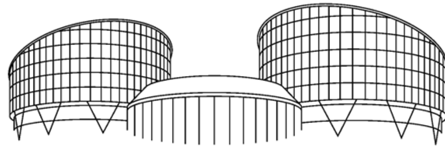

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF K.O. AND V.M. v. NORWAY

(Application no. 64808/16)

JUDGMENT

Art 8 • Respect for family life • Long-term placement of applicants' child in foster care and granting of limited contact rights • Relevant and sufficient reasons • Regime of contact at variance with aim of family reunification • Authorities' failure to consider possibility of family reunification in light of child's best interests

STRASBOURG

19 November 2019

FINAL

15/04/2020

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of K.O. and V.M. v. Norway,

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

Robert Spano, *President,*
Marko Bošnjak,
Valeriu Griţco,
Egidijus Kūris,
Ivana Jelić,
Arnfinn Bårdsen,
Darian Pavli, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar*,

Having deliberated in private on 5 November 2019.

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

PROCEDURE

1. The case originated in an application (no. 64808/16) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Norwegian nationals, Mr K.O. (“the first applicant”) and Ms V.M. (“the second applicant”) (“the applicants”), on 4 November 2016. The President of the Section acceded to the applicants’ request not to have their names disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicants were represented by Mr M. Engesbak, a lawyer practising in Oslo. The Norwegian Government (“the Government”) were represented by their Agent, Mr M. Emberland of the Attorney General’s Office (Civil Matters).

3. The applicants alleged that the decision to take their daughter into public care and to grant them contact rights of two hours, six times a year had violated their right to respect for family life under Article 8 of the Convention.

4. On 4 May 2017 notice of the application was given to the Government. In the Court’s letters of 11 September 2019, the parties were invited to make any submissions they might wish on the possible relevance of the Grand Chamber’s judgment in the case of *Strand Lobben and Others v. Norway* ([GC], no. 37283/13) to the instant case. All parties made additional submissions further to that invitation.

5. Written submissions were also received from the Government of the Czech Republic and the Government of the Slovak Republic, who had been granted leave to intervene in the proceedings as third-parties under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant, Mr K.O., was born in 1974 and the second applicant, Ms V.M., was born in 1986.

A. Emergency decision

7. On 1, 10 and 22 December 2014 the child-welfare services received notifications of concern (*bekymringsmeldinger*) about A, an as yet unborn child. Two of the notifications came from the police and concerned suspicions that the first applicant had physically mistreated the second applicant. The third notification came from the preventive-mental-health services (*forebyggende psykisk helsetjeneste*) and contained information about the second applicant's history of anxiety, depression and drug use.

8. In addition, the child-welfare services received three notifications from private parties, two of which were anonymous. These expressed serious concerns as to how the second applicant was being controlled and manipulated by the first applicant. According to the notifications, the first applicant had forced the second applicant to use amphetamines, and he had cut up her clothes and put her shoes in water in order to hinder her from leaving their home. Moreover, the second applicant had been excluded from contact with her family and network, either as she had been manipulated into distancing herself from them, or because they had been threatened and frightened by the first applicant. According to the notifications, the second applicant had tried to leave the first applicant several times, but had always returned.

9. A, a girl, was born on 13 January 2015. On the same day, the child-welfare services received an anonymous notification of concern which stated that the first applicant was violent and that he had pressured the second applicant into taking drugs. On 14 January 2015 the second applicant's grandmother sent a notification of concern where she stated that the first applicant was manipulative, controlling and that he had been selling amphetamines. On 15 January 2015 the child-welfare services received information from other public authorities about the first applicant's criminal convictions and the second applicant's mental-health problems and her history of drug abuse. The same day the child-welfare services arranged for the second applicant and the child to stay at a family centre, with the second applicant's consent. The first applicant was informed of the decision, but not of their whereabouts, due to the concerns that had been expressed in the notifications.

10. On 22 January 2015 the child-welfare services considered that the second applicant had withdrawn her consent to stay at the family centre. It

therefore adopted an emergency decision under section 4-6 of the Child Welfare Act (see paragraph 43 below) to place A in public care; to grant the applicants contact rights of one hour every second week, under supervision; and not to inform the applicants of A's address. The child-welfare services found that there was a risk that A would suffer considerable harm if she were to stay with the applicants. Reference was made to the notifications concerning mental-health problems, drug abuse and suspicions of violence, and to the fact that the applicants had not agreed to cooperate with the child-welfare services prior to A's birth.

