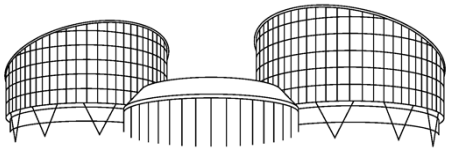

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF E.M. AND OTHERS v. NORWAY

(Application no. 53471/17)

JUDGMENT

Art 34 • Locus standi • Mother's lack of standing to act on her two children's behalf • Conflicting interests due to serious joint parental child neglect and issuance of care order on account of concerns of her failure to protect her children
Art 8 • Family life • Justified continuation of foster care, removal of mother's parental responsibilities and refusal of her contact rights • Extensive proceedings accompanied by adequate safeguards • Relevant and sufficient reasons • Domestic decisions based on children's best interests • Measures neither irreversible nor permanent • Considerable attention given to mother-child relationship

STRASBOURG

20 January 2022

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 E.M. and Others v. Norway,

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

Síofra O'Leary, *President,*
Mārtiņš Mits,
Ganna Yudkivska,
Lətif Hüseynov,
Lado Chanturia,
Mattias Guyomar, *judges,*
Anne Grøstad, *ad hoc judge,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 53471/17) 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 a Czech national, Ms E.M., in her name and also on behalf of her two minor children, B and C ("the applicants"), on 18 July 2017;

the decision to give notice to the Norwegian Government ("the Government") of the complaint concerning Article 8 of the Convention and to declare the remainder of the application inadmissible;

the decision not to have the applicants' names disclosed;

the decision to give priority to the application (Rule 41 of the Rules of Court);

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

the comments submitted by the Government of the Czech Republic, who had exercised their right to intervene pursuant to Article 36 § 1 of the Convention;

the comments submitted by the Government of the Slovak Republic and the organisation the Ordo Iuris Institute for Legal Culture, who were granted leave to intervene by the President of the Chamber;

Considering that on 13 August 2021 the President of the Chamber decided to appoint Ms Anne Grøstad to sit as an ad hoc judge (Rule 29);

Having deliberated in private on 14 December 2021,

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

INTRODUCTION

1. The case concerns a complaint under Article 8 of the Convention in relation to proceedings in which it was decided not to lift a care order in respect of the first applicant's two children, the second and third applicants; to withdraw the first applicant's parental responsibilities in respect of her two children; and to refuse her contact rights in respect of her children.

THE FACTS

2. The first applicant was born in 1976 and the second (B) and third (C) applicants in 2005 and 2008 respectively. They were represented by Ms D. Boková, a lawyer practising in Prague.

3. The Norwegian Government ("the Government") were represented by Mr M. Emberland of the Attorney General's Office (Civil Matters) as their Agent, assisted by Ms E. Sawkins Eikeland, attorney at the same office.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND

5. The first applicant moved to Norway in 2005 to live with A, also a Czech national, who had been residing in Norway since 1986. Together they had the two aforementioned children (sons), both of whom were born in Norway and have lived most of their lives there.

6. The children were placed in emergency care on 20 May 2011 because of concerns relating to sexual abuse and violence. The first applicant and A began to live apart, and in that context arranged that the first applicant would have daily care of the children. In the following period, the children remained in emergency care partly on the basis of agreement between the child welfare services and their parents. At first the applicant had weekly contact sessions with the children, and later on sessions twice a week, until contact was stopped at the end of August owing to the children having made further statements which raised concerns about sexual abuse, and a police investigation was instituted. During the autumn of 2011 the first applicant filed for separation from A.

7. On 8 February 2012 the County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*) decided to take B and C into public care and to place them in a foster home. The Board found that both children had been subjected to serious neglect and that they had been physically abused. It did not find it necessary to assess further whether and to what extent they had been subjected to sexual abuse. In addition, the Board concluded that it was highly likely that the children, if they were to be returned to the first applicant, would be placed in a situation of serious neglect. Although the Board noted that there was much to indicate that the placement could end up being long term, it would not rule out, however, that the first applicant could become capable of taking care of the children. As to contact rights, the Board found that, on the basis of the situation as it was at the time and what the children themselves had said, the first applicant was to be granted contact rights of two hours, four times a year, under supervision, while A was not granted any contact rights.

