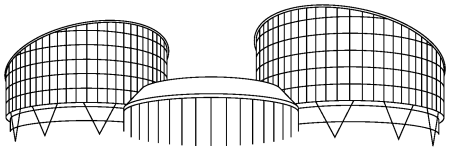

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF JANSEN v. NORWAY

(Application no. 2822/16)

JUDGMENT

STRASBOURG

6 September 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Jansen v. Norway,

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

Angelika Nußberger, *President,*
Erik Møse,
Yonko Grozev,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov,
Lado Chanturia, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 10 July 2018,

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

PROCEDURE

1. The case originated in an application (no. 2822/16) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Ms B. Jansen, a Norwegian national who was born in 1992 and lives in Oslo. She was represented before the Court by Ms N. Hallén, a lawyer practising in Oslo.

2. The Norwegian Government ("the Government") were represented by their Agent, Mr M. Emberland of the Attorney General's Office (Civil Matters).

3. The applicant alleged that the refusal to allow her contact with her daughter, A, who had been taken into local authority care, had violated her right to respect for her family life under Article 8 of the Convention.

4. On 27 April 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background and care order

1. Background

5. A was born in 2011 and is the daughter of the applicant and Y. Both the mother and father had just turned 19 when the child was born. They had

been engaged to be married, but the relationship had ended, and the applicant did not name Y as the child's father. At the father's initiative, paternity was established by a court on 18 April 2012. The applicant and the child's father later agreed on joint parental responsibility.

6. When the child was born, the applicant was living at home with her parents, who are Norwegian Roma. Shortly afterwards, she and A were thrown out by the applicant's father – the child's maternal grandfather – and the applicant, assisted by the social security authorities, decided that she and the child would stay at R. family centre – a parent-child institution. They moved back home after just under three weeks, but returned to the family centre three weeks later because the maternal grandfather had been violent to the applicant.

7. While the applicant was staying at R. family centre, on 1 December 2011 the grandfather stabbed a neighbouring married couple who were the parents of one of the applicant's friends. The background to this was that he believed that they had helped the applicant to move to the family centre. The applicant was equipped with a panic alarm (*voldsalarm*).

8. The applicant and A stayed at R. family centre for three and a half months, until 16 February 2012. They then moved back in with the applicant's family. Shortly thereafter, the Child Welfare Service applied for a care order pursuant to section 4-12(a) of the Child Welfare Act (see paragraph 67 below).

9. On 14 June 2012 the Child Welfare Service issued an emergency care order to place A in an emergency foster home at a secret address, in accordance with the second paragraph of section 4-6 of the Child Welfare Act (see paragraph 67 below). The decision stated that the Child Welfare Service had known the family network for many years and that the family, including the applicant, evaded measures of assistance. The County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker* – "the Board") approved the emergency placement the following day. On 18 June 2012 A was moved to the emergency foster home, and on 21 June 2012 it was decided that the applicant would have one hour of supervised contact per week. The reason given for the supervision was the risk that the child might be abducted.

10. On 25 June 2012 the Board reviewed the emergency care order. It noted that the Child Welfare Service had been informed by the staff at R. family centre that there were considerable deficiencies in the applicant's ability to care for herself and the child, but that she would not accept assistance. Moreover, the Board observed, *inter alia*, that the applicant had repeatedly moved back from the family centre to her parent's home, where she herself had been the victim of violence numerous times as well as witness to violence against other family members and neighbours, even after A had been born. A witness from R. family centre had testified that the mother would not take advice, had herself had a troubled childhood and was

under the dominance of her father. The witness mentioned that the applicant's father took decisions for the applicant and controlled her finances. He had also taken her to the social security authorities and presented her as having intellectual disability (*psykisk utviklingshemmet*) in order to obtain an apartment for himself. The Board added that even when the applicant had lived in a secure environment at R. family centre, she had followed her father's order to return home.

11. On 23 August 2012 Oslo City Court (*tingrett*) reviewed and upheld the emergency care order. It noted, *inter alia*, that there was an obvious (*nærliggende*) risk that the applicant's father would influence her to prevent the Child Welfare Service from involving itself any further. It took account of how her father had prevented her from going to school, which meant that she still could not read or write and did not have the necessary knowledge for day-to-day life. Further, the City Court found that the applicant was obviously still under strong influence of her father, as had been lately illustrated by how she had two times left the family centre (see paragraphs 6 and 8 above) without notice, because her father had asked her to do so. For this reason, the City Court did not attach weight to the applicant's statements before that court to the effect that she was now willing to accept assistance measures. Moreover, the applicant had stated that she was now living with a friend, but had been unable to give the address. A's father, Y, supported the emergency care order before the City Court.

12. After three months, on 26 September 2012, A was moved from the emergency foster home to her current foster home. The background to this move was that the emergency foster mother had discovered a car following her after a contact session at the child welfare centre two days before, on 24 September. She had reported this to the centre's emergency foster care department, which had found out that the car belonged to the applicant's maternal grandfather. The car had been driven by a young man who was alone in the car. Because of the abduction risk, the Child Welfare Service made an emergency order that the applicant would have supervised contact with A one hour per month in suitable premises and with police assistance. A similar decision was made in relation to Y the next day, on 27 September.

13. On 5 October 2012 Y initiated custody proceedings against the applicant and requested an order that A live in his care. The appointed expert in that case, A.G.H., concluded that neither parent should have care and control of or contact with A.

14. On 18 October 2012 the Board reviewed the orders on contact rights of 26 and 27 September 2012 (see paragraph 12 above). It found, *inter alia*, that the incident on 24 September, viewed in conjunction with the other information about the behaviour of the mother's family and network, showed that the applicant and Y could both be subject to threats or pressure, which again implied a risk that A might be kidnapped. The Board noted that it would be demanding to carry out any contact sessions without A's

identity being revealed to the applicant's family and network, but the risk would be reduced with fewer visits. The Board also attached weight to A being a vulnerable child who had experienced considerable instability and disorder in her first year. She had recently been moved again and had a particular need for calm and stability.

2. Care order

15. On 19 December 2012 the Board, composed of a chairperson qualified to act as a professional judge, a psychologist and a layperson, in accordance with the first paragraphs of sections 7-2 and 7-5 of the Child Welfare Act, issued a care order pursuant to section 4-12(a) of that act (see paragraph 67 below). Before the Board, A's father, Y, supported the care order and requested visiting rights.