11. The applicants appealed against the emergency decision to the County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*). On 2 February 2015 the Board upheld the decision. It noted the notifications received by the child-welfare services prior to A's birth; that the applicants had refused to cooperate with the child-welfare services before the birth; and that the second applicant had withdrawn her consent to stay at the family centre.

12. The applicants challenged the Board's decision before the City Court, which on 26 March 2015 upheld the placement of A in emergency public care. It held that there was a considerable risk that A, a three-and-a-half-month-old infant, would suffer serious harm if she were returned to the applicants.

13. The City Court attached considerable weight to the high level of conflict in the family, which could be harmful for a small child. The applicants had acknowledged that they had argued at times, and had stated that these arguments had often begun as disagreements over trivial matters which had escalated. They had not contested that the second applicant had left the family home several times during the pregnancy and that she had, on one occasion, been thrown out by the first applicant after an argument. The police had been called to their home several times during the pregnancy, both by neighbours and by the second applicant, after loud disagreements. The applicants had stated that they would adapt to the new situation with an infant and that they would not argue in the presence of the child. In the City Court's opinion there was a high risk of continued strife due to the high level of conflict that had existed between the applicants over time – both before and during the pregnancy – and on account of the added stresses that would result from the demanding task of taking care of a small child.

14. The City Court also found that the second applicant lacked proper impulse control and the ability to handle conflicts in an adequate manner. In 2014 she had pretended to be suicidal, which had resulted in her being admitted to a psychiatric institution. Her general practitioner (*fastlege*) had testified that she had not considered the second applicant to be suicidal and that the compulsory placement had been an error. The City Court noted that the second applicant's mental health had not been examined, but that it was

a matter of grave concern given its potential effect on her ability to provide adequate care.

15. Based on an overall assessment, the City Court found that there was a qualified risk that A would suffer material harm if the emergency placement order were lifted. Less restrictive assistance measures could not adequately safeguard her against the dangers she would be exposed to if she were returned to the applicants. In reaching this conclusion the City Court emphasised the complexity of the family's problems and the fact that previous attempts to help the applicants deal with their various health and drug related problems had been unsuccessful. It therefore concluded that the applicants would need extensive and long-lasting assistance before A could be returned.

16. The applicants appealed against the City Court's judgment on the emergency decision, but later withdrew the appeal, as the child-welfare services had instigated proceedings in order to obtain a care order (see below).

B. Placement decision

1. *County Social Welfare Board*

17. Prior to the City Court's judgment on the emergency care order, on 6 March 2015 the child-welfare services applied to the County Social Welfare Board for a decision to place A in public care under section 4-12 of the Child Welfare Act (see paragraph 43 below). The Board, composed of a chairperson qualified to act as a professional judge, two psychologists and two laypeople, held oral hearings for two days and heard testimony from eleven witnesses. The applicants were present and were represented by counsel.

18. On 20 May 2015 the Board decided that A should be placed in a foster home and that the applicants should not be informed of her whereabouts, in accordance with section 4-19 of the Child Welfare Act (see paragraph 43 below), due to concerns that they would try to find A, and even try to kidnap her. The Board decided not to deprive the applicants of their parental responsibilities in respect of A.

19. The Board found that the applicants, individually and together, had several traits which gave rise to concern as to their ability to provide adequate care for A. The first applicant had been diagnosed with post-traumatic stress disorder (PTSD) and attention-deficit disorder (ADHD) and had an extensive criminal history, including convictions for battery and for issuing threats. The second applicant had a long and extensive history of psychiatric illness and drug abuse. The police had been called to the applicants' house several times during 2013 and 2014 on account of

domestic disputes. The second applicant had gone to a crisis centre twice during the pregnancy.

20. While the first applicant had two cousins and an aunt living nearby, the Board considered that this support network would not be sufficient to ensure that the child would receive adequate care. The Board held that assistance measures, for example counselling, would not be sufficient to ensure adequate conditions for the child. Neither of the applicants had, over time, taken advantage of offers to assist them with their mental-health issues or their substance abuse. The Board therefore held that it would be in the best interests of the child to be placed in a foster home.