8. B and C were subsequently placed in their respective foster homes during the spring of 2012.

9. The Board's decision was brought before the District Court (*tingrett*), which held a hearing from 27 to 30 June 2012. On 4 July 2012 the court upheld the Board's decision, with the exception of the first applicant's contact rights, which it withdrew. The District Court found it to be clear that the children had lived in a care situation which had serious deficiencies, and that they had been subjected to physical punishment beyond what could be characterised as symbolic slapping. It reads in the judgment that C had started a contact session with the first applicant by telling her not to hit him. The District Court also found it probable that A had sexually abused the children and that the first applicant had been aware of the abuse, even having observed it sometimes, and that the children had seen her in these situations. According to the judgment, when they had been in emergency foster care, both B and C had given detailed descriptions of serious sexual abuse by A and of how the first applicant had not stopped him. Staff at the kindergarten had before the District Court explained that they had reacted to bodily findings indicating the same types of abuse. As to whether the first applicant had actively participated in the sexual abuse, the District Court did not find it necessary to come to a conclusion on that issue. The first applicant's contact rights were withdrawn on the basis of an assessment in which importance was attached to the first applicant's behaviour during the contact sessions, the children's attitude to the contact sessions, their stress reactions and their association of the first applicant with violence and sexual abuse. Given the fear and uncertainty that the children experienced in connection with the contact sessions, the District Court considered that it would not be justifiable for them to be continued at that time.

10. The parents appealed against the refusal of contact rights to the High Court (*lagmannsrett*), which granted leave to appeal to the first applicant only. It heard the case from 19 to 21 February 2013 and, on 4 March 2013, reversed the District Court's decision and granted the first applicant contact rights for two hours, twice a year, under supervision. In its decision the High Court noted that, although its finding was not decisive, it did not find that there were sufficient grounds to believe that the first applicant had sexually abused the children, nor that she had been aware of A's abuse and had failed to intervene. It stated that beyond referring to the fact that the cases against the parents had been dropped, there were no grounds for the High Court to carry out a further examination of those issues. The High Court did, however, find that the first applicant had failed to shield the children from A's abusive behaviour, that she had slapped the children and caused them significant fear, and that she had been jointly responsible for the neglect they had suffered. On the basis of assessments from two experts in psychology, the High Court also found that the first applicant had fallen short with regard to carrying out contact sessions which could have been beneficial to the children. The first

applicant was considered as resourceful and with potential to create good contact with the children in the future. In order to succeed in doing so and to increase the amount of contact sessions in the longer-term she would however have to change focus from herself to the children. The children had experienced despair and fear which would take time to overcome, and, although it would be hurtful for the first applicant, she would have to develop the ability to behave in a manner that would support the children feeling safe in that they would be cared for in the foster home in the future. As it would probably be a matter of long-term fostering, the purpose of contact sessions would principally be to give the children sufficient knowledge of their mother, in so far as their daily care and attachment would be with their foster parents. The High Court had doubts about the amount of contact which would be appropriate, in particular given the children's reactions to the contact sessions, but also emphasised that it was important not to fail to appreciate the positive potential in keeping contact between the children and their mother and her family.

11. Leave to appeal to the Supreme Court (*Høyesterett*) was refused by the Supreme Court's Appeals Committee (*Høyesteretts ankeutvalg*) on 21 May 2013. In the minutes of a meeting held between the child welfare services and the first applicant and her lawyer in the meantime, on 28 January 2013, it reads among other things that the first applicant, contrary to the advice of her lawyer, refused to give out the children's passports, as she followed instead the advice of a children's organisation in the Czech Republic and a minister. Moreover, it reads that the first applicant wanted to have her contact sessions filmed and that she recorded phone conversations, as she distrusted the child welfare services. According to the minutes she stated that she would cooperate, if she were given contact.

12. On 26 August 2014 this Court, sitting as a Committee of three judges, declared the first applicant's application concerning the above facts and the proceedings that ended with the decision of the Supreme Court's Appeals Committee of 21 May 2013, particularly the decision to limit the first applicant's right to contact with the children, inadmissible.

II. THE PROCEEDINGS IN 2014-2017

13. On 10 December 2014 the first applicant applied to have the care order in respect of the children lifted. The child welfare services applied for its continuation. They additionally applied for the removal of the first applicant's parental responsibilities in respect of both children, refusal of contact rights for the first applicant and A in respect of B, and authorisation of adoption in respect of C.

14. The Board appointed a representative for the children, I.M., who held a conversation with them. The case was then heard from 15 to 17 September 2015. The Board's bench comprised a chairperson who was qualified to act

as a professional judge, a psychologist and a lay person. The first applicant and A were present with their legal counsel and gave evidence. I.M. also gave evidence during the hearing. In its decision of 24 September 2015, the Board concluded that the care orders for B and C should not be lifted; the first applicant's parental responsibilities for B and C should be withdrawn; the first applicant should be refused contact with B; and C's adoption should be authorised. The decision to withdraw the first applicant's parental responsibilities in respect of B was justified by reference to how the first applicant had contributed to the children's case being exposed in different media hundreds of times, including with photos of the children in connection with texts about sexual violations. This had been a strain on B throughout and he followed the publicity closely on the Internet. Withdrawing the first applicant's parental responsibilities would make it more difficult for her to get access to documents and photos that she could give to media, making it possible for B to feel safer and calmer.

