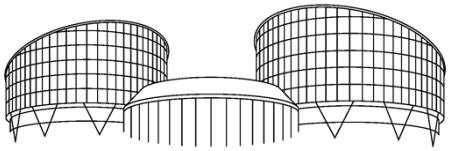

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF A.L. AND OTHERS v. NORWAY

(Application no. 45889/18)

JUDGMENT

Art 8 • Family life • Severe limitations on parents' contact rights, following their child's placement in foster care, at variance with aim of family reunification • Failure to examine existence of any other alternative arrangement to avoid permanent foster care

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 A.L. 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. 45889/18) 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 Slovak national, Mr A.L., a Norwegian national, Ms S.M., a Norwegian national, X, and a Slovak national, Ms J.L. ("the applicants"), on 19 September 2018;

the decision to give notice to the Norwegian Government ("the Government") of the complaints concerning Articles 6 and 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 applications (Rule 41 of the Rules of Court);

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

the comments submitted by the Government of the Slovak Republic, who had exercised their right to intervene in accordance with Article 36 § 1 of the Convention;

the comments submitted by the Government of the Czech Republic and 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 application concerns complaints under Articles 6 and 8 of the Convention relating to proceedings concerning childcare measures adopted in respect of the first and second applicants' child, the third applicant, whose grandmother is the fourth applicant.

THE FACTS

2. The first and second applicants reside in Norway. The first applicant was born in 1987 and the second applicant in 1994. The third applicant is their child, X, born in mid-January 2015, and the fourth applicant is the first applicant's mother, who resides in Slovakia and who was born in 1961. They were represented before the Court 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 T. Oulie-Hauge, attorney at the same office.

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

5. On 26 March 2015 the third applicant was taken into emergency foster care. It appears from the decision that the hospital had contacted the child welfare services after the first and second applicants had left the hospital with the child even though the hospital had explained that there were indications that the child needed treatment and was not ready to leave. The child welfare services had since offered a close follow-up to the family, who had needed a lot of practical guidance with regard to the child's needs concerning food, nursing, sleep and routines. It had been challenging to offer sufficiently concrete guidance and even though the first and second applicants felt more secure in respect of practical matters, they still did not ensure the child's safety. The first and second applicant still left the child alone at the nursing table or in a sofa and it occurred that the first applicant switched off an alarm which (by vibrating) informed the second applicant that the child was crying. The first applicant had shooed the child when she cried. In addition to the assistance measures attempted, the family had been offered a stay at a family centre, but had refused. The decision also contained a description of how the child had started to develop irregularly because of a lack of interaction with and social stimuli from her caregivers. It was decided not to disclose the foster home's address to the child's family, and the first and second applicants were granted rights to contact with the child for one hour every fourteen days, under supervision (see, for further details, paragraph 16 below).

6. On 31 March 2015 the emergency placement decision was confirmed by the County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*). It appears from the Board's decision that the child welfare services had argued that there were conflicting interests to be balanced concerning the level of contact that should be set, and that they had proposed that the first and second applicants should be given contact rights of one hour every fourteen days.

7. The emergency placement decision was upheld on review by the District Court (*tingrett*) on 25 June 2015. From the District Court's judgment it appears that the municipal child welfare services had argued before the

court that the second applicant's contact rights should be reduced to once a month, and that the first applicant should be refused all contact with the child.

8. The emergency placement decision became final with a decision from the High Court (*lagmannsrett*) of 30 October 2015, in which the first and second applicants were not granted leave to appeal against the District Court's judgment.

9. The emergency placement was followed by an application to the Board for a care order on 7 May 2015.

10. On 26 November 2015 the child welfare services decided to reduce the first and second applicants' right to contact with the child to one hour every sixth week. That decision was upheld by the Board on 3 February 2016.

11. The Board rejected the application for a care order on 7 March 2016. It appears from the Board's decision that the child welfare services had argued that it would be a long-term placement and that special reasons existed for limiting the first and second applicants' contact with the child to twice a year or less. Following the Board's decision, the child welfare services increased the level of contact between the first and second applicants and the third applicant to one hour every third week.