21. As to the question of contact rights, the Board noted that no attachment had been established between A and the applicants, as she had been placed in public care shortly after birth. The placement in foster care would most likely be long-term. The purpose of visits with the applicants would therefore be for the applicants and A to get to know each other. While it would be important for A to have order and stability in the foster home, the Board found that it was not necessary to restrict the contact rights to the degree proposed by the child-welfare services – one hour, once a year. Instead it granted contact rights of one hour, four times a year. The child-welfare services would be allowed to supervise the visits.

2. City Court

22. The applicants challenged the County Social Welfare Board's decision before the City Court. They asked for the decision to place A in public care to be overturned or, if the City Court upheld the placement, for their contact rights to be increased. The applicants also requested a suspension of the Board's decision as far as the limited contact rights were concerned. The City Court refused the request for a suspension on 6 July 2015.

23. The City Court, composed of one professional judge, one lay person and one psychologist, heard testimony from the applicants and ten other witnesses, including a court-appointed expert, also a psychologist, from 24 to 26 November 2015.

24. In its judgment of 17 December 2015, the City Court upheld the decision to place A in public care, but increased the applicants' contact rights to two hours, six times a year. The City Court found that while the applicants were loving parents who wanted the best for A, the evidence had revealed numerous risk factors relating to their ability to provide adequate care.

25. The City Court noted that the first applicant had previously been convicted of serious violent crimes of an antisocial character (*alvorlige voldsforbrytelser, av asosial karakter*). He had been convicted of assault at least six times and had in total been sentenced to fifteen years' imprisonment. In 2005 a court of first instance had ordered his preventive

detention (*forvaring*), but this had, upon appeal, been altered to a prison sentence. Most of his criminal acts had been carried out while he had been a member of a motorcycle club, partly as a result of his role as a debt collector for the club. Acting in this capacity he had, *inter alia*, administered beatings and issued threats. According to the police he had been listed 100 times in the register of criminal complaints (*anmeldelsesregisteret*). Some of the complaints against him were still pending. The second applicant's mother had for example reported him to the police for threatening her.

26. In the City Court's view, the first applicant's history showed that he had exhibited antisocial behaviour over a considerable period of time. Moreover, he appeared to have little confidence in, or patience with, the public authorities, including the child-welfare services. The manager of the municipal child-welfare service had obtained a restraining order against the first applicant due to the frightening or threatening messages he had posted on social media. In the City Court's opinion this demonstrated that the first applicant had a worrying inability to learn from his past actions, and it therefore questioned to what extent he would be able to change his behaviour in the future. During the court proceedings he had acted aggressively and impulsively towards the lawyer representing the child-welfare services and had been unable to control himself in a normal manner.

27. The City Court did take note of positive aspects of the first applicant's character that had been emphasised by his psychologist and by the court-appointed expert. However, the psychologist had also noted that the first applicant's state of health had been complex, as he had been diagnosed with ADHD and had showed symptoms of PTSD, and had expressed concern on account of the first applicant "self-medicating" with cannabis on a daily basis.

28. The expert had not found any indications that the second applicant had been suffering from any serious mental illness. The City Court also noted that it was positive that she had been able to refrain from using drugs for a longer period of time. However, it also considered that she was vulnerable. She had broken off contact with her family and appeared to be dependent on the first applicant and his network. Furthermore, the City Court considered her to have several unstable character traits which could affect her ability to provide adequate care, including, *inter alia,* her long history of psychiatric problems, her inability to finish the treatment that had been offered to her, and her impulsivity.

29. Several witnesses, including representatives from the police, had stated that they had suspected that the first applicant had physically mistreated the second applicant. The City Court found it difficult to establish whether the second applicant had in fact been subjected to violence or whether she had exaggerated her fear of the first applicant to friends and the authorities to gain sympathy and attention. It stated that the most plausible conclusion lay somewhere in between.