16. On the issue of daily care, the Board considered that A was a vulnerable girl who had already experienced several broken relationships. Referring to case documents and testimony, it assessed A as insecure in her attachment to care persons. The Board further noted that A scored as "delayed" and otherwise obtained low scores on tests relating to motor skills, communication and social functioning. It appeared clear that she had been under-stimulated until she was placed in the emergency foster home. She had therefore, in the Board's view, a particular need for stable and predictable surroundings and a care that could further her development (*utviklingsfremmende omsorg*). The Board found it clearly proved that there were serious deficiencies in terms of the personal contact and security needed by A in light of her age and development. This could be related to the applicant's own growing up not having been secure and adequate (*trygg og god*), including that she had been kept away from, or had chosen not to avail herself of, assistance measures from child welfare and health authorities.

17. The Board remarked that the child welfare authorities should consider offering the applicant treatment of her mental health, and further assessed that she would not be able to benefit from child welfare assistance measures without her first obtaining help with her mental health. In addition, the Board noted that the material conditions had considerable deficiencies: the applicant had been assisted to get her own apartment, but had not paid rent or managed to obtain documents in order to have the rent covered by the social security authorities. She had stated that her father had received all the money she had been granted as financial support, to which she had only had limited access. The Board considered that she, in short time, could end up in a situation where she could not offer the child a place to live and food. The Board examined the issue of A's Roma heritage in light of the United Nation's 1989 Convention on the Rights of the Child (see paragraph 69 below) and the Council of Europe's 1995 Framework

Convention for the Protection of National Minorities (see paragraph 72 below) and concluded that these did not prevent that a care order be issued.

18. As to the question of contact, the Board stated that this had to be determined in light of the proportionality requirement set out in Article 8 of the Convention as well as the United Nation's 1989 Convention on the Rights of the Child (see paragraph 69 below). According to the case-law of the European Court of Human Rights, the clear starting point was that a care order should be a temporary measure to be discontinued as soon as circumstances permit. Reference was also made to *Johansen v. Norway*, 7 August 1996, §§ 78 and 83, *Reports of Judgments and Decisions* 1996-III, according to which the authorities had a "normal obligation under Article 8 of the Convention to take measures with a view to reuniting them if the mother were to become able to provide the daughter with a satisfactory upbringing". At the same time, contact which did not further the child's development could be limited, and even denied. The Board further noted that according to case-law of the Supreme Court and the European Court of Human Rights, special and compelling reasons were required in order to justify contact to such limited extent that it had to be considered as a breaking off of contact.

19. The Board went on to examine the instant case in view of the fact that, in its opinion, it would be a long-term placement. This meant that the purpose of contact was for A to get to know her biological origins with a view to potential future attachment. Before the Board, the child welfare authorities had submitted that contact should be denied altogether, because of the risk that A would otherwise be abducted. The Board found it substantiated that it was a member of the applicant's family who had followed the emergency foster mother on 24 September 2012 (see paragraph 12 above) to find out where A had been placed. However, the Board agreed with the parents that there was quite a leap between following someone in order to find out an address and carrying out an abduction. The Board was therefore of the opinion that there was a "certain risk" of A being kidnapped and kept hidden, but that there was not, at the time it made its decision, a sufficiently present and obvious (*aktuell og nærliggende*) risk. Two contact sessions had taken place since A had been moved from the emergency foster home into her ordinary foster home following the "car incident", without anyone attempting to find out her address. Nor had any information about where A had been placed emerged during contact sessions, since she was too young to communicate that information. She would probably be unable to do so for another year.

20. The Board had not found any other circumstances relating to the contact between the parents and A to indicate that special and compelling reasons for denying contact existed, and gave both parents supervised contact of one hour, four times a year. Neither of them was entitled to know A's whereabouts.

B. First set of contact proceedings

1. The City Court

21. Both the applicant and Y accepted the care order, but the applicant applied to the City Court for contact to be increased, with the frequency to be decided by the court. The father became a party to the case. He first applied for the Board's decision to be upheld. He subsequently applied for unsupervised contact. The municipality asked the court to deny both parents contact because of the risk of abduction.

22. The City Court heard the case from 18 to 19 June 2013. The court's bench was comprised of one professional judge, one lay judge and one psychologist (see paragraph 68 below). The parties attended with counsel and gave evidence. Eight witnesses were heard.

23. On 5 July 2013 the City Court gave judgment and ordered that the applicant and Y were not entitled to have contact with A.

24. The City Court found that the applicant's father had not altered his need to control the applicant and her child. The court referred to statements the applicant had made to the police, to the extent that her father wanted to take over the care of the child and planned to take the applicant and her daughter abroad, kill the applicant and then take over the care of A. He had allegedly said this only a few hours before he had stabbed the parents of the applicant's friend (see paragraph 7 above). It was also, to the City Court, unlikely that the applicant had cut off contact with her father. In addition, it was likely to have been the applicant's family who had followed the emergency foster mother (see paragraph 12 above). There was thus a present and obvious (*aktuell og nærliggende*) risk of kidnapping. At the age of two, A had already had to change care persons several times, and it could be considerably harmful if she lost her foster parents because of kidnapping or a risk of such. In addition, the applicant's father could not in any way be expected to be a serious care person for A. Viewed in connection with the contact sessions that had taken place, which had led to the child having negative reactions and challenged the calm and stability in the foster home, this supported the conclusion that the court should not allow any contact. Weighing the different interests, the City Court concluded that a decision to the effect that the applicant would not be entitled to have contact with A, pertained to her best interests.

25. As to A's cultural background on her mother's – the applicant's – side, the City Court concluded that the Council of Europe's 1995 Framework Convention for the Protection of National Minorities (see paragraph 72 below) could not lead it to reach a different conclusion as to what was in A's best interests. It added that it would be limited how much the applicant could teach A about the Roma during four contact sessions yearly, and that A would be given information about her background by the foster parents.

2. The High Court

26. The applicant and Y both appealed to the High Court (*lagmannsrett*) which heard the case, including testimony from the applicant and the child's father – who both attended with counsel – and eight witnesses, three of which were experts. It gave judgment on 5 May 2014, dismissing the appeals.

27. The High Court noted that it was circumstances relating to the applicant's family that had led it to decide not to allow any contact. It mentioned that the applicant's father had, over the years, been convicted of possession and use of drugs, driving under the influence of alcohol or drugs (*promillekjøring, kjøring i påvirket tilstand*), thefts and a stabbing. He had been suspected of violent crimes and charged with attempted murder with the use of a firearm, but the charges had been dropped. The applicant's mother had been fined and sentenced to imprisonment for violent crimes. Moreover, the High Court noted, the applicant's father had thrown the applicant out of her home when she had had care of the child, then only newborn. The applicant had explained that she had been subject to violence from her father and abuse from her mother and brother. The High Court noted that the applicant's father was violent and appeared unpredictable. In addition, there had been the incident with the emergency foster mother being followed (see paragraph 12 above). There was, in conclusion, a risk that the child would be abducted and hidden from the Child Welfare Service. The child had already been a victim of neglect when living with the applicant and the applicant's parents and there were reasons to fear that she would again be subject to neglect if someone in the applicant's extended family (*storfamilie*) kidnapped her. Breaking off A's relationship to her foster parents, to whom she was developing attachment, at that time, would also in itself be serious.

