptional circumstances, and that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family. In addition, placement outside of the family should be regarded as a temporary measure, to be discontinued as soon as circumstances permit. On the other hand, it is

clearly also in the child's interests to ensure its development in a sound environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development. Furthermore, the passage of time can have irremediable consequences for the relations between the child and the parent with whom it does not live.

78. The decision-making process is also important. What has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the biological parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests, and whether they have been able to present their case.

79. In the present case, the second applicant was taken into public care on 14 April 2016, when about four months old (see paragraph 6 above). She was briefly accommodated in a centre for social assistance and then with a relative of her mother, and on 20 May 2016 she was placed in a social care institution (see paragraphs 6 and 9-10 above).

80. Before the Court the applicants contested these early measures, in particular on the ground that social services had not taken action aimed at the prevention of the abandonment of children, such as accommodation in a Mother and Baby Unit, but had instead immediately sought to place the second applicant outside of her biological family (see paragraph 64 above).

81. As the Court observed above, while this early period normally falls outside its jurisdiction, it will nevertheless examine whether already at that stage the national authorities acted in accordance with the requirements of Article 8 of the Convention (see paragraph 57 above). That provision requires that a child's ties with its family be maintained, and that the authorities do what is possible to preserve those personal relations (see paragraph 77 above).

82. In the light of these requirements, it is indeed regrettable that social services, alerted that the second applicant was at risk on 14 April 2016, did not take action provided for by law for the prevention of the abandonment of children, such as placing the applicants in a Mother and Baby Unit (see paragraphs 50-53 above). Such a course of action would have allowed them to stay together and could have preserved their personal relations. The Government have not provided any explanation for the apparent failure to explore this option. It is significant in that regard that the second applicant had not been the victim of violence, which could have justified her urgent separation from her mother. The Court refers also to the submissions of the third-party intervener, the Center for Humane Policy, according to which it is the practice of social services in Bulgaria to remove the children of parents with substance-abuse problems immediately and place them into alternative care, without providing social support to the parents (see paragraph 72 above).

83. Yet, despite the above considerations, the Court does not find social services' failure at this early stage to pursue measures permitting the two

applicants to stay together decisive for its conclusion on the complaints under examination. It observes that in fact the first applicant seemed content with the early measures taken: while she initially submitted a request to have her daughter returned to her, she subsequently abandoned it, and herself proposed several days later that the child be placed with a family member for one month (see paragraphs 9 and 12 above). After that month expired and the baby was placed in a social care institution, the first applicant did not contest that decision, having contact with her daughter on a daily basis, and being tasked by the staff with some of the care to be provided (see paragraphs 10-11 above).

84. In addition, it appears that during this initial stage social services envisaged the reunification of the applicants' family and worked towards facilitating it. This is reflected in the report of the social institution psychologist of June 2016: the psychologist met with the first applicant for a psychological consultation and a parental-capacity assessment, and was at that stage optimistic about the possible reintegration of the second applicant into the biological family (see paragraph 13 above).

85. Accordingly, the Court is of the view that during the initial period following the second applicant's placement in public care, namely from 14 April to about the end of June 2016, social services acted with the sufficient care required to preserve the ties between the applicants and to seek to facilitate the family's reunification, as required under Article 8 of the Convention.

86. Things apparently deteriorated in the second half of 2016, and in the following months the first applicant gradually lost contact with her daughter (see paragraphs 5, 11 and 14 above). Eventually, in 2018 and 2019 the authorities concluded that the family bond had been broken, noting that the second applicant no longer had any recollection of her mother (see paragraphs 25 and 29 above). The parties were in dispute as to whose fault that state of affairs was: the applicants contended that it was the authorities who had prevented them from maintaining their bond and had broken the family ties (see paragraph 63 above), while the Government argued that it had been the first applicant's behaviour and lack of cooperation which had rendered futile social services' efforts towards family reunification (see paragraph 67 above).

87. The Court observes that in the second half of 2016 the first applicant started visiting her daughter less frequently and in a "chaotic" manner, and that her last visit was on 7 March 2017, when the child was about one year and three months old (see paragraphs 11 and 14 above). The first applicant presented different explanations – in her submissions to the Court she stated that the reason had been the hostility of the director of the social care institution where her daughter was accommodated (see paragraph 15 above), although at the time she told social services that she had undergone surgery and that she had been living outside of Sofia (see paragraphs 17-18 above).

Following two requests to take her daughter with her at the weekends, which the Court will discuss in more detail below, after February 2018 the applicant stopped seeking contact with her child altogether (see paragraph 21 above).