30. The City Court found that A was a normally functioning child, whose development was adequate for her age, but noted that she had already experienced two separations from her caregivers: the first when she was taken from her mother to the emergency care home; and a second time when she was moved to the foster home. The City Court held that while making her move again would come at a psychological cost, it would not be impossible to do so if her new caregivers could provide her with optimal care.

31. The City Court agreed with the applicants that there were grounds for criticising the child-welfare services' handling of the case in the period leading up to the emergency care decision. The child-welfare services should have gathered more information about the parents before concluding that a stay at the family centre was necessary. The City Court found that it was unclear whether the second applicant had in fact retracted her consent to stay at the centre. However, it held that it was understandable that the child-welfare services had found it necessary to take steps in response to the notifications of concern that they had received. The fact that there were grounds for criticising some of their decisions did not entail that it would be in the child's best interests to end her public care at the time of the City Court's decision.

32. The City Court concluded that the applicants, considered both individually and together, presented a number of risk factors which made it inadvisable to return A to them. The first applicant's daily drug use was a factor of great concern. Both the psychologist and the expert had noted that the process of stabilising and rehabilitating the first applicant would take several months and potentially more than a year. The applicants had been unable to make use of the assistance measures that had previously been offered to them to help them deal with their psychological issues and drug dependency. Their history of domestic disputes, which had continued throughout the pregnancy, also illustrated that their relationship was vulnerable. Between 2013 and 2014 the police had had to intervene at the couple's home seven times on account of domestic disturbances (*husbråk eller lignende*).

33. The court-appointed expert and the second applicant's general practitioner had spoken in favour of returning A to the applicants. The City Court however considered that they had not taken sufficient account of the above-mentioned risk factors, particularly in the light of the decisive weight to be given to the best interests of the child.

34. The City Court found that assistance measures would not be adequate to create appropriate conditions for A if she were returned to the applicants, as the level of assistance that would be required would be too extensive to be practically feasible. Furthermore, the applicants' difficulties with cooperating with the authorities were a factor to be considered in this regard. The City Court observed, *inter alia,* that on account of the first

applicant’s behaviour the police had advised the child-welfare services not to visit the applicants’ home without the police being present.

35. As to the question of contact rights, the City Court noted that an extensive (*omfattende*) contact scheme should only be implemented where the placement in public care was considered to be short-term, so as to facilitate an expedient return of the child. In the instant case the City Court considered that the placement would be long-term, and it would therefore not be in the child’s best interests for the applicants to be given extensive contact rights. However, because the applicants’ interactions with A during visits had been described in positive terms, it found that their contact rights should be increased to two hours, six times a year. The child-welfare services were allowed to supervise the visits.

3. *Leave-to-appeal proceedings*

36. The applicants appealed against the City Court’s judgment. On 1 March 2016 the High Court (*lagmannsrett*) refused leave to appeal, noting that the case had been thoroughly examined by the City Court and that the judgment had been adequately reasoned. No new evidence had been submitted which could merit a re-examination of the case.

37. The applicants appealed against the High Court’s decision. On 4 May 2016 the Supreme Court’s Appeals Leave Committee (*Høyesteretts ankeutvalg*) refused the applicants leave to appeal, unanimously finding that their appeal had no prospects of success.

C. Subsequent developments

38. While their application to the Court was still pending, the applicants, with reference to section 4-21 of the Child Welfare Act (see paragraph 43 below), asked the County Social Welfare Board to lift the care order. The municipality supported the applicants’ claim. On 16 February 2018 the Board declined the request.

39. The applicants appealed against the Board’s decision to the City Court. The municipality upheld its assessment that A should be returned to her parents, particularly on account of the applicants having agreed to assistance measures. Both the applicants and the municipality consented to the City Court’s deciding the matter without an oral hearing.

40. On 19 March 2018 the City Court allowed the joint claim to lift the care order. It noted that two expert witnesses who had appeared before the Board had evaluated the applicants’ care capacity as being stable and good, and that the applicants had consented to the implementation of assistance measures. The City Court accordingly saw no reason to depart from the municipality’s assessment that the care order should be lifted.

41. In his letter to the Court 1 June 2018, the applicants' representative stated that A had been returned to her parents in accordance with the City Court's judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

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

Article 102

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

Article 104

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

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

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

It follows from the Supreme Court's case-law – for instance its judgment of 29 January 2015 (*Norsk Retstidende* (*Rt.*) 2015 page 93, paragraphs 57 and 67) – that the above provisions are to be interpreted and applied in the light of their international law models, which include the Convention and the case-law of the European Court of Human Rights.