15. The first applicant appealed against the Board's decision to the District Court on 18 October 2015. The District Court, composed of one professional judge, one lay person and one psychologist, heard eighteen witnesses in the hearings held from 25 to 27 May 2016. The first applicant and A were present with their respective counsel and gave evidence. The Czech Republic provided a written submission in the case. The children's representative, I.M., had given a written report and attended the hearing, where she elaborated on her report.

16. The District Court delivered its judgment on 30 June 2016. Noting that it had to undertake a renewed assessment of all aspects of the case, it found that the first applicant's situation now was different than at the time of the placement. The first applicant's caring abilities had improved since the placement in 2012. B had also developed positively since the placement. He had become an age-appropriately active child with good social and cognitive skills. At the same time, however, he had significant problems and had been diagnosed with post-traumatic stress disorder (PTSD), which was considered to be due to complex and continued neglect. The psychologist who had made the diagnosis considered that he was not stable enough to begin confronting the trauma he had experienced and that any treatment could not begin before the pending case was over. She envisaged long-term treatment and said that, because of his diagnosis, he was in need of a particularly good care situation with security, stability and predictability. She also emphasised that those who were to take care of him and help him in regulating himself, could not be those who had created the trauma. C was considered an enlightened, extrovert and sociable boy with a broad emotional register and very good cognitive skills. He was not considered to have any particular challenges or problems, unlike his brother, and hence his care needs were not as extensive.

17. With regard to the children's views, the District Court found that B had clearly expressed, both verbally and physically, that he did not want to

move back to live with the first applicant. Among other things, in conversation with a psychologist, B had explained that he did not want to return to the first applicant because he had had painful experiences there which he thought about all the time. He had also said that he had been exposed to violence from A, and violence between the parents.

18. As for C, the children's representative had noted the following in her report:

> "He was honest and said that it was very difficult to talk about. He was restless on the couch, put his head towards the floor and did the most unbelievable things. He often did not reply to questions, and said that you have to know how hard it has been. He stated that it was just frustrating to think about and talk about. He did not know what to say. He did not want to talk about [the first applicant and A]. He did not want to have anything to do with them. They have lost all parent points. He wants to stay where he is because nobody is mean there."

19. The District Court additionally took note of issues relating to media exposure of the case. It is stated in the judgment that when the foster parents, upon having been contacted by media, had searched on the Internet, they had discovered photos and sensitive information about the children, including information about B's health situation. Parts of an expert report, which contained information about sexual abuse, and pictures of the children together with text about sexual abuse, had also been posted online. On the basis of an overall assessment, the District Court concluded that the first applicant could not provide the children with the care they needed, even with support measures, given the children's strong resistance to moving back in with her and her lack of comprehension of their needs.

20. As to the care order in respect of B, the District Court particularly placed emphasis on B's views and the physical reactions he showed when the question of contact with the first applicant was raised. It also found that the first applicant had contributed to the neglect that B had suffered and thereby to his trauma, and referred in that context to the psychologist's statement that B's caregivers could not be those who had caused the trauma (see paragraph 16 above). Moreover, while B had special care needs, the first applicant had shown little understanding of the reasons why B refused to meet her. The District Court also attached importance to B's primary attachment being to his foster home. Turning to C, he did not have the same care needs as his brother, and in addition had only a weak attachment to his mother. He had been only two and a half years old at the time of the placement, and the contact visits after this had been limited. C had also clearly stated that he did not want to move back to his mother, and the District Court found that his opinion in this regard was important. C had a strong attachment to his foster family and there was no doubt that removal from them would cause serious problems for him, including severe loss and profound grief. Given his strong ties to his foster family, the court found that a return to the first applicant

would cause problems exceeding what could normally be expected for a long-term placement and was thus clearly not in his best interests.

21. With respect to the first applicant's parental responsibilities in respect of B, the District Court noted that the first applicant had published sensitive information about him on the Internet and had exposed him in the media. She had thus used the information which she had obtained through her parental responsibility in a way that had caused problems and concerns for B, and that would without doubt cause problems for him in the future. The court considered that, through her actions and testimony before the court, she had shown that she had not respected the children's rights. It added that B was, at the time, a patient at the Children and Youth Psychiatric Outpatient Clinic, and the first applicant would, on account of her parental responsibilities, have access to sensitive information stored by the clinic. In order to safeguard B's right to privacy and his best interests overall, it was necessary to prevent the first applicant from publishing additional information about him. In that context, the court took into account Article 8 of the Convention, and the Convention on the Rights of the Child.

22. As to the refusal to grant the first applicant contact rights in respect of B, the District Court noted that this was a very serious interference which required special and compelling reasons, and that the decision in this regard had to be based on a concrete, comprehensive assessment where the child's best interests were a primary concern. It noted that in previous decisions the placement had been found to be long term for both children, and found that this was still the case for B. The aim of contact visits would be for B to have knowledge of his parents and family. The absence of contact with his biological parents would deprive him of the opportunity this would provide to experience the culture he was born into, and this would constitute an interference with his rights according to the Convention on the Rights of the Child.