12. On 27 June 2016 the District Court decided that implementation of the Board's decision should be suspended, before it subsequently, on 26 September 2016, upheld the decision. It appears from the District Court's judgment that the child welfare services had again argued that it would be a long-term placement and that that consideration had to have consequences for the contact rights. They had maintained that when compelling reasons so required, contact rights could be set at one to two times yearly, and argued that the extent of contact that had been practised until then had to be reduced.

13. On 4 November 2016 the High Court quashed the District Court's judgment on procedural grounds, as it considered that one of the judges had been biased. A further appeal to the Supreme Court (*Høyesterett*) was dismissed by the Supreme Court's Appeals Committee (*Høyesteretts ankeutvalg*) on 13 January 2017.

14. The case was accordingly to be retried before a first-instance court. It was sent to a different District Court, which held a hearing from 9 to 13 October 2017. The first and second applicants were present, each with legal aid counsel, and gave evidence. Twenty witnesses were heard and an expert psychologist appointed by the District Court attended the hearing and gave a statement. The first and second applicants also called an expert witness. The court-appointed and the privately-appointed experts each provided a written report, which had been submitted to the Commission of Child Welfare Experts (*Barnesakkyndig kommisjon*) for quality checks. The Commission made no significant remarks in respect of the report from the court-appointed expert, whereas it stated that the report from the privately-appointed expert displayed major and serious shortcomings, to the extent that it could only contribute to elucidating the case to a limited degree.

15. In a judgment of 16 November 2017 the District Court took note of the fact that the third applicant had been in emergency foster care since March 2015 until the time of the court's judgment. While the case formally concerned placement in public care, regard should therefore also be had to the rules governing the discontinuation of care orders.

16. The District Court went on to examine and assess the situation of the third applicant, the child; it considered her personality, history, development and possible physical, mental, social and emotional challenges. It observed that there had been no concerns at birth. Two weeks after the birth a midwife had made a note of concerns and, from approximately the same time, a health visitor who had had weekly contact with the family expressed concern as the child did not develop and progress. The health visitor had shown the third applicant to a doctor, who had observed that she made little eye contact and assessed that this did not have physiological causes. The child welfare services had visited the family around late January-early February 2015, and considered that the care situation was adequate. They were concerned, however, about the lack of interaction between the parents and the child.

17. The District Court and the court-appointed expert agreed with the child welfare services that there were problems in respect of interaction between the parents and the child. Among other evidence, a video recording of interaction between the parents and the child was played before the court, and the court stated in that context that it was aware that it could be challenging to interact with a child when under supervision by strangers. The second applicant also had a hearing disability and used sign language when communicating with the child welfare service staff. The District Court did not consider, however, that the second applicant dealt with X particularly differently when observed and when not. Nor did it consider that her hearing disability had any particular impact on her interaction with the child.

18. In addition, the District Court took note of the development of the child's motor skills, which had been delayed at the time when she had been placed in care, a delay that had not yet been fully compensated for. For that reason, referring to the assessments of the court-appointed expert, it considered that the third applicant had elevated care needs. The delay in the development of her motor skills was also a matter which required particular follow-up by her caregivers. The District Court went on to examine the first and second applicants' caring skills and noted that, while the second applicant had expressed sound opinions on how to care for children in general, she had, according to the court-appointed experts, certain difficulties in understanding X's needs.

19. The court-appointed expert had stated that the second applicant had a reduced level of caring skills and she assumed that that was related to the second applicant's own psychological functioning, possibly due to difficult and traumatic experiences in her own upbringing. She did not find that the second applicant's hearing difficulties had any impact. The District Court

agreed with the expert on those points. As for the first applicant, the expert had assessed him as also having reduced caring skills, which were insufficient to meet X's needs. The expert had been particularly concerned with the first applicant's understanding of X's situation and needs, and his capacity to reflect and cooperate. The District Court stated that both the expert and the child welfare services had found it particularly challenging that the first applicant was intense and invasive towards X.

20. The District Court further found that circumstances had improved with the contact sessions that had been carried out. X nonetheless still suffered adverse reactions after the contact sessions, a considerable part of which had to be attributed to the first and second applicants' conduct during the sessions. The court also took into account that the first and second applicants had received extensive assistance and guidance, in particular with respect to how to act sensitively towards X. They had not been capable of benefiting from these measures.