B. Child Welfare Act

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

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

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

Section 4-6. Interim orders in emergencies

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

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

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

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

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

Section 4-12 Care orders

"A care order may be issued

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

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

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

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

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

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

Section 4-19. Contact rights. Secret address

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

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

...

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

Section 4-21. Revocation of a care order.

"The county social welfare board shall revoke a care order where it is highly probable that the parents will be able to provide the child with proper care. The decision shall nonetheless not be revoked if the child has become so attached to persons [where he or she is living] and the environment where he or she is living that, on the basis of an overall assessment, removing the child may lead to serious problems for him or her. Before a care order is revoked, the child's foster parents shall be entitled to state their opinion.

The parties may not demand that a case concerning revocation of a care order shall be dealt with by the county social welfare board if the case has been dealt with by the county social welfare board or a court of law in the preceding twelve months. If a demand for revocation of the previous order or judgment was not upheld with reference to the first paragraph, second sentence of section 4-21, new proceedings may only be demanded where documentary evidence is provided to show that significant changes have taken place in relation to the child's situation."

C. Case-law in respect of the Child Welfare Act

44. There are several Supreme Court judgments concerning the determination of contact rights under the Child Welfare Act. In its judgment of 10 January 2001 (*Rt*. 2001 page 14) the Supreme Court noted that the High Court had limited a mother's contact rights with her child, who had been placed in public care, to two hours, twice a year. In the Supreme Court's opinion, special reasons (*særlige grunner*) had to be adduced for such stringent limitations to be placed on the parent's right to see her child, particularly in the light of her rights under the Convention. It therefore expanded the contact rights to three hours, four times a year.

45. The Supreme Court again considered the question of contact rights in its judgment of 6 December 2012 (*Rt.* 2012 page 1832). It distinguished the extent of contact rights to be established in short-term and long-term placements. Where the placement was short-term, the biological parents should be granted more frequent contact so as to facilitate the return of the child. Where the placement would be long-term, the contact should be less frequent so as to give the child the stability and continuity required to establish a good relationship with his or her foster parents. The Supreme Court cited the *travaux préparatoires* to the Child Welfare Act, which stated that the purpose of establishing contact rights in such cases was to allow the child to gain a cognitive and intellectual understanding of who his or her biological parents were, not to create or maintain an emotional connection.

46. In its judgment of 4 May 2015 (*Rt.* 2015 page 467) the Supreme Court noted, with reference to its previous decisions, that where it had held that a child's placement in public care must be foreseen to be long-term, it had granted visits from three to six times per year. In its judgment of 23 October 2017 (HR-2017-2015-A), the Supreme Court reiterated, with

reference to its 2012-judgment (see paragraph 45 above), that the purpose of establishing contact rights in cases involving long-term placement in care was to allow the child to gain a cognitive and intellectual understanding of who his or her biological parents were, not to create or maintain an emotional connection.

III. THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

47. The applicants complained that the taking of their child into public care and the granting of limited contact rights had violated their right to respect for family life as provided in Article 8 of the Convention, which reads as follows:

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

48. The Government contested that argument.

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicants

50. The applicants argued that the decision to place A in public care and to award them limited contact rights had represented a disproportionate interference with their right to respect for their family life.

51. The child-welfare services had had no contact with the applicants prior to A's birth and had never assessed the possibility of implementing assistance measures, apart from the five days that the second applicant had

spent at the family centre. No expert had been appointed during the proceedings before the County Social Welfare Board; in that respect the proceedings in the instant case had suffered from shortcomings similar to those identified by the Grand Chamber in the case of *Strand Lobben and Others v. Norway* ([GC], no. 372823/13, 10 September 2019). During the proceedings before the City Court, the court-appointed expert had concluded that the applicants could provide A with adequate care. Despite the expert's conclusion, which had been based on extensive conversations with the applicants as well as observations, the City Court had upheld the Board's decision to place A in public care. The authorities had failed to adequately consider whether less intrusive measures could have been implemented instead, and had not carried out a genuine balancing exercise in respect of the competing interests at stake in the case.