23. B had, since March 2013, had a few supervised contact visits with the first applicant, and the foster home had explained that he was afraid to be alone with her. The child welfare services and the foster home had tried to encourage B to have contact with the first applicant but he had agreed to this only reluctantly. He had demanded that the child welfare services provide for his safety during contact visits, and after a contact visit he had said that they had broken their promise. He had also told the child welfare services that he did not want to see his mother, and that if she loved him, she would leave him in peace. According to several witnesses, including B's appointed spokesperson, when the topic of contact visits was raised, B would have physical reactions such as uncontrolled perspiration, his body would start shaking and he showed visible bodily anxiety. B had himself described this as a feeling of pain in his whole body and in particular in the chest and throat. On 9 March 2015 staff at the child welfare services had found that his reactions were so serious that forcing further contact would entail an

immediate risk to his health. Given the above-mentioned facts, the District Court found that it was adequately proved that there were special and compelling reasons to refuse contact rights. Continuing contact visits against B's expressed wishes would entail a risk to his health and would clearly be contrary to his best interests. The court assessed that a refusal of contact rights in the present case was not in breach of the Convention or the Convention on the Rights of the Child, as B had a human rights-based entitlement to protection against being exposed to harmful acts, and this right had to supersede the right of contact with his biological parents and knowledge of his cultural background. On the same grounds, it found that it would be irresponsible to oblige B to have any form of contact with the first applicant. While it was important that B gained knowledge of Czech culture and language, ensuring this by way of contact with the first applicant would be at odds with his best interests at the present time, and the latter had to prevail.

24. On the topic of C's adoption, the District Court noted as a starting point that the family ties that would be severed by an adoption were protected under Article 8 of the Convention, and the Norwegian Constitution, and that for a child to be adopted was an intrusive measure which could only be granted if it were in his or her best interests. It went on to highlight that, in the present case, there were many factors which indicated that it would be in C's interests to be adopted. He had a strong attachment to the foster home and adoption would ensure a stronger affinity with it and greater security with regard to future developments. The arguments that weighed against adoption were the severance of ties to his biological family that adoption would entail; the ties to his brother B were considered to be of particular importance. Against that background, the District Court concluded that authorisation for adoption should not be given.

25. On the question of the removal of the first applicant's parental responsibilities in respect of C, the court found that the same reasons for removing her parental responsibilities in respect of B were applicable to C. While C, at the time, did not have any knowledge of what his mother had posted on the Internet about him, he would soon reach an age where he would have access to the Internet and other media, and the same concerns would then apply to him. It was found to be of as much importance for C as for B that the first applicant should not be given access to information which could allow her to exercise her parental responsibilities in a manner clearly contrary to his rights.

26. As to contact rights in respect of the first applicant, the District Court noted that memos from the child welfare services concerning the contact visits conducted with the first applicant had overall been positive. However, the foster home had reported that C had had adverse reactions and that, prior to the visits, he had been reluctant and had not wanted to go if his brother was not going to be there. The foster home had, despite this, succeeded in convincing him. After the visits he had been agitated and anxious and had

had trouble sleeping. He had had further strong adverse reactions and had defecated in his pants. The District Court took note of there having been long gaps between the contact visits; thus it was only natural that C would to some extent be reserved to begin with. Moreover, the contact visits had taken place in a slightly artificial situation with representatives from the child welfare services present and security measures in place. Yet, in conclusion, even though the contact visits had been conducted in an acceptable manner, it was not in C's best interests to have contact visits with the first applicant at that time. The District Court attached decisive importance to the reactions that C had shown before and after the visits, which were considered serious and clearly beyond what could be expected for children in relation to contact visits.

27. The first applicant appealed to the High Court against the District Court's judgment. A lodged an ancillary appeal in respect of the refusal to grant him contact rights. The Czech Republic also intervened in support of the first applicant.

28. In a decision of 28 November 2016 the High Court unanimously refused the parents leave to appeal in respect of their respective appeals.

29. The first applicant appealed to the Supreme Court against the High Court's refusal to grant leave to appeal.

30. On 24 January 2017 the Supreme Court's Appeals Committee dismissed the appeal, finding that it had no prospects of success.