28. The High Court also referred to the fact that a psychologist at an outpatient clinic, K.G.F., had reported that A was marked by neglect in her early life. The psychologist recommended that A, because of her socio-emotional difficulties, be referred to the Children's and Young People's Psychiatric Out-Patient Clinic (*Barne- og ungdomspsykiatrisk poliklinkk*). Furthermore, the psychologist recommended that A, because of her somewhat scarce use of language, attention difficulties and early development delay, in time be examined by educational and psychological services *(praktisk-pedagogisk tjeneste)* for at least one year prior to starting school. The psychologist had reported that A needed that her needs to develop in a completely secure and predictable environment be given priority, which also implied a need for a continued arrangement in which she did not have contact with the applicant. The High Court noted, in addition, that another psychologist, A.G.H., who had been appointed as expert in the proceedings between the parents concerning custody and parental authority (see paragraph 13 above) had already in 2012

recommended that none of the parents should have contact with A, primarily because of the abduction risk.

29. The High Court disagreed with the Board's consideration to the effect that, while there was a certain risk of abduction, it could not qualify as present and obvious (*aktuell og nærliggende*), and special and compelling reasons could therefore not be present. In the High Court's view, an overall assessment had to be made, in which not only the probability of an abduction would weigh in, but also factors such as the consequences of a possible abduction, the child's robustness and other consequences that contact would entail for the child. Although the main reason for refusing contact lay in the abduction risk, that risk was not the only argument for denying contact. One unfortunate consequence of the abduction risk was that contact sessions would necessarily have to take place without the foster parents – A's primary caregivers and those she felt most secure with – present. This could also harm the child's confidence in the foster parents. In addition, A had had negative reactions to the sessions that had taken place. The foster parents had stated that she, following the sessions, could cry for a week, be sad, wake up during nights as if she had bad dreams and had developed a rash that looked like eczema which the health visitor had said had been stress-related. The problems associated with the contact sessions had to be seen in view of the fact that A was a vulnerable child.

30. In the view of the High Court, it was not possible for A's father, Y, to have contact with A either. He had repeatedly been threatened by the applicant's father, brother and cousin. The court was of the opinion that he could be pressured into disclosing information about A's whereabouts should it come to his knowledge.

3. The Supreme Court

31. The applicant and Y appealed to the Supreme Court, regarding the application of the law and assessment of the evidence. Written declarations were presented to the court by A.N., a secondary education teacher at a municipal Roma Initiative (*Romtiltaket*) – an advice centre that gave help and guidance; H., a case officer with the Child Welfare Service, and the psychologist K.G.F. (see paragraph 28 above). They had also given evidence before the City Court and the High Court (see paragraphs 22 and 26 above). Since the High Court had given judgment, the maternal grandfather had started serving a four and a half year sentence in connection with the stabbing in December 2011 (see paragraph 7 above). The Supreme Court had also been informed that the applicant was pregnant and living with the father-to-be (see paragraph 38 below).

32. In its judgment of 23 October 2014 (*Norsk Retstidende* (*Rt.*) 2014 page 976) the Supreme Court first set out the general principles with respect to contact rights, based on the Child Welfare Act, its preparatory works and related Supreme Court case-law, Article 9(3) of the 1989 Convention on the

Rights of the Child (see paragraph 69 below) and Article 8 of the Convention on the right to respect for family life as this provision had been interpreted by the European Court of Human Rights in cases such as *Johansen v. Norway*, cited above; *R. and H. v. the United Kingdom* (no. 35348/06, § 73, 31 May 2011); and *Neulinger and Shuruk v. Switzerland* [GC] (no. 41615/07, § 136, ECHR 2010). The Supreme Court additionally observed that the relevant legal standard that could be inferred from the case-law of the European Court of Human Rights – that a child's ties with its family can only be broken "in very special circumstances" – was also in line with Article 102 and Article 104 viewed in conjunction with Article 92 of the Norwegian Constitution (see paragraph 66 below).

33. On the topic of A's Roma identity, the Supreme Court examined, *inter alia*, Article 30 of the 1989 Convention on the Rights of the Child (see paragraph 69 below), Article 27 of the international Covenant on Civil and Political Rights (see paragraph 71 below), General Comment No. 11 from 2009, the UN Committee on the Rights of the Child (see paragraph 70 below), and Article 5 of the Council of Europe's Framework Convention for the Protection of National Minorities (see paragraph 72 below).

34. The Supreme Court considered it somewhat unclear whether the High Court had been of the opinion that the risk of abduction alone was sufficiently high to justify denial of contact. Studying the High Court's reasons, it found that these could be understood to mean that, in the overall assessment, even a small ("certain") risk of abduction would be a sufficient basis for denying contact if an abduction would have a strong harmful effect on the child, if the child was vulnerable, and if the child reacted negatively to contact sessions. If this had been the High Court's point of departure for its assessment, it had not been pertinent. If the risk of abduction could not be said to be real and present (*reell og aktuell*), contact could not be denied because an abduction would have a severely harmful effect. This also had to apply if the child showed such negative reactions to contact sessions as in the present case, since contact was considered to be in the child's best interests from a long-term perspective. The Supreme Court also interpreted the municipality to mean that the negative reactions were not in themselves a sufficient basis for denying contact.

35. When turning to the facts of the instant case, the Supreme Court took into account that there had been no direct presentation of evidence before it, nor had any expert witnesses been appointed, which would normally imply that it would be reluctant to depart from the High Court's assessment of the facts. In the instant case there were, however, some unclear or new aspects of the case that needed further examination by the High Court. This included A's maternal grandfather having started serving a four and a half year sentence (see paragraphs 7 and 31 above); two years had passed since the incident in which the emergency foster mother had been followed (see

paragraph 12 above) and nothing had happened since to indicate that the applicant's family was trying to locate A or planning to abduct her; the applicant had grown older and was anew pregnant, now with a father to-be from a different environment; the applicant had gone to school and undergone a work placement. The Supreme Court wanted an assessment of what the foregoing meant in relation to the possibility of the applicant resisting any pressure exerted by her family and also a more thorough assessment concerning Y.