52. The applicants had been awarded very limited contact rights because the domestic authorities had considered that A's placement in foster care would be long-term; also in that connection the case bore similarities to that of *Strand Lobben and Others*, cited above The authorities had not had an adequate evidentiary basis for their conclusion concerning the length of the placement. The extent of the contact rights had been established with a view to providing A with knowledge of her biological origin, rather than facilitating a future reunification of the family.

(b) The Government

53. The Government submitted that the decisions to place A in public care and limit the applicants' contact rights had been proportional and justified in the circumstances of the case. The Court's judgment in the case of *Strand Lobben and Others v. Norway* ([GC], no. 372823/13, 10 September 2019) had limited relevance, in particular since that judgment had concerned adoption.

54. Both the County Social Welfare Board and the City Court had taken the various relevant factors into account and had made detailed references to the available evidence, including the expert's report. The City Court had considered the possibility of assistance measures but had found that they could not be successfully implemented at the time of the decision. The City Court's decision had been informed by its direct access to the parties and the evidence including, *inter alia*, first-hand observations of the first applicant's conduct during the oral hearing. The applicants had been afforded adequate procedural safeguards. They had been represented by a lawyer throughout the proceedings. Both the Board and the City Court had held oral hearings. The City Court had thoroughly assessed the updated information regarding the applicants' positive developments. The fact that no expert had been appointed during the Board's evaluation of the case had not violated the Convention, particularly since an expert had been appointed during the proceedings before the City Court.

55. The City Court's assessment that the placement would be long-term had been justified in the light of the evidence, and the extent of the applicants' contact rights had been determined in the light of the child's need to develop a stable relationship with her foster parents.

(c) Third-party intervention

56. The Government of the Czech Republic and the Government of the Slovak Republic emphasised that the taking of a child into public care should normally be considered a temporary measure which should be discontinued as soon as the circumstances permit. The granting of very limited contact rights from the outset of the child being taken into public care could lead to the alienation of the child from his or her biological parents and reduce the possibility that the care order would be rescinded at a later date. The third-party intervenors maintained that the granting of limited contact rights in the instant case was indicative of a systemic practice in Norway which was problematic in the light of the obligation to implement childcare measures in such a way as to facilitate the reunification of the family as soon as possible.

2. The Court's assessment

57. It has not been contested by the Government that taking the child into public care and restricting the applicants' contact with their daughter had amounted to an "interference" with the applicants' right to respect for their family life under Article 8 of the Convention. Nor have the applicants disputed that the measure complained of had been "in accordance with the law" and adopted with the aim of ensuring A's "rights and freedoms" and her "health and morals" under the second paragraph of that provision.

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

(a) General principles

59. The general principles applicable to child welfare measures such as those at issue in the instant case are well-established in the Court's case-law and were recently extensively set out in the case of *Strand Lobben and Others v. Norway* ([GC], no. 372823/13, §§ 202-13, 10 September 2019, to which reference is made).

60. In the present case, the Court reiterates that regard to family unity and for family reunification in the event of separation are inherent considerations in the right to respect for family life under Article 8 of the Convention. Accordingly, 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. Moreover, any

measure implementing such temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child. The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child. Furthermore, the ties between members of a family, and the prospect of their successful reunification will perforce be weakened if impediments are placed in the way their having easy and regular access to each other (see *Strand Lobben and Others*, cited above, §§ 205 and 208).

(b) Application of those principles to the present case

61. The Court notes that what is to be examined in the present case is A's placement in care and the determination of the applicants' contact rights, decided in the course of the same proceedings.

62. Starting with the procedure, the Court notes that the case was heard over several days by both the County Social Welfare Board, composed of a lawyer qualified to act as a professional judge, two psychologists and two laypeople, and the City Court, composed of a professional judge, a psychologist and a layperson (see paragraphs 17 and 23 above). An expert was appointed by the City Court, who gave evidence during the proceedings and whose report was extensively referenced in the judgment (see paragraphs 23 and, *inter alia*, 28 and 33 above). The applicants, both of whom were represented by counsel, were allowed to present evidence and give testimony before both the Board and the City Court. Taking all this into account, the Court finds that the domestic decision-making process was comprehensive and that the applicants were provided with the requisite protection of their interests and fully able to present their case. It further notes that under section 4-21 of the Child Welfare Act (see paragraph 43 above), the applicants could lodge an application to have the care order lifted twelve months after the case had been considered by the courts, and their subsequent application to that effect was successful (see paragraph 40 above). The national procedure accordingly provided the applicants with the requisite protection of their interests.