RELEVANT LEGAL FRAMEWORK

31. Under section 4-12 of the Child Welfare Act of 1992 (*barnevernloven*), a child may be taken into public care if there are serious deficiencies in the daily care of the child or in relation to the personal contact and security needed by the child according to his or her age and development. Under section 4-21 the parties may request the County Social Welfare Board to discontinue the public care provided that at least twelve months have passed since the Board or the courts last considered the matter. Contact rights between a child in public care and his or her parents are regulated by section 4-19, in accordance with which the extent of contact rights is decided by the Board. By virtue of the same provision, the private parties can require that contact rights also be reconsidered by the Board, provided that at least twelve months have passed. Under section 4-20 the Board may withdraw parental responsibilities and consent to adoption if the parents will be permanently unable to provide the child with proper care, or if the child has become so attached to people and the environment where he or she is living that removing the child may lead to serious problems for him or her.

32. Paragraphs 1 and 2 of Article 3 and Article 12 of the United Nations Convention on the Rights of the Child, concluded in New York on 20 November 1989, contain the following:

Article 3

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

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."

Article 12

"1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

33. The applicants complained that the decision not to lift the care orders in respect of the second and third applicants, to deprive the first applicant of her parental responsibilities in respect of the second and third applicants, and to refuse to grant the first applicant any contact rights in respect of the second and third applicants, had violated all three applicants' rights to respect for their family life as provided in Article 8 of the Convention, which reads as follows:

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

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

A. Admissibility

34. The Government contested the admissibility of the second and third applicants' complaint on the grounds that the first applicant did not have standing to complain on their behalf because there was a conflict of interest.

35. The first applicant, on behalf of herself and the children, submitted that the Government's objection should be rejected by reference to *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, §§ 156-59,

10 September 2019). The Czech Government, a third-party intervener, joined the applicants' submissions on that point.

36. The Court observes that a similar objection was submitted by the respondent Government in *Strand Lobben and Others* (cited above), and that it was rejected. The Court stated, however, in its judgment delivered in that case, that where an application has been lodged with it by a biological parent on behalf of his or her child, the situation may be that the Court identifies conflicting interests between parent and child, and that a conflict of interest is relevant to the question of whether an application lodged by one person on behalf of another is admissible (see *Strand Lobben and Others*, cited above, § 158). In the instant case, the Court finds that this matter is closely linked to the merits of the complaint and therefore joins the Government's preliminary objection to the merits.

37. In other respects, the Court notes that the complaint under Article 8 of the Convention is not inadmissible for being manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or on any other grounds. In so far as it has been lodged by the first applicant on her own behalf it must therefore be declared admissible.

B. Merits

1. The parties' and third parties' submissions

(a) The applicants

38. The first applicant argued that it was in the interests of the children to always take the least invasive measures, and that the key point was the right of children to be cared for by their biological parents. In the instant case, legal standards with respect to separation of children and biological parents and the best interests of children had been unambiguously breached.

39. In addition, the first applicant argued that rumours of her abusing her children had emerged but had not been thoroughly investigated. Expert opinions had been obtained, but they had not clarified matters, and had instead concluded that the first applicant had failed in bringing up the second and third applicants.

40. The first applicant further maintained that, instead of the authorities working with her in respect of how to bring up the second and third applicants, the latter had been left in foster care while their contact with the first applicant had been, at first, made completely impossible and, later, so limited that it could not be regarded as contact at all.

41. In the first applicant's view, the procedures in the instant case had not corresponded to the model procedures presented by the respondent State and had been in contradiction with the right to respect for family life. The domestic authorities had not only failed in their positive duty to take measures

to facilitate family reunification as soon as reasonably feasible, but had acted contrary to this duty.

42. The first applicant emphasised that the Court's general principles concerning the preserving of family ties had to be applied, *mutatis mutandis*, to the relationship between siblings.

(b) The Government

43. The Government submitted that relevant and sufficient reasons had been provided for the measures complained of. The District Court had conducted a thorough assessment where the first applicant's interests had also been taken into account, but where the combination of the children's special care needs, and their clear opinions and descriptions concerning possible contact with the first applicant had comprised the paramount reasons to uphold the care order and refuse contact rights.

44. Upon a careful assessment, the domestic authorities had found that the first applicant could not provide the children with the care they needed, even with assistance. The first applicant had also not shown any interest in cooperating with the child welfare services and had continued to show a lack of understanding of her deficiencies as a caregiver and the risks she posed to the second and third applicants. A considerable period of time – five years – had also passed since the children had been originally taken into public care and regular contact between them was assured.

45. As to the refusal of contact rights, the Government maintained that the child welfare services had initially taken measures to facilitate reunification of the applicants. They had provided supportive guidance for the first applicant at the early stage in connection with the contact sessions. When the ultimate goal of reunification had been abandoned, this had been in the best interests of the children. The Court should, in the Government's view, attach considerable importance to the children's own opinions on any form of contact with their parents in the light of their age and maturity at the time of the final judgment.

46. With regard to parental responsibilities, the Government argued that withdrawing the first applicant's parental responsibilities in respect of the two children had been well-founded in the specific circumstances of the case, including in particular the way in which the first applicant had exercised those responsibilities. The domestic authorities had emphasised the rightful protection of the children's privacy and the way in which the first applicant had used the media in violation of that privacy by way of extensive disclosures of private information about the children contrary to their expressed wishes.