21. Overall, the District Court found that there would be serious deficiencies in X's care if she were returned to the first and second applicants. With regard to the question of contact rights, the District Court stated the following:

> "*Contact*
>
> The first paragraph of section 4-19 of the Child Welfare Act states that parents and children are generally entitled to have contact with each other. In our case, there is also no disagreement that the child should have contact with her biological parents if the court decides to take the child into care, but the disagreement concerns the extent of the contact. The municipality has entered a statement of claim that the contact be set at three times a year for one hour at a time, while the parents have requested that the contact be as extensive as possible.
>
> When it comes to the further determination of the contact, it must be based on section 4-1 of the Child Welfare Act, which states that decisive importance shall be attached to the child's best interests. A key factor in this assessment is the purpose of the care decision and its estimated duration. The Supreme Court's judgment in Rt. 1998 page 787, states the following about the importance of the expected duration of the care order:
>
> 'In cases where the care order is assumed to be temporary and return is expected to take place within a reasonable time, care should be taken to maintain the best possible contact between the biological parents and the child, see the statements in the Official Norwegian Report (NOU) 1985: 18, page 162. This indicates gradually more frequent contact of a somewhat longer duration. If return cannot be expected or a return lies far ahead in time, contact is to be aimed at making the child aware of his or her biological origin with a view to a possible later attachment as the child grows up. The main objective over time must be that also more limited contact works in the best interests of the child based on the child's feelings, interests and needs.'
>
> The court finds that for [X] it is a matter of permanent placement, for growing up. Almost three years have elapsed since the emergency decision, and as mentioned before, the parents have not come in a position in which they can exercise caring responsibilities for [X] despite long-standing and comprehensive guidance.

> The purpose of contact in our case will then be to maintain a relationship between [X] and the parents, taking into account [X]'s need to further develop a good attachment to the foster home, and to ensure her stability and security. The evidence presented at the main hearing has shown that the contact sessions have been of varying quality, and [X] has, as mentioned, shown reactions after contact. The court agrees with the expert that contact every three weeks, as it has been taking place so far, is too frequent. [X] needs calm and stability to continue to form an attachment to her caregivers. It is of the utmost importance that [X] develop as much as possible undisturbed by the stresses caused by contact. Her development since the foster home placement has been positive, and the court considers it of fundamental importance that [X] be spared frequent stress factors that will have a negative impact on her development. [X] is a vulnerable child in need of calm and predictability, and the court refers to the descriptions of her above. In addition, the parents' skills relating to contact are limited. The court has previously described contact sessions that have been very stressful for [X], because they become intense and the parents show little sensitivity to [X]'s needs.
>
> The court has therefore concluded that the number of annual contact sessions should be set at three per year for one hour at time.
>
> The child welfare services are given the opportunity to supervise. This is primarily because it still seems that the parents are unable to avoid subjecting [X] to the stresses described above, and because the parents, especially the father, are highly antagonistic towards the child welfare service. The court is not confident that the parents are able to adequately protect [X] during contact."

22. The District Court also authorised the non-disclosure of the foster home's address by reference to:

> "... the pressure that remains in the case from the parents and the circle around them, and to [X]'s need for peace and quiet. The court considers it a necessary protection for the foster family that their address and identity are not known to the parents, while the court does not find the parents' need to know the address and identity to be sufficiently compelling."

23. Lastly, the District Court decided that the contact arrangement which it had decided on in the judgment should take effect immediately, that is, before the judgment would otherwise become final.

24. On 20 March 2018 the High Court refused leave to appeal against the District Court's judgment, and on 12 June 2018 the Supreme Court's Appeals Committee dismissed the first and second applicants' appeal against the High Court's decision.

RELEVANT LEGAL FRAMEWORK

25. 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 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.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

26. The applicants complained that the proceedings concerning public care of the third applicant, X, and the measures adopted therein, notably the care order in respect of X and the limitations imposed on the first and second applicants' right to contact with X, had violated their right to respect for their family life as provided in Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

The parties' submissions

(a) The Government

27. The Government argued that the fourth applicant had not satisfied the admissibility criteria in Articles 34 and 35 of the Convention. They observed that the fourth applicant had never been a party to any of the domestic proceedings complained of, nor had she ever attempted to become a party. Although the Government did not formally contest the admissibility of the complaint lodged on behalf of the child, the third applicant, they further emphasised that there was a conflict of interest between her and the other applicants, which the Court should take into consideration.