36. The Supreme Court assumed, as had the High Court, that an abduction would be traumatic for A. She would be torn away from her care situation, and it was unlikely that she would receive satisfactory care if she were hidden from the authorities by someone acting on behalf of her maternal grandfather. The case had still not been sufficiently elucidated before it for it to be satisfied that a real and present (*reell og aktuell*) risk of abduction existed.

37. The Supreme Court therefore concluded that the High Court's judgment be set aside so that the case could be reheard by the High Court.

38. On 15 October 2014 the applicant had given birth to a son, B, whose father is of half Chilean and half Peruvian descent.

C. Second set of contact proceedings and final judgment

1. The High Court

39. On 3 November 2014, after the case was returned to the High Court from the Supreme Court, the applicant requested that an expert witness be appointed in order to assess her caring skills in respect of B. On 13 January 2015 the court turned the request down. It stated that the key issue was whether a real risk of abduction existed and that an expert assessment of the applicant's competence to care for her newborn child was not particularly relevant. As to the applicant's relationship to her own family, and the significance of this with respect to her ability and will to protect A from persons in the family who might pose an abduction risk, it considered that an expert witness would not be particularly qualified to draw a conclusion regarding these circumstances. Insights into these issues could rather be obtained through conversations between the Child Welfare Service and the applicant, and by the applicant's appearance before the High Court.

40. The applicant and Y also requested an interim measure to the effect that contact be reestablished in line with the Board's decision. On 12 December 2014 the High Court turned the request down. It noted that while the Supreme Court under the relevant procedural law had been formally competent to decide on the merits of the case, it had chosen to quash the High Court's former judgment because the case had been insufficiently elucidated. A meeting with the parties had since been held on

8 December 2014, and the court had then been informed of the child welfare authorities having requested the police to make a report on the abduction risk. The report would be finalised by January-February 2015 and the appeal hearing had been scheduled at 12 March. A new, full hearing, would thus take place in three months' time and in examining the request for interim measure, the High Court had no further basis on which to assess the abduction risk than that which the Supreme Court had had some one and a half months earlier.

41. During the appeal hearing from 12 to 13 March 2015 in the contact proceedings, the High Court's bench was comprised of three professional judges, a lay judge and a psychologist (see paragraph 68 below). The applicant and Y attended with their counsel and gave statements. An officer with the Child Welfare Service attended together with the municipality's counsel. Seven witnesses were heard, including the child welfare officer.

42. In its judgment of 29 April 2015 the High Court concluded that the appeals could not succeed.

43. In its reasoning, the court commenced by noting that it would review all aspects of the case as far as it was elucidated at the time judgment was given.

44. As a rule, children and parents were entitled to have contact with each other after a child had been taken into care under the first paragraph of section 4-19 of the Child Welfare Act (see paragraph 67 below). When applying this provision, decisive importance had to be attached to finding measures that were in the child's best interests. This included attaching importance to giving the child stable and good contact with adults and continuity of care. Reference was made to section 4-1 of the Child Welfare Act (ibid.).

45. Moreover, the Child Welfare Act had to be interpreted and applied in accordance with Norway's obligations under various conventions. In the present case, the relevant provisions were found in Article 9(3) of the 1989 Convention on the Rights of the Child on the child's right to regular and direct contact with both parents (see paragraph 69 below) and Article 8 of the Convention on the right to respect for family life. Since the child belonged to a national minority, Article 30 of the Convention on the Rights of the Child on the right of minority children to live in keeping with their own culture and use their own language also applied (ibid.). In addition, it followed from Articles 5(1), 10(1) and 14(1) of the Council of Europe's Framework Convention for the Protection of National Minorities of 1 February 1995 (see paragraph 72 below) that the State had a duty to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, allow the minority to learn their minority language and use it freely and without interference. The Supreme Court had based several decisions on the understanding that the provisions had to be interpreted in such a way that special and compelling

reasons were required to deny contact. The High Court assumed that the same requirement applied to the provision in the Council of Europe's Framework Convention.

46. The special and compelling reasons relevant to this case were whether there was a real risk of abduction if contact sessions took place and whether there were concrete circumstances that substantiated this fear. The risk also had to be present, but no "preponderance of probability" could be required. The latter had been clarified by the Supreme Court's judgment in the instant case (see paragraphs 32-37 above).

47. In the High Court's opinion, the risk of abduction was still real and present (*reell og aktuell*). This risk was related to the applicant's father in particular, but also generally to other people in the community to which he and his family belonged. In this respect, the High Court agreed with the parents' counsels that the parents had to be assessed as individuals and not on the basis of what group they belonged to. Knowledge about the mother's environment could nevertheless have a bearing as background information. According to information provided by the police, the Roma community was statistically overrepresented in child abduction cases. This was also consistent with the impression of a psychologist, F. This overrepresentation could be due to the fact that many members of the community did not adhere to the Norwegian model for law enforcement and conflict resolution, and the possibility of keeping children away from the Norwegian authorities provided by family ties abroad.

48. The applicant had previously found it difficult to break contact with her family and the community. When she had been given a place at R. family centre in September 2011, she had moved back in with her parents a few weeks later (see paragraph 6 above). On 1 November of the same year, she had been placed in the same institution again, but had moved back in with her family again in February 2012, despite the fact that her father had previously been violent to her (see paragraphs 6 and 8 above).

49. One of the witnesses – A.N., the teacher from the municipal Roma Initiative (see paragraph 31 above) – had given a positive assessment of the applicant's recent development. She was now described as resourceful and eager to learn, she had her own flat, and she had recently had her second child. According to the witness, she could serve as a role model for other Roma women.

50. The High Court did not disagree that there were positive elements in the applicant's development, but there was also information to indicate that the development had not been as stable as the applicant and A.N. claimed. In May 2013 the applicant had been evicted from her flat after several complaints from neighbours of domestic disputes. She was in receipt of social security benefits because she had no other income with which to support herself and her second child, B. It had also been reported that her work training and school attendance had been somewhat unstable. In the

summer of 2013 the police had been called because of an argument between the applicant and her father. Shortly after B's birth in October 2014 (see paragraph 38 above) social services had raised concerns because the applicant had been at risk of losing her home for being behind on her rent. B's father had previous convictions for drug crime, among other things, and, according to the applicant, he had been violent to her during her pregnancy. Considering the circumstances, the High Court considered it natural to assume that the applicant might feel the need for her family's help and protection.

51. If the applicant were to come under her father's influence again, it was unlikely that she would cooperate with the Child Welfare Service to prevent A from being abducted in connection with a contact session. During the investigation of her father in connection with the stabbing (see paragraph 7 above), she had stated that her father wanted to take over the care of A. The applicant had been told that her father planned to take her to another country, kill her and take her child. She had then asked for a domestic abuse alarm device.