47. The Government also submitted that the decision-making process had been fair and had afforded due respect to the applicants' rights. It emphasised that various specialists had been involved and that the children had had a spokesperson. The impugned measures had been based on all relevant

considerations, and had been well justified and rooted in the best interests of the children.

(c) The third-party interveners

48. The Czech Government submitted, among other things, that the biological family had not been provided with sufficient support with the aim of family reunification. While they were aware of the difficult situation of the first applicant and her children, the first applicant's parental responsibilities and contact rights should have been maintained; a suitable solution to the difficult family situation could have been found, but the authorities of the respondent State had not made any serious attempts in that direction. The positive obligations under Article 8 of the Convention had not been met.

49. The other third-party interveners – the Government of the Slovak Republic and the Ordo Iuris Institute for Legal Culture – primarily made submissions with regard to the general principles on the basis of which complaints about proceedings concerning childcare measures are to be examined. Ordo Iuris also made a comparative study of public childcare practices in Norway and Poland.

2. The Court's assessment

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

50. The Court observes that the case concerns proceedings in which the first applicant had applied for the care order in respect of her children, the second and third applicants, to be lifted, and the municipal child welfare services had applied for (i) the first applicant's parental responsibilities in respect of both children to be removed, (ii) the first applicant to be refused contact with the second applicant, and (iii) authorisation be given to the third applicant's foster parents to adopt him. The outcome of the proceedings was that (i) the care orders were not lifted in respect of either the second or the third applicant, (ii) the first applicant was refused the right to contact with either of them, and (iii) the first applicant's parental responsibilities in respect of both the second and the third applicants were withdrawn, while authorisation to adopt the third applicant, C, was refused.

51. The Court finds that it cannot be called into question that the relevant proceedings and the decisions taken in the course of those proceedings entailed an interference with the applicants' right to respect for their family life as guaranteed by Article 8 of the Convention. It further finds that the measures complained of were in accordance with the law, namely the Child Welfare Act of 1992 (see paragraph 31 above), and pursued the legitimate aim of protecting the second and third applicants' "health or morals" and their "rights". The remaining question is whether the interference was "necessary in a democratic society" under the second paragraph of Article 8. As indicated

above (see paragraph 36) the Court will examine whether there is a conflict of interest between the first applicant and the second and third applicants as a part of its examination of that question.

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

52. The Court notes that the general principles applicable to cases involving child welfare measures (including measures such as those at issue in the present case) are well established in the Court's case-law, and were extensively set out in *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, §§ 202-13, 10 September 2019), to which reference is made. The principles have since been reiterated and applied in, *inter alia*, *K.O. and V.M. v. Norway* (no. 64808/16, §§ 59-60, 19 November 2019); *A.S. v. Norway* (no. 60371/15, §§ 59-61, 17 December 2019); *Pedersen and Others v. Norway* (no. 39710/15, § 60-62, 10 March 2020); *Hernehult v. Norway* (no. 14652/16, § 61-63, 10 March 2020); *M.L. v. Norway* (no. 64639/16, §§ 77-81, 22 December 2020); and *Abdi Ibrahim v. Norway* ([GC], no. 15379/16, § 145, 10 December 2021). For the purpose of the present analysis, the Court particularly emphasises the general principle that a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child if and when appropriate (see *Strand Lobben and Others*, cited above, §§ 207 and 208).

53. In applying those principles to the facts of this case, the Court notes, firstly, that the proceedings in question were extensive. When the District Court examined the case, its bench was composed of one professional judge, one lay person and one psychologist. It heard eighteen witnesses in a hearing over several days, where both parents were present with counsel and gave evidence. The children's views were obtained (see paragraph 15 above). The District Court gave a detailed judgment (see paragraphs 16-26 above), and extensive proceedings had already been conducted by the County Social Welfare Board (see paragraph 14 above). The Court does not find any basis for considering that the proceedings were not conducted in a satisfactory manner or were not accompanied by safeguards commensurate with the gravity of the interferences and the seriousness of the interests at stake (contrast, in particular, *Strand Lobben and Others*, cited above, § 225).

54. As the Court held in *Strand Lobben and Others*, cited above, § 203, in determining whether the measures complained of were necessary in a democratic society, the Court considers whether, in the light of the case as a whole, the reasons adduced to justify those measures were relevant and sufficient for the purposes of paragraph 2 of Article 8, whether they corresponded to a pressing social need and whether they were proportionate to the legitimate aim pursued. As regards the decisions taken by the District Court, which gave what became the final judgment on the merits, to continue

the care order, refuse the first applicant contact rights, and withdraw her parental responsibilities in respect of the second and third applicants, the Court will examine all decisions in turn (see, similarly, for example *K.O. and V.M. v. Norway*, cited above), but keeps in mind that all three decisions are related and that the domestic authorities' decisions were intrinsically linked to how the child welfare case had proceeded until then (see, *mutatis mutandis*, *Hernehult*, cited above, § 64, and paragraph 60 below).