(b) The applicants

28. The applicants argued that there was no conflict of interest between the third applicant and the other applicants. As to the fourth applicant, they stated that she could only have applied for contact rights after the decisions complained of had become final. However, she would not have had a legal right to contact and it was not clear whether she would have been given legal aid had she sought to institute any proceedings. The fourth applicant had also

been afraid that instituting proceedings might have been to the detriment of the first and second applicants in their proceedings.

(c) The Court's assessment

29. The Court finds that, as to the application having been lodged on behalf of the third applicant by her parents, the first and second applicants, its findings in *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, §§ 156-59, 10 September 2019) apply also to the present case, the differences in the type of childcare measures at issue in this case and in *Strand Lobben and Others* notwithstanding. The Court discerns no conflict of interest in the present case that would require it to dismiss the first and second applicants' application on behalf of the third applicant and there are accordingly no grounds for declaring the application lodged on behalf of the child inadmissible.

30. With regard to the fourth applicant, the Court notes that in so far as she was not a party to the domestic proceedings complained of and did not seek to become a party to those proceedings, and as she has also failed to institute other proceedings or in any other manner to bring her Convention grievances before the domestic authorities, she cannot be considered to have exhausted all domestic remedies within the meaning of Article 35 of the Convention. The application in so far as it concerns the fourth applicant must accordingly be declared inadmissible.

31. The complaint lodged under Article 8 of the Convention is otherwise neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention and must be therefore be declared admissible in respect of the first to third applicants.

B. Merits

1. The parties' and third parties' submissions

(a) The applicants

32. The applicants submitted that the proceedings had not been conducted in accordance with normal procedures as set out in domestic guidelines on dealing with child welfare cases where children had a connection to other countries, particularly as the domestic authorities had not investigated the situation of the child's relatives in Slovakia and whether the child could have been sent to live with relatives in Slovakia.

33. The applicants further argued that there had not been any evidence to show that the parents had posed a risk to the child's health or development. They also pointed out that the parents had planned to be supported by the child's grandmother – the fourth applicant – who had had medical education.

34. With regard to contact rights, the applicants emphasised that the present case differed from *Levin v. Sweden* (no. 35131/06, 15 March 2012)

and *S.J.P. and E.S. v. Sweden* (no. 8610/11, 28 August 2018). They also argued that there had been no need to protect the third applicant from her parents in this case.

(b) The Government

35. The Government emphasised that domestic authorities are faced with an extremely difficult dilemma, in so far as failures to act in order to protect children could result in violations of the children's rights, while interferences in family life in order to protect children could also raise difficult questions.

36. In the instant case, the emergency placement of X had been necessary owing to the serious deficiencies in the care provided by the first and second applicants and the fact that assistance measures had proved unsuccessful. The domestic authorities, having carefully considered all aspects of the case and having focused on the child's best interests, had provided relevant and sufficient reasons to show the necessity for the placement.

37. The Government also maintained that relevant and sufficient reasons had been provided in respect of the limitations on contact rights. The placement in foster care had been considered to be a long term one because the parents, despite long-standing and comprehensive guidance, had not put themselves in a position where they could exercise caring responsibilities with regard to X. Sufficient reasons had also been provided for the decision to authorise the municipality to supervise the contact sessions, as the parents had been found to be unable to avoid subjecting X to stress, and as they, especially the child's father, had behaved highly antagonistically towards the child welfare services. It had also been necessary to place X in a foster home at an undisclosed address because of the pressure that remained in the case from the parents and the people close to them, and the child's need for peace and quiet.

38. The Government further argued that the domestic authorities had not planned for X not to be returned to her parents. The District Court's finding that the placement was "permanent" and "for growing up" did not mean that it had given up on the possibility of reunification. The level of contact had been decided on the basis of a concrete assessment at the time of the judgment, and the child welfare services had a continuous obligation to consider if new circumstances required a change to the previous assessments.

39. In addition, the Government submitted that the decision-making process had been fair and had afforded due respect to the applicants' rights under Article 8 of the Convention. In-depth examinations had been carried out in the course of the proceedings, in which the applicants had been fully involved and in which, among other things, various specialists had been involved.