52. It was the High Court's opinion that, if the applicant's father wanted to take over the care of A, there was little doubt that he would threaten or persuade the applicant to use contact sessions for these purposes if he considered it expedient. He had previously displayed controlling and threatening behaviour in relation to his daughter. He had taken her out of school when she was eight years old. She had been physically abused by him and he had been against her moving out. The High Court's judgment of 11 October 2013, in the criminal case against him, showed that he did not hesitate to carry out aggravated acts of violence when he thought the family's interests were being threatened. According to the judgment, he had visited a neighbouring married couple who had allegedly been involved in the applicant's moving out of her parents' flat into the family centre (see paragraph 6 above). The father's message had been that the couple was not to interfere in what was an internal family matter. The confrontation had ended with him stabbing the couple and inflicting life-threatening injuries on them both (see paragraph 7 above). He had been sentenced to four and a half years' imprisonment for this offence (see paragraph 35 above). His criminal record also contained many other serious offences (see, *inter alia*, paragraph 27 above).

53. After a contact session on 24 September 2012, the emergency foster mother had noticed a car following her (see paragraph 12 above). She had stated that she had decided not to drive straight home, and instead had driven around for a while until her pursuer had lost her by a set of traffic lights. The car had been driven by a young man, and had later been found to be registered to the applicant's maternal grandfather. The episode had been reported to the police, but had not been investigated further. However, the fact that the emergency foster mother had been followed after a contact

session by a car belonging to a member of the applicant's family could not be a coincidence. In the court's opinion, this episode confirmed the risk of abduction, although nothing more specific could be said about it.

54. The fact that there had been no subsequent episodes to indicate that anyone was trying to locate the child or plan to abduct her did not, in the High Court's opinion, reduce the risk of abduction to any significant extent. It could just as well be due to a lack of opportunity as a change in attitude. The applicant's father had been serving a prison sentence during this entire period, and the foster parents' identity and address were not known to the applicant's family.

55. The High Court considered that there would also be a real and present (*reell og aktuell*) danger of abduction in relation to Y if he were to have contact sessions. It was unlikely that he himself would abduct the child, but he might be pressured or tricked into aiding an abduction, for example by being threatened or tricked into disclosing information about A that could help to identify the foster home and foster parents. Y had previously stated that he had received such threats. He had told the police that the applicant's cousin and younger brother had threatened to kill him, and that this had allegedly taken place on 15 December 2010. His lawyer had written in a letter to the Child Welfare Service dated 8 November 2011 that Y had repeatedly received death threats from the applicant's father, brother and cousin when he had asked for a paternity test. In the summer of 2012 Y had told the Child Welfare Service that he had reported the applicant's family to the police twice. One of the official complaints concerned the applicant's brother and cousin, who he had reported for threatening to shoot him. The second concerned threats from the applicant's father and uncle. The complaints had been withdrawn because the parties had reached an agreement. He had raised concerns before the Board that the child might be kidnapped. The High Court did not attach decisive weight to the fact that Y, according to his testimony, no longer had any contact with the applicant or her family, and that he no longer shared the Child Welfare Service's concerns about an abduction.

56. An abduction would clearly be harmful to A, who would in such a case be torn away from the care of her foster parents. A psychologist, F., had testified before the City Court that the child showed signs of having suffered neglect at an early age. She was still a vulnerable child with attachment problems. She needed a calm life, extra security and therapy. She would probably be subjected to more neglect if she were abducted.

57. Other than the general assumption that it was a good thing for a child to get to know its culture and background, there was little to indicate that contact sessions would be beneficial if they were to take place. Contact would be quite limited and the possibility for the child to get to know her background and Roma culture would thus in any case be significantly reduced. In addition, the foster parents had stated that A had shown strong

reactions to the contact sessions that had actually taken place. She was a child with special needs. According to the foster parents, the contact sessions had caused her sleep and digestive problems. If contact were to be resumed, psychologist F. feared that it could cause a significant feeling of insecurity and a reaction against the foster parents for allowing this insecurity, particularly as A had suffered significant neglect in her biological family. Both the foster parents and the Child Welfare Service still considered A to be suffering from separation anxiety, which could be exacerbated by contact. The contact sessions could also be stressful for her. The Child Welfare Service had stated that it had to consider the risk of abduction and make the contact sessions supervised and subject to police protection, regardless of the High Court's conclusion. The High Court had to assume that this would further impair the quality of the contact sessions.

58. The effects that contact would have on the foster parents also had to be taken into consideration. Contact with the biological parents could create insecurity that could in turn have a negative impact on the conditions in the foster home. The incident in which a car had followed the emergency foster mother could be taken into account in this context. The episode had not been investigated, and not much was known for certain about it. In any case, it had to have been an unpleasant experience, and was likely to have created a sense of fear in the foster parents.

59. Neither the 1989 Convention on the Rights of the Child, the Convention nor the Council of Europe's Framework Convention could lead to any other conclusion. The High Court did not interpret any of these conventions to mean that parents had an unconditional right to contact if it was contrary to the child's best interest. Under Article 9(3) of the Convention on the Rights of the Child, the right of contact could be exercised except if it was contrary to the child's best interests (see paragraph 69 below). The right to family life was also not unconditional, in accordance with Article 8(2) of the Convention. These exceptions had to be considered as expressions of a general principle in family law (*barneretten*) to consider the best interests of the child, a principle that had also to be applied when interpreting Article 30 of the Convention on the Rights of the Child (ibid.) and the relevant provisions in the Council of Europe's Framework Convention (see paragraph 72 below). These provisions also had to allow for contact to be denied in cases, such as this one, where special and compelling reasons so indicated.

60. The State's obligation to protect its citizens could not lead to any other conclusion either. The risk of abduction not only applied in connection with contact sessions. It was also related to the possibility of the applicant's family discovering the foster family's identity and address. If that were to happen, the measures required to protect the child from abduction would be so extensive as to be unrealistic. In the High Court's

view, denial of contact was sufficient to fulfil the State's obligation to protect A from being abducted.

61. Based on the above, the appeal was dismissed.

2. The Supreme Court's Appeals Leave Committee

62. Both parents appealed to the Supreme Court. The applicant maintained, among other things, that security measures in connection with contact sessions were not unusual, and that contact sessions had taken place also after the "car incident" (see paragraph 12 above) without abductions having been attempted. In its response at this point, the child welfare authorities submitted, *inter alia*, that the fact that some contact sessions had been carried out subsequent to the County Social Welfare Board's decision (see paragraphs 15-19 above) without abduction having been attempted, could not be decisive. It argued that these sessions, which had taken place with police assistance, had occurred at a time when A had not yet started to talk and did not understand much of the situation.