55. The Court reiterates that, as it has consistently held, in the case of imposition of public care restricting family life, a positive duty lies on the authorities to take measures to facilitate family reunification as soon as reasonably feasible. However, that positive duty is subject always to its being balanced against the duty to protect the best interests of the child (see *Strand Lobben and Others*, cited above, §§ 205 and 208). Before examining the decision to continue the care order and the related decisions, the Court considers it important to stress the circumstances pertaining between the adoption of the emergency care order on 20 May 2011 and the first decision of the District Court on 4 July 2012. During this period the domestic authorities were investigating not only child neglect but also serious allegations of physical and sexual abuse committed by one or both of the parents. The findings of the District Court and, later, the High Court in that regard are outlined in paragraphs 9-10 above. The Court notes that the 2016-decision to continue the care order in these circumstances was taken by the District Court, following a renewed assessment of all aspects of the case, on the basis of, *inter alia*, the first applicant's developed caring abilities, expert reports, reports from the children's domestic representative, B's physical reactions when the question of contact with the first applicant was raised and the first applicant's lack of understanding as to why he refused to meet her, and C's weak attachment to the first applicant (see paragraphs 16-20 above). The District Court also took the children's own opinions into account as one of the relevant factors.

56. Furthermore, the Court notes that the District Court carried out additional individual assessments on the basis of each child's situation in foster care. As to B specifically, the District Court found, for example, that he had developed positively while in foster care (see paragraph 16 above). As to C specifically, it found among other things that removing him from his foster family would impose on him feelings of severe loss and profound grief (see paragraph 20 above). The fact also remains that when the children had first been placed in foster care – in the course of the proceedings in 2011-2013 (see paragraphs 6-11 above), which fall as such outside the scope of the Court's jurisdiction in the instant case and in respect of which the Court has already declared an application from the first applicant inadmissible (see paragraph 12 above) – the different levels of domestic authorities all found that they had been victims of abuse and violence in their home, though there

were some variations in what the County Social Welfare Board, the District Court and the High Court had found proved, and what they considered necessary to decide on with regard to the establishment of facts (see paragraphs 7, 9 and 10 above). In particular with regard to B, the causes of his trauma were relevant to the decisions now brought before the Court (see, *inter alia*, paragraphs 16 and 20 above).

57. The Court considers that the District Court, in the above-mentioned decision, advanced both relevant and sufficient reasons falling within the wide margin of appreciation that is afforded to domestic authorities in respect of the necessity for care orders. Furthermore, as to the removal of the first applicant's parental responsibilities in respect of B and C, the Court is equally satisfied that the domestic authorities sufficiently demonstrated the necessity of those measures. It observes that the applicant had published or contributed to publishing sensitive information about the children on the Internet and in other media and that the removal of her parental responsibilities was a targeted decision made in order to prevent the applicant from continuing to spread sensitive personal information relating to the children (see paragraphs 14, 21 and 25 above). The Court takes into account that, unlike the measure that was at issue in the case of *Strand Lobben and Others* (cited above), which concerned a decision to replace foster care with adoption, neither the care order nor the decision to remove the first applicant's parental responsibilities in the instant case were irreversible or permanent. It notes the refusal to authorise the adoption of C and the domestic courts' awareness of and engagement with the Convention requirement to provide special and compelling reasons in relation to decisions which result in serious interferences with parental rights under Article 8 of the Convention (see paragraphs 22 and 24 above).

58. With regard to the specific issue of contact rights, the Court notes that the first applicant was not granted any right to contact with either of the children, the second and third applicants. Since she was thereby effectively deprived of any family life with them, it is incumbent on the Court to carry out a "stricter scrutiny" of whether the circumstances were so exceptional that measures to that effect were justified (see, for example, *Strand Lobben and Others*, cited above, § 211).

59. Nonetheless, the Court takes particular note of the children's own opinions and the degree and nature of their negative reactions to contact with the first applicant or to that topic being brought up. Those included, *inter alia*, B's physical reactions such as uncontrolled perspiration, his body starting to shake, his showing visible bodily anxiety, and what he had himself described as a feeling of pain in his whole body and in particular in the chest and throat. They also included C's agitation and anxiety, his trouble sleeping, his strong reactions and his defecating in his pants (see paragraphs 18, 23 and 26 above). Against that background, the Court does not find that it has any basis in the specific circumstances of the case for considering that the District Court did

not sufficiently justify its decision to refuse to give the first applicant contact rights in respect of the children at the time of its judgment. It reiterates that a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see, among many other authorities, *Strand Lobben and Others*, cited above, § 207) and observes that, under domestic law, biological parents may apply to have the contact rights decided anew when 12 months have passed (see paragraph 31 above). With regard to contact between the children, the Court takes note of the Government's information to the effect that they visit each other regularly.