(c) The third-party interveners

40. The Government of the Slovak Republic submitted that they had welcomed the Court's judgment in *Strand Lobben and Others* (cited above), and the general principles stated therein, which had been applied to subsequent cases concerning child welfare measures adopted by the authorities of the respondent State. They further made reference to a number of measures that the Slovak authorities had taken towards the Norwegian authorities in the context of the instant case. Stating that they fully respected the competence of the Norwegian authorities with regard to the childcare issue in this case, the Slovak Government submitted that it was important to assess the facts in terms of the duty on the authorities to perform a genuine balancing exercise between the interests of the child and her biological family, and especially in terms of the positive duty on the authorities to take measures to facilitate family reunification as soon as reasonably feasible.

41. The other third-party interveners – the Government of the Czech 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) Interference, accordance with the law and legitimate aim

42. The Court finds that it cannot be called into question that the proceedings complained of and the measures adopted therein entailed an "interference" with the first to third applicants' right to respect for their family life as guaranteed by Article 8 of the Convention, that that interference was in accordance with the law, namely the Child Welfare Act (see paragraph 25 above), and that it pursued the legitimate aim of protecting the third applicant's "health" and her "rights". The remaining question is whether the interference was proportionate and "necessary in a democratic society" within the meaning of the second paragraph of Article 8.

(b) Necessary in a democratic society

43. 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* (cited above, §§ 202-213), 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).

44. 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 issue a care order and limit the first and second applicants' contact rights to one hour, three times yearly, the Court will examine both decisions in turn (see, similarly, for example *K.O. and V.M. v. Norway*, cited above), but keeps in mind that the two decisions are interrelated as well as both intrinsically linked to how the child welfare case had proceeded until then (see, *mutatis mutandis*, *Hernehult*, cited above, § 64, and paragraph 46 below).

45. Turning to the facts of the instant case, the Court observes that the impugned care order in respect of the third applicant, X, was, because the child welfare services' application for the order had originally been dismissed by the County Social Welfare Board on 7 March 2016 (see paragraph 11 above), first issued by the District Court in its judgment of 16 November 2017, which also became the final decision on the merits (see paragraph 24 above). That judgment was given after the District Court had conducted an extensive hearing where numerous witnesses had given evidence and two experts had participated (see paragraph 14 above). The Court does not find any basis for considering that the first and second applicants, who attended with their legal aid counsel and gave evidence, were not allowed to fully participate in that decision-making process or that that process did not sufficiently protect their interests.

46. Furthermore, as concerns the merits of that judgment, the Court takes note that the District Court essentially found that a care order was necessary because the child lagged behind in development, which was deemed to have a connection with insufficient parent-child interaction (see paragraphs 16-17 above). The District Court also found that there would be serious deficiencies in X's care if she were returned to the first and second applicants (see, *inter alia*, paragraph 21 above). In making those findings, the District Court relied on psychological expertise (see, *inter alia*, paragraphs 14, 17 and 19 above). Bearing in mind the wide margin of appreciation afforded to domestic authorities in respect of care orders, and taking into account the fact that the national authorities had the benefit of direct contact with all the persons concerned at the very stage when the measures were envisaged and implemented, the Court finds that the reasons advanced in respect of the care order were relevant and, if viewed in isolation, sufficient. In its overall assessment, the Court takes note however that the care order was issued after

a long period during which a far-reaching interference with the applicant family's right to respect for their family life had already been in place, in particular in so far as an emergency care order accompanied by a decision to limit parent-child contact to one hour every fourteen days had been issued already some two and a half months after the child was born (see paragraph 5 above).

47. Turning to the issue of contact rights, the Court notes that in its judgment of 16 November 2017, the District Court set the first and second applicants' contact rights at one hour, three times yearly, under supervision (see paragraph 21 above).

48. As a starting point, the Court has found that such severe limitations imposed on contact between parents and children in the context of childcare measures are normally incompatible with the aim of reunification and the principle that care orders should seek as far as possible to be temporary measures. It has emphasised that it is crucial that the contact regime, without exposing the child to any undue hardship, effectively supports the goal of reunification until – after careful consideration, and taking account of the authorities' positive duty to take measures to facilitate family reunification – the authorities are justified in concluding that the ultimate aim of reunification is no longer compatible with the best interests of the child. Family reunification cannot normally be expected to be sufficiently supported if there are intervals of weeks, or even months, between each contact session (see *K.O. and V.M. v. Norway*, cited above, § 64, and *M.L. v. Norway*, cited above, § 79).