63. On 7 July 2015 the Supreme Court's Appeals Leave Committee (*Høyesteretts ankeutvalg*) – composed of three Supreme Court Justices – refused leave to appeal.

64. The Committee remarked that during the High Court proceedings, the child's foster mother had testified by telephone without her identity being revealed to the appellants. This was a procedural error. However, it was clear to the Committee that it could not have had a bearing on the substance of the decision, and there was therefore no reason to refer the appeal on this matter for consideration by the Supreme Court.

65. The High Court's reasons had clearly been sufficient. As to the appellants' attack on the substance of the High Court's judgment, the Committee found that neither the decision's significance beyond the scope of the current case nor any other circumstances indicated that the case should be heard by the Supreme Court. The decision to refuse leave to appeal was unanimous.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. Domestic law

66. Articles 92, 102 and 104 of the Norwegian Constitution of 17 May 1814 (*Grunnloven*), as revised in May 2014, read as follows:

Article 92

> "The authorities of the State shall respect and ensure human rights as they are expressed in this Constitution and in the treaties concerning human rights that are binding for Norway."

Article 102

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

Article 104

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

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

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

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

Section 4-1. Consideration of the child's best interests

"When applying the provisions of this chapter, decisive importance shall be attached to finding measures which are in the child's best interests. This includes attaching importance to giving the child stable and good contact with adults and continuity in the care provided.

..."

Section 4-6. Interim orders in emergencies

"If a child is without care because the parents are ill or for other reasons, the child welfare service shall implement such assistance as is immediately required. Such measures may not be maintained against the will of the parents.

If there is a risk that a child will suffer material harm by remaining at home, the head of the child welfare administration or the prosecuting authority may immediately make an interim care order without the consent of the parents.

In such a case, the head of the child welfare administration may also make an interim order under section 4-19.

If an order has been made under the second paragraph, an application for measures as mentioned in section 7-11 shall be sent to the county social welfare board as soon as possible, and within six weeks at the latest, but within two weeks if it is a matter of measures under section 4-24.

If the matter is not sent to the county social welfare board within the time-limits mentioned in the fourth paragraph, the order lapses.

..."

Section 4-12 Care orders

"A care order may be issued

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

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

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

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

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

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

..."

Section 4-19. Contact rights. Secret address

"Unless otherwise provided, children and parents are entitled to have contact with each other.

When a care order has been made, the county social welfare board shall determine the extent of contact, but may, for the sake of the child, also decide that there should be no contact. The county social welfare board may also decide that the parents should not be entitled to know the child's whereabouts.

...

The private parties may not demand that a case regarding contact should be dealt with by the county social welfare board if the case has been dealt with by the county social welfare board or a court of law in the preceding twelve months.

..."

Section 7-2. The composition of the county social welfare board.

"Each county social welfare board shall consist of

(a) one or more chairs who are qualified to act as judges,

(b) a committee of experts,

(c) a committee of ordinary members. The Ministry may decide that the committee shall be divided into sub-committees covering different parts of the board's territorial jurisdiction.

..."

Section 7-5. The board's composition in individual cases.

"In individual cases, the county social welfare board shall consist of a chairperson, one member of the ordinary committee and one member of the expert committee. When necessary due to the complexity of the case, the chairperson may decide that, in addition to the chairperson, the board shall consist of two members of the ordinary committee and two members of the expert committee."

68. The first paragraph of section 36-4 and the last paragraph of section 36-10 of the Dispute Act of 17 July 2005 (*tvisteloven*) read:

Section 36-4. Composition of the court. Expert panel

"The district court shall be composed of two lay judges, one of whom shall be an ordinary lay judge and the other an expert. In special cases, the court may be composed of two professional judges and three lay judges, one or two of whom shall be experts.

..."

Section 36-10. Appeal

"...

(4) At the oral appeal hearing in the court of appeal, the court shall sit with two lay judges, of whom one shall be an ordinary lay judge and the other shall be an expert. The provisions of this Chapter shall otherwise apply to the appeal hearing to the extent appropriate."

B. International law material

69. The relevant provisions of the United Nations Convention on the Rights of the Child, concluded in New York on 20 November 1989, read as follows:

Article 8

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

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."

Article 9

"1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

..."

Article 19

"1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

Article 20

"1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, *inter alia*, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

..."

Article 30

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

..."

Article 39

"States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

70. The relevant parts of the UN Committee on the Rights of the Child (CRC), General Comment No. 11 (2009): Indigenous children and their rights under the Convention [on the Rights of the Child], 12 February 2009, CRC/C/GC/11, read as follows:

"15. The Committee notes that the Convention contains references to both minority and indigenous children. Certain references in this general comment may be relevant for children of minority groups and the Committee may decide in the future to prepare a general comment specifically on the rights of children belonging to minority groups.

...

17. Although article 30 is expressed in negative terms, it nevertheless recognizes the existence of a "right" and requires that it "shall not be denied". Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. The Committee concurs with the Human Rights Committee that positive measures of protection are required, not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party."

71. Article 27 of the 1966 International Covenant on Civil and Political Rights reads as follows:

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

72. The relevant provisions of the Council of Europe's 1995 Framework Convention for the Protection of National Minorities read as follows:

Article 5

"1. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

2. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

..."

Article 10

"1. The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.

..."

Article 14

"1. The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

73. The applicant complained that the refusal to allow her contact with A had violated her right to respect for 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."

74. The Government contested that argument.

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

76. The applicant pointed out that the Supreme Court, in its judgment of 23 October 2014, had stated that the High Court had not fully looked into the case, and that it had pointed to circumstances concerning the applicant and her development. The High Court had, however, not carried out this examination in the subsequent rehearing of the case. It had also denied the applicant's request to have a psychologist appointed as an expert.

77. The authorities had presented old cases mentioning people from the Roma population, even though these people had had no connection whatsoever to the applicant or her family, including her father. This way of handling the case had emerged as racist and had not at all been suited to clarifying the applicant's situation. The High Court had, furthermore, spoken of a statistical overrepresentation of Roma in abduction cases, even though there had been no connection between the random criminal cases that had been presented and the applicant and her family.

78. The evidence had not shown that there had been a real and present risk of abduction, amounting to special and compelling reasons to deny the applicant contact. Attention was drawn to the fact that contact sessions had taken place between A and her parents in 2012, following the "car incident", and that no issues had arisen. No adequate reasons had been given as to why such sessions could not be facilitated later.

79. The applicant highlighted the Government's positive obligations under Article 8. She and A had shared interests – there was no risk involved in contact between them as such, and it was for the Government to ensure that she and her daughter were safe when meeting each other.

80. As to A's cultural background, it was clear that a girl of her age could not take responsibility for learning about her culture from books or pictures.