60. The Court also takes into account that when the District Court in 2016 gave what was the final decision on the merits in the domestic proceedings complained about (see paragraphs 13-30 above), the children had been in foster care, initially on an emergency basis, since 2011 (see paragraph 6 above). The Court has emphasised that decisions such as those complained about in the instant case must be placed in context, which inevitably means that it must to some degree have regard to the former proceedings and decisions relating to the care of the children in question (see, for example, *Strand Lobben and Others*, cited above, § 148), and that it is relevant in a case such as the present one whether the competent domestic authorities have considered from the very outset all the relevant requirements of Article 8 of the Convention (see *M.L. v. Norway*, no. 64639/16, § 98, 22 December 2020). The fact also remains that the Court, in respect of the respondent State in several recent judgments, has expressed concerns with regard to the justifications given in relation to the establishment of particularly restrictive contact regimes based on conclusions already reached when the children have been taken into care, to the effect that the care orders are likely long term (see *Strand Lobben and Others*, §§ 221 and 225; *K.O. and V.M. v. Norway*, cited above, §§ 67-71; *Pedersen and Others*, cited above, §§ 67-69; and *M.L. v. Norway*, cited above, §§ 92-94).

61. However, as concerns that aspect of the instant case, the Court reiterates that when the children had first been placed in foster care, that was based on findings concerning violence and abuse in the home (see paragraphs 7, 9 and 10 above; see also paragraph 56 above). The County Social Welfare Board at the time nonetheless did not rule out that the circumstances could change so that the first applicant could regain care of the children (see paragraph 7 above). Moreover, the High Court granted leave to appeal on the issue of contact rights specifically, and carried out a lengthy assessment in which it took account not only of its consideration that the case would be a matter of long-term fostering for the children, but also, *inter alia*, the children's views, their experiences and their reactions to contact at the time (see paragraph 10 above). The Court also observes that matters relating to willingness to cooperate impacted on the implementation of the care order and the decision on contact rights at the time of the original care order proceedings (see, *inter alia*, paragraph 11 above).

62. In the light of the above, the Court does not find that it has any basis for considering that there were any shortcomings in the initial care order proceedings that may have affected the proceedings complained about, or that placing the decision on contact rights taken in 2016 in its context in any other manner can lead the Court to conclude that the domestic authorities have not shown that it was justified in the best interests of the children. It is clear from the domestic proceedings that considerable attention was paid to the question of maintaining, to the extent possible, the mother-child relationship, albeit with the children's best interest always remaining paramount (see paragraphs 10, 16-19 and 22-23 above).

(c) Conclusion

63. On the basis of its above examination of the necessity of the totality of the interference with the first applicant's right to respect for her family life and the case as a whole, the Court concludes that there has been no violation of Article 8 with regard to her.

64. As regards the first applicant's standing to complain on behalf of the two children, a question joined to the merits (see paragraph 36 above), the Court reiterates its existing case-law to the effect that, in principle, 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 as not being consistent with the rights guaranteed by the Convention. In such cases, the standing as the natural parent suffices to afford him or her the necessary power to apply to the Court on the child's behalf, too, in order to protect the child's interests (*Iosub Caras v. Romania*, no. 7198/04, § 21, 11 December 2006, and the further detailed references therein). In *Strand Lobben and Others*, cited above, § 157, the Court held that the key criterion for the Court in relation to questions of *locus standi* is the risk that children's interests might not be brought to its attention and that they would be denied effective protection of their Convention rights. However, 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). Unlike in other recent cases involving the respondent State in which no conflict of interests was found (see, for example, *Pedersen and Others*, cited above, § 45), the Court considers that in a case such as this where serious joint parental child neglect has occurred and the care order was issued on the basis of concerns relating to the applicant mother having failed to protect the children she seeks to represent before it from abuse they had suffered in their home, such a conflict may clearly arise. Finally, it notes that at domestic level a representative was appointed for the minor children in the proceedings. The representative spoke with the children in person and gave evidence before the domestic authorities (see, *inter alia*, paragraphs 14, 15 and 18 above).

65. On the basis of the above, the Court concludes that the Government's preliminary objection is well-founded and that the application in respect of the second and third applicants is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 thereof and must be rejected pursuant to Article 35 § 4.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins to the merits* the Government's objection to the first applicant's having lodged the application on behalf of the second and third applicants and *upholds* it;

2. *Declares* the complaint under Article 8 of the Convention admissible in so far as it concerns the first applicant and the remainder of the application inadmissible;

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

Done in English, and notified in writing on 20 January 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Síofra O'Leary President