49. Indeed, the Court reiterates that it is mindful that in cases such as the present one, there will inevitably be particular circumstances that need to be accommodated, and takes into account that it falls to the domestic authorities to make the proper assessment to that end (see, for example, *K.O. and V.M. v. Norway*, cited above, § 70). In that context, the Court observes that, in the instant case, the first and second applicants had had more extensive contact rights during the emergency placement, which had lasted for a prolonged period because the District Court's judgment, in which it upheld the Board's refusal to issue a care order, was quashed due to a problem of judicial bias and the case therefore had to be reheard (see paragraphs 11-14 above).

50. However, the fact remains that when the care order was issued, the District Court, in imposing the limitations in question on the first and second applicants' contact rights, contrary to the starting point mentioned above (see paragraph 47), appears rather to have proceeded on the basis that the purpose of future contact would only be to maintain a relationship between X and her parents and only to the degree that it would not prevent X from growing attached to her foster parents – instead of examining whether any other arrangement could have contributed to avoiding the permanency that it envisioned. In the District Court's view, X was to grow up in foster care (see paragraph 21 above).

51. In the light of the above, the Court notes the similarity between the facts of this case, with regard to the justifications given for the decision to severely limit the right to contact between the parents and their child, and those given in other cases against the respondent State in which shortcomings relating to justifications provided by the domestic authorities for the establishment of particularly restrictive contact regimes based on conclusions already reached when children have been taken into care, to the effect that the care orders are likely to be long term, have either in themselves led to the finding of a violation (see *K.O. and V.M. v. Norway*, cited above, §§ 67-71) or formed important parts of the context in which violations have occurred (see *Strand Lobben and Others*, cited above, §§ 221 and 225; *Pedersen and Others*, cited above, §§ 67-69; *Hernehult*, cited above, §§ 73-74; and *M.L. v. Norway*, cited above, §§ 92-94). Against that background, the Court does not find that the decision on contact rights in this case stands up to the "stricter scrutiny" that is required by the Court in cases where such far-reaching measures as those adopted in this case have been imposed (see, for example, *Strand Lobben and Others*, cited above, § 211). Accordingly, the Court finds that there has been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

52. The applicants complained that the proceedings had not been carried out in accordance with the "reasonable time" requirement as provided in Article 6 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

53. The applicants argued that the proceedings had taken an unreasonably long time. They pointed out that the periods of time in between decisions taken had been disproportionate in a case involving a small child.

54. The Government submitted that although the lapse of time in the domestic proceedings had exceeded that of a standard care order case, that was due to the circumstances and, in part, to the conduct of the first and second applicants. There had in any event not been any inactivity on part of the domestic authorities.

55. The Court reiterates that the reasonableness of the length of proceedings is to be determined in the light of the circumstances of the case and with reference to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Silva Pontes v. Portugal*, 23 March 1994, § 39, Series A no. 286-A).

56. With regard to the instant case, the Court observes that the emergency placement decision was taken on 26 March 2015 (see paragraph 5 above). The first and second applicants appealed against the decision and while the

appeal was pending, the child welfare services applied for a care order on 7 May 2015. The care order proceedings became final with the Supreme Court's decision of 12 June 2018 (see paragraph 22 above). Due to the close connection between the emergency placement decision and the care order proceedings in the instant case, the Court considers that the period to be taken into account should span from the emergency decision to the final decision in the care order proceedings, that is somewhat short of three years and three months.

57. The Court further notes that the proceedings concerned matters where the daily care of the first and second applicants' young child was at stake, but considers at the same time that the proceedings concerned a case of considerable complexity and notes that it involved, for example, observations of the parents and the child by experts (see paragraph 14 above). During the relevant time period, the emergency placement decision was reviewed on appeal at several levels of jurisdiction, as was the care order, on all occasions on the basis of the situation at the time of the relevant decision. Furthermore, the Court does not find that the applicant has shown any periods of real inactivity as such; the reason why the childcare case took a longer time than expected was essentially the High Court's finding that one of the judges on the District Court's bench had been biased – a finding that the first and second applicants appealed against to the Supreme Court – which entailed the District Court having to conduct a second hearing (see paragraph 13 above). Whereas there was accordingly a procedural error that contributed to the length of the proceedings, the authorities responded to that error in an acceptable manner.