88. For the Court, none of the explanations given by the first applicant at different times shows convincingly that she might have been objectively prevented from maintaining contact with her daughter. Nor does her participation in a methadone programme appear to have been in and of itself an obstacle, seeing that it required her travelling to another city only once a week (see paragraph 16 above). The Court thus agrees with the Government's statement (see paragraph 69 above) that the first applicant never explained in a plausible manner why she stopped visiting her daughter or seeking any contact with her.

89. As mentioned, during this period the first applicant approached on two occasions social services with requests to be allowed to take her daughter at the weekends. The first of those was made in December 2016. Social services initiated a check-up of the applicant's circumstances and gathered information, but the applicant herself failed to pursue the procedure and subsequently could no longer be reached (see paragraph 17 above). Similarly, when the first applicant made her second request in December 2017, she did not pursue it, even though a check-up was once again initiated and social workers visited her in her home. During her final visit to social services, where she was perceived as being in an inebriated state, the applicant declared that she needed time "to stabilise" (see paragraphs 18-20 above).

90. Once again, the Court must verify whether during this period of time the national authorities acted in accordance with the requirements of Article 8 of the Convention, most notably whether they took care to preserve as far as possible the family ties between the applicants and, if appropriate, to "rebuild" the family (see paragraph 77 above). It thus refers to its finding above that the first applicant stopped visiting her daughter and seeking information about her for reasons which she has never convincingly explained, and to the fact that on two occasions she seemed to have herself abandoned her requests to re-establish contact, which social services were working on. The social workers were unable to reach her by telephone (see paragraphs 14 and 17 above) and at one point she was thought to have left the country (see paragraph 28 above). Even after the second applicant was placed in foster care, meetings with the first applicant were envisaged (see paragraph 27 above), but at that point in time the social workers no longer had any contact with her (see paragraphs 21 and 27 above).

91. The Court reaffirms that in the case of vulnerable persons such as the first applicant social welfare authorities have to act with particular vigilance and afford increased protection (see *Y.I. v. Russia*, no. 68868/14, § 87, 12 October 2020). Even so, it does not perceive a failure of those authorities in the present case to react adequately to the first applicant's requests and to seek to assist her. They recognised her attachment to her daughter (see

paragraph 14 above) and tried to contact her, however such contact appears to have failed as the first applicant was unavailable.

92. In view of the above, the Court cannot conclude that the national authorities can be blamed for the breaking of the family ties and the bond between the applicants, in that they took sufficient steps to assist the first applicant, whenever she was available. Nor does it appear that after June 2016 the authorities otherwise acted in breach of the requirements of Article 8 of the Convention.

93. The decision to place the second applicant on the Register for adoption was taken in this particular context (see also paragraphs 28-30 above). The first applicant applied for judicial review of the decision, but it was upheld by the national courts (see paragraphs 31-35 above). The first applicant did not apply for family reunification at that time, but merely opposed the placement of her daughter for adoption, apparently preferring that the child remain in foster care.

94. Even in these circumstances the applicants retained a right to respect for their family life, and the national courts had to balance the interests of the child against the interests of the biological mother (see *Abdi Ibrahim*, cited above, §§ 150-51).

95. In the judicial-review proceedings the Sofia City Administrative Court based its decision on the second applicant's best interests, which according to its analysis required an early-age adoption, thus facilitating her rapid and problem-free adaptation to the new family environment. It also considered that the first applicant lacked parental capacity and could not provide for her daughter's needs (see paragraph 33 above). Its conclusions were upheld by the Supreme Administrative Court (see paragraph 35 above).

96. The Court sees no reason to conclude that the decision to place the second applicant for adoption, in the circumstances described above, suffered from any shortcomings. As discussed, at that juncture the family ties between the two applicants had already been broken for reasons for which the authorities were not responsible, and the first applicant was no longer seeking family reunification or to take care of her daughter, or even contact rights, but only that the child remain in foster care for an indefinite period of time.

97. The Court cannot conclude, in view of the above, that the domestic authorities overstepped their margin of appreciation when deciding to pursue what they considered to be in the best interests of the child, namely early-age adoption. In addition, the first applicant had the possibility to participate in the decision-making process, and even if she chose not to attend the court hearings in person, she was legally represented and able to put forward her arguments (see paragraphs 31-32 and 34 above).