(b) The Government

81. The Government submitted that relevant and sufficient reasons had been adduced for the decision to deny the applicant contact. The denial of contact had been decided in order to protect A, as an abduction would have been detrimental to her interests.

82. Furthermore, the decision-making process had been fair and had afforded due respect to the applicant's rights. The applicant had had legal aid and counsel throughout the proceedings. She had been fully free to present evidence and give testimony. The domestic courts had carried out an in-depth examination of the case. There appeared to be no disagreement between the parties as to the threshold used by the national courts when assessing whether the risk of kidnapping sufficed to warrant a restriction of the applicant's contact rights – a "real and present" risk. As to the issue of whether a real and present risk had existed in the case, this was a question of fact. In accordance with the "fourth instance doctrine", it was primarily for the domestic courts to assess evidence.

83. The risk of abduction in the instant case had been assessed a total of five times by the Board, the City Court, the Supreme Court and the High Court. Taking account of how the domestic courts had had the benefit of direct contact with the persons concerned, the Government invited the Court to join the High Court's assessments of the facts. The High Court had examined the applicant and Y individually. The information about other members of the Roma community had been relevant, but not decisive.

84. When considering what was in A's best interests, the Court had to bear in mind the consequences of her being kidnapped. The Government had been under an obligation to protect A from abduction. Reference was made to Article 3 of the Convention and Articles 19 and 20 of the Convention on the Rights of the Child. Furthermore, A was vulnerable and in need of a calm and stable environment. Reference was at that point made to Article 39 of the Convention on the Rights of the Child. In addition,

considerable time had lapsed since the applicant had been refused contact. Moreover, allowing contact sessions might affect the foster parents' ability to care for A as well as their own safety. Lastly, it would be open to the applicant to apply for a review of the question of contact in the future.

85. As to the applicant having the care of B, this did not alter the assessment of the situation with respect to A. With respect to positive obligations, there was little the Government could do to ensure contact between the applicant and A, as had been observed by the High Court. The international protection of ethnic minorities could not alter the assessment under Article 8 of the Convention, in so far as it was the best interests of the child that carried paramount importance. The Government stated that A's foster parents reported of telling her stories about her ethnic origin and that the Child Welfare Services had offered to relay books and pictures from the applicant, but that she had not responded.

2. The Court's considerations

86. It has not been contested by the Government that refusing the applicant contact with A amounted to an "interference" with her right to respect for her family life under Article 8 of the Convention. Nor has the applicant disputed that the measure complained of was "in accordance with the law" and adopted with the aim of ensuring A's "rights and freedoms" and their "health or morals" under the second paragraph of that provision.

87. On the basis of the material submitted to it, the Court finds no reason to conclude otherwise, and will accordingly examine whether the interferences complained of were "necessary in a democratic society".

(a) General principles

88. The Court reiterates that, in determining whether an impugned measure was "necessary in a democratic society", it will consider whether, in the light of the case as a whole, the reasons adduced to justify that measure were relevant and sufficient for the purposes of Article 8 § 2 (see, among many other authorities, *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 179, 24 January 2017). The essential object of Article 8 is to protect the individual against arbitrary action by the public authorities (see, for example, *Wagner and J.M.W.L. v. Luxembourg*, no. 76240/01, § 118, 28 June 2007).

89. In accordance with the Court's established case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, is proportionate to the legitimate aim pursued, regard being had to the fair balance which has to be struck between the relevant competing interests. In determining whether an interference was "necessary in a democratic society", the Court takes into account that a margin of appreciation is left to the national authorities, whose decision remains

subject to review by the Court for conformity with the requirements of the Convention (see *Paradiso and Campanelli*, cited above, § 180).

90. The margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake, such as, on the one hand, the importance of protecting a child in a situation which is assessed as seriously threatening his or her health or development and, on the other hand, the aim to reunite the family as soon as circumstances permit. When a considerable period of time has passed since the child was originally taken into public care, the interest of a child not to have his or her *de facto* family situation changed again may override the interests of the parents to have their family reunited. The Court thus recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care. However, a stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by the authorities on parental rights of access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed (see *K. and T. v. Finland* [GC], no. 25702/94, § 155, ECHR 2001-VII).

91. Where children are involved, their best interests must be taken into account. The Court reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance (see, among other authorities, *Neulinger and Shuruk*, cited above, § 135). Indeed, the Court has emphasised that in cases involving the care of children and contact restrictions, the child's interests must come before all other considerations (see *Jovanovic v. Sweden*, no. 10592/12, § 77, 22 October 2015, and *Gnahoré*, no. 40031/98, § 59, ECHR 2000 IX).

92. On the one hand, the best interests of the child dictate that the child's ties with his or her family must be maintained, except in cases where the family has proved particularly unfit. On the other hand, it is clearly also in the child's interests to ensure his or her development in a sound environment, and a parent cannot be entitled under Article 8 of the Convention to have such measures taken as would harm the child's health and development (see, among many other authorities, *Neulinger and Shuruk*, cited above, § 136).

93. According to the Court's case-law, measures that totally deprive an applicant of his or her family life with the child and are inconsistent with the aim of reuniting them should "only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests" (see, for instance, *Johansen*, cited above, § 78, and *Aune v. Norway*, no. 52502/07, § 66, 28 October 2010). It should also be reiterated that in *Gnahoré v. France*,

cited above, § 59; see also *Görgülü v. Germany*, no. 74969/01, § 48, 26 February 2004), the Court held:

> "... it is clear that it is equally in the child's interest for its ties with its family to be maintained, except in cases where the family has proved particularly unfit, since severing those ties means cutting a child off from its roots. It follows that the interest of the child dictates that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to 'rebuild' the family."

94. As to the decision-making process, what has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions taken, the parents have been sufficiently involved in the decision-making process, seen as a whole, to be provided with the requisite protection of their interests and fully able to present their case. Thus, it is incumbent upon the Court to ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and a whole series of factors, particularly those of a factual, emotional, psychological, material and medical nature, and made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what would be the best solution for the child. In practice, there is likely to be a degree of overlap in this respect with the need for relevant and sufficient reasons to justify a measure in respect of the care of a child (see, *inter alia, Y.C.*, cited above, § 138).

95. In determining whether the reasons for the impugned measures were relevant and sufficient for the purpose of paragraph 2 of Article 8 of the Convention, the Court will have regard to the fact that perceptions as to the appropriateness of intervention by public authorities in the care of children vary from one Contracting State to another, depending on such factors as traditions relating to the role of the family and to State intervention in family affairs and the availability of resources for public measures in this particular area. However, consideration of what is in the best interests of the child is in every case of crucial importance. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned, often at the very stage when care measures are being envisaged, or immediately after their implementation. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for regulating the care of children and the rights of parents whose children have been taken into local authority care, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see, for example, *K. and T. v. Finland*, cited above, § 154).