58. Viewing the circumstances of the case as they have been presented to the Court by the parties, the Court does not find that the application discloses any appearance of a violation of Article 6 of the Convention as concerns the length of the proceedings. It follows that the complaint under Article 6 is inadmissible for being manifestly ill-founded and must be rejected in accordance with Article 35 § 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicants claimed 50,000 euros (EUR) each in respect of non-pecuniary damage.

61. The Government stated in response that they were satisfied that the Court, in the event of it finding a violation, would ensure that any award of just satisfaction would be in accordance with its case-law.

62. The Court considers that the first and second applicants must have sustained non-pecuniary damage through distress, in view of the violation found above (see paragraphs 43-51). It awards them jointly EUR 25,000 in respect of non-pecuniary damage, plus any tax that may be chargeable. In respect of X, having regard to her age at the relevant time and to the fact that she did not experience the procedures in question in the same way as the first and second applicants, the Court finds that a finding of violation can be regarded as sufficient just satisfaction.

B. Costs and expenses

63. In respect of costs and expenses, the applicants requested, firstly, recovery of EUR 8,399.32 for what was stated as "legal representation in Norway". In addition, they requested EUR 675 for what was stated as "representation before the Court", in addition to the expenses covered by the Court's legal aid scheme. The applicants also requested that a sum amounting to 15 per cent of the award in respect of non-pecuniary damage be awarded to them because of an agreement with counsel. They asked for EUR 2,949.78 to be awarded in respect of "cash expenses", most of which apparently related to proceedings in Norway, including expenses for persons who had given evidence before the domestic courts, but also to translation of the Government's observations before the Court that had been submitted in English.

64. The Government submitted that it did not appear from the applicants' claim whether the "legal representation in Norway" was actually connected to the case before the Court. They further stated that they had not had any possibility to examine the agreement between the applicants and counsel. The Government additionally maintained that they were satisfied that the Court would ensure that the applicants' recovery of costs and expenses in the event of a violation would align with what was necessary and reasonable.

65. As concerns the costs relating to "legal representation in Norway", the Court observes that the first and second applicants were granted legal aid by the domestic authorities and notes that the applicants have not provided any explanation as to why they would have had further costs. It accordingly does not have any basis for concluding that the applicants' claim may be met in so far as it refers to domestic proceedings, whether it concerns lawyers' fees or other expenses. Furthermore, the Court notes that the applicants, under the heading "legal representation in Norway", have submitted a bill addressed to the fourth applicant amounting to 46,093.75 Norwegian kroner (NOK) (approximately EUR 4,700), which refers principally to exchanges of emails with Norwegian lawyers in June and July 2018. While the Court observes that

the bill has been labelled "application to the European Court of Human Rights", it is nonetheless, without any further explanation, unable to decide that these are costs that have reasonably and necessarily been occurred by the first and second applicants in connection with the application now decided.

66. With regard to the agreement between the applicants and counsel, the Court is not bound by it (see, *mutatis mutandis, Strand Lobben and Others*, cited above, § 234), and, taking into account, *inter alia*, that it does not appear to have any connection to actual costs or expenses, the Court does not find that the "success fee" it includes can reasonably be awarded.

67. Turning to the costs relating to fees for "representation before the Court", the Court notes that the bills submitted to support the claim include, for example, costs for work carried out in 2017, when the domestic proceedings were still pending. On the basis of the documents provided to it, the Court finds that it is necessary and reasonable to award EUR 500 out of the EUR 675 claimed in this respect, payable to the first and second applicants.

68. It follows that the Court will award EUR 500 in respect of costs and expenses jointly to the first and second applicants, plus any tax that may be chargeable to them.

C. Default interest

69. 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 complaint brought by the first to the third applicants concerning Article 8 of the Convention admissible and the remainder inadmissible;

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

3. *Holds* that the finding of a violation of Article 8 of the Convention constitutes sufficient just satisfaction in respect of the third applicant;

4. *Holds*
   (a) that the respondent State is to pay the first and second applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State, at the rate applicable at the date of settlement:

(i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the first to third applicants' claim for just satisfaction.

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