98. Furthermore, the Court sees no reason to accept the applicants' assertion that their family was separated because the first applicant was poor (see paragraph 64 above). While the first applicant being unemployed was mentioned by the domestic authorities (see paragraphs 28 and 30 above), the

main reasons discussed were the first applicant not having sought the discontinuation of the measure placing her daughter in alternative care, her lack of interest in the child, and the breaking of the family ties (see paragraphs 28, 30 and 33 above).

99. It is also significant that under domestic law the placement of the second applicant on the Register for adoption could, in principle, have been annulled, had the circumstances having led to such a measure changed (see paragraph 48 above).

100. Lastly, in the light of the above considerations, the Court cannot conclude that the impossibility for the first applicant to participate in the adoption proceedings (see paragraph 37 above) – a fact she expressly complained of (see paragraph 66 above) – raises any separate issue.

101. The Court accordingly concludes that there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;
2. *Holds*, by five votes to two, that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 13 December 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Pere Pastor Vilanova
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Serghides and Zünd is annexed to this judgment.

P.P.V.
M.B.

JOINT DISSENTING OPINION OF JUDGES SERGHIDES AND ZÜND

1. This opinion contains a statement of disagreement with paragraph 101 of the judgment and point 2 of its operative provisions, holding that there has been no violation of Article 8 of the Convention. It also contains a brief reasoning of our disagreement.

2. The impugned measure, namely the placement of the child (the second applicant) by the domestic authorities on the Register for adoption, against the will and without the consent of her biological mother (the first applicant), resulting ultimately in the adoption of the child in December 2020 (see paragraph 36 of the judgment), was not necessary in a democratic society and was a very drastic, harsh, inflexible, permanent and irreversible measure which was disproportionate to the alleged legitimate aims pursued. Other less intrusive measures could have been taken by the domestic authorities, such as placing the child in a foster family while allowing the mother and the child to maintain some contact with each other.

3. The respondent State could thus have found ways to preserve the family tie or bond between the mother and the child, and it had a positive obligation under Articles 1 and 8 § 1 of the Convention to take appropriate and effective steps to assist the mother in improving her parental capacity and her relationship with her child. By arranging for the adoption of the child, in breach of this obligation, the respondent State put an end irretrievably to the legal and actual relationship between the mother and the child and to any future prospect or hope for improving that relationship, thereby infringing the right to respect for family life of both applicants, the child and the mother. Stated otherwise, instead of the domestic courts and the present judgment interpreting and applying Article 8 § 1 of the Convention according to the principle of effectiveness as a norm of international law and as a method of interpretation, so as to render the applicants' exercise of the right to respect for family life under Article 8 § 1 practical and effective, they entirely extinguished its core or very essence.

4. Regrettably, the judgment concludes that the domestic courts did not overstep their margin of appreciation (see paragraphs 33-34 and 95-96 of the judgment), apparently finding sufficient the mere reference to some relevant factors or considerations. However, neither the domestic courts nor the Court engaged in any *genuine* proportionality test *stricto sensu*, balancing the interference and the applicants' rights under Article 8 § 1 (see similar arguments advanced in more detail in Judge Serghides' dissenting opinion in *S.J.P. and E.S. v. Sweden* (no. 8610/11, 28 August 2018), and especially paragraph 15 thereof). We therefore consider that the decision-making process leading to the impugned decision to place the child on the Register for adoption was problematic from the standpoint of the Convention. In our view, a fair balancing test between all the interests concerned would lead to

the conclusion that the scales should tip in favour of not placing the child on the Register for adoption, and thus to a conclusion that would give precedence to the interests of the two applicants, primarily those of the child. The following findings of the Court in *Abdi Ibrahim v. Norway* ([GC], no. 15379/16, § 162, 10 December 2021) can lend support, by analogy, to the proposed approach advanced in the present dissenting opinion:

“The reasons advanced in support of the decision were not sufficient to demonstrate that the circumstances of the case were so exceptional as to justify a complete and definite severance of the ties between X and the applicant, or that the decision to that effect was motivated by an overriding requirement pertaining to X’s best interests. Emphasising the gravity of the interference and the seriousness of the interests at stake, the Court also considers that the decision-making process leading to the applicant’s ties with X being definitively cut off, was not conducted in such a way as to ensure that all of her views and interests were duly taken into account. There has accordingly been a violation of Article 8.”

In this connection see also, *mutatis mutandis*, *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, § 225, 10 September 2019).

5. For these reasons, we find that there has been a violation of Article 8 § 1 of the Convention and we would make an award to the applicants in respect of non-pecuniary damage as well as legal costs and expenses. However, since we are in the minority, there is no need to estimate the extent of these issues.