(b) Application of those principles to the present case

96. The primary question in the instant case is whether the alleged danger of abduction and its implications for the contact sessions justified the

authorities' decision to refuse the applicant contact with her daughter despite potential negative long-term consequences for the relationship between the child and her mother if no contact were to take place.

97. Based on the assessments of evidence made by the domestic courts, and from which there are no reasons for the Court to depart, there had been indications that there was a real risk of abduction which emanated predominantly from the applicant's father, but was not limited to him. For instance, the applicant's father had stabbed a neighbouring married couple in the belief that they had helped the applicant to take the child out of their home (see paragraph 7 above); the applicant had been told that her father planned to take her to another country, kill her and take her child (see paragraph 51 above); A's father had received death threats when he had sought to establish his paternity (see paragraph 55 above); and a family member had followed one of the foster parents, possibly as part of discovering A's whereabouts (see paragraph 12 above). The Court has no basis for finding that the domestic courts erred in assessing the abduction risk and qualifying it as "a real risk" in accordance with domestic case-law (see, for example, paragraphs 19 (the Board), 34 and 36 (the Supreme Court), and 46-47 (the High Court) above).

98. The Court also accepts the national authorities' assessment that the consequences of an abduction would be detrimental for A's development as she would again be likely to suffer neglect (see paragraph 56 above). It reiterates in this respect that the national authorities have had the benefit of direct contact with all the persons concerned (see paragraph 95 above).

99. As to the procedure, the Court notes that after the care order was issued by the Board in December 2012 (see paragraph 15 above), the case was examined once by the City Court (see paragraphs 21-25 above), twice by the High Court (see paragraphs 26-30 and 39-59 above), and once in full by the Supreme Court (see paragraphs 31-37 above). In addition, a review was carried out by the Supreme Court's Appeals Leave Committee in July 2015 when it examined whether leave to appeal should be granted (see paragraphs 62-65 above). The High Court's bench was composed of three professional judges, a lay judge and a psychologist (see, in particular, paragraph 41 above). Thus, it cannot be said that there was a lack of expert advice. There is nothing to indicate that the High Court had been wrong to consider that the appointment of an expert witness in accordance with the applicant's request was not the appropriate way to shed light on the applicant's ability and will to protect A from persons in the family (see paragraph 39 above). The applicant, with legal aid counsel, was allowed to present evidence and give testimony in the City Court and on both occasions in the High Court (see paragraphs 22, 26 and 41 above). Taking all this into account, the Court finds that the domestic decision-making process was comprehensive and that the applicant was sufficiently involved

in it as she was provided with the requisite protection of her interests and fully able to present her case (see paragraph 94 above).

100. The Court further observes that the national courts did not only assess the situation of the applicant and A at the moment when A was taken into care, but followed up on later developments. Thus, the High Court, in its judgment of 29 April 2015, carried out an extensive assessment of the applicant's recent development and situation at that time, including her father's having served a prison sentence during the entire period (see, in particular, paragraphs 50-54 above). It essentially concluded that although there were positive signs, there were also a number of factors pointing in the opposite direction (see, in particular, paragraph 50 above). Many different aspects were thus taken into account in the decision-making process, not only the degree of the risk of abduction (see paragraphs 50-55 above), but also the consequences if an abduction were to happen, A's signs of having suffered neglect, her vulnerability and needs (see paragraph 56 above), her interests in knowing her Roma background and culture (see paragraph 57 above), and the effects that contact would have on the foster parents and the conditions in the foster home (see paragraph 58 above). In the Court's view, there are no grounds for contesting that the domestic authorities carried out a sufficiently in-depth examination of the case or that the decision was taken based on what was considered to be in A's best interests.

101. The question remains whether the High Court's decision was based on an interpretation and application of the notion of the "best interests of the child" compatible with the Court's jurisprudence (see paragraphs 91-92 above), taking into account the guiding principle whereby a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit (see paragraph 90 above), which is, furthermore, followed by the positive duty to take measures to facilitate family reunification as soon as reasonably feasible (see, among other authorities, *K. and T. v. Finland*, cited above, § 178).

102. The Court takes note of the High Court's consideration that the risk of abduction did not only relate to the moment when contact sessions would take place, but also to the danger of the foster family's home and identity becoming known to the applicant's family (see paragraph 60 above). While the Court accepts that the organisation of such sessions might therefore be difficult, and that any number of sessions could potentially entail that information about where A lived was revealed, it also emphasises that it was never foreseen to have more than four contact sessions a year, a factor that would reduce the risk of A's whereabouts being revealed and the difficulties on the authorities.

103. Furthermore, the decision complained of entailed the danger that family relations between the applicant and A were effectively curtailed (see paragraph 90 above). In its decision the High Court did not explicitly mention that the applicant and A had not seen each other for three years –

subsequent to the few contact sessions that took place after the "car incident" (see paragraph 12 above). Moreover, the High Court's decision did not focus on reuniting A and the applicant (see paragraph 93 above) or on preparing for reunification in the near future, but rather on protecting A from a potential abduction and its consequences. Taking into account the circumstances of the present case, the Court considers that there was a risk that A could completely lose contact with her mother. According to the Court's jurisprudence it is imperative to consider also the long-term effects which a permanent separation of a child from her natural mother might have (see, *mutatis mutandis*, *Görgülü v. Germany*, no. 74969/01, § 46, 26 February 2004). This is all the more so as the separation of A from her mother could also lead to an alienation of A from her Roma identity.

104. In conclusion, although the Court accepts that the decisions of the national authorities were made in what they considered to be the best interests of the child and bears in mind that perceptions as to the appropriateness of intervention by public authorities in the care of children vary from one Contracting State to another (see paragraph 95 above), the Court holds that in the instant case, the potential negative long-term consequences of losing contact with her mother for A and the positive duty to take measures to facilitate family reunification as soon as reasonably feasible were not sufficiently weighed in the balancing exercise.

105. In the light of the above, the Court concludes that there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

106. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

107. The applicant requested that the Court award her non-pecuniary damage on the basis of its discretion.

108. The Government left the question of non-pecuniary damage, including the eventual amount, to the Court's discretion.

109. The Court finds that the applicant must have sustained non-pecuniary damage through distress, in view of the violation found above. It awards the applicant EUR 25,000 in respect of non-pecuniary damage.

B. Default interest

110. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amount, to be converted into Norwegian kroner (NOK) at the rate applicable at the date of settlement:
      EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 6 September 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President