63. Turning to the merits of the decision to place A in public care, the Court notes that the City Court found that both applicants had had a history of drug abuse, and that it had been established during the proceedings before it that the first applicant had been "self-medicating" with cannabis on a daily basis (see paragraphs 27 and 32 above). The applicants had been found to be suffering from various psychological problems (see, *inter alia*, paragraphs 27, 28 and 32), and particularly the treatment of the first applicant was expected to take a considerable amount of time (see paragraph 32 above) The first applicant had also been convicted of serious criminal offences of an antisocial character, including violence and threats,

and the City Court held that he had demonstrated a worrying inability to learn from his past actions (see paragraphs 25-26 above). The relationship between the applicants had been volatile both before and during the pregnancy, the police having been called to their home a number of times on account of domestic disturbances. The second applicant had twice sought assistance at a crisis centre while she had been pregnant (see paragraph 19 above).

64. The Court further observes that the domestic authorities considered whether less intrusive measures could have been utilised, but that they concluded that this would have been impractical since previous attempts to help the applicants overcome their problems concerning drug dependency and mental health had been unsuccessful, and because of the applicants' difficulties in cooperating with the child-welfare services (see, *inter alia*, paragraphs 20 and 34 above, on the Board's decision and the City Court's judgment, respectively). The Court notes in particular that the manager of the municipal child-welfare services had obtained a restraining order against the first applicant due to frightening or threatening messages that he had posted on social media, and that the police had advised the child-welfare services not to visit the applicants' home if the police were not present (see paragraphs 26 and 34 above).

65. Having regard to the detailed reasons given by the County Social Welfare Board and the City Court, the Court is satisfied that the authorities conducted an in-depth examination of the factors relevant to the case. Bearing in mind the margin of appreciation to be afforded to the domestic authorities in cases concerning placement in foster care, the Court finds that relevant and sufficient reasons were adduced for taking A into public care and that the interference with the applicants' right to family life was not in that regard disproportionate.

66. On the basis of the above, the Court finds that there has been no violation of Article 8 of the Convention in respect of the placement of A in public care.

67. Proceeding to the question of the applicants' contact rights, the Court notes that according to the emergency decision taken by the child-welfare services and upheld by the County Social Welfare Board, the applicants were allowed to visit their child for one hour, every other week (see paragraph 10 above). In its later decision regarding the placement of A in foster care, the Board reduced the number of visits to four per year. It found that the foster care would most likely be long-term and that the purpose of the visits with the applicants would therefore be for the applicants and A to get to know each other (see paragraph 21 above). The City Court also considered that the placement would be long-term and that it would therefore not be in A's interests for the applicants to be given extensive contact rights. Emphasising the positive descriptions that had been given of the applicants' interactions with A during the contact sessions

until then, it increased the duration and number of visits to two hours, six times a year (see paragraph 35 above).

68. The Court acknowledges that, in the above-mentioned assessments, the domestic authorities adjusted the number and duration of visits in the light of the evidence available to them at the different stages of the proceedings. At the same time, in determining the extent of the applicants' contact rights, both the County Social Welfare Board and the City Court largely based their decisions on the consideration that the placement in care would be long-term and that A would therefore require stability in her foster home. It would appear to the Court that, instead of carrying out serious contemplation of the possibility of reunification of the family (see, in particular, *Strand Lobben and Others*, cited above, § 220), the Board and the City Court implicitly gave up reunification as the ultimate goal at a very early stage, without demonstrating why the ultimate aim of reunification was no longer compatible with A's best interests.

69. Moreover, it is crucial that the regime of contact effectively supports the goal of reunification until – after careful consideration and also 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. The Court emphasises that family reunification cannot normally be expected to be sufficiently supported if there are intervals of weeks, or even – as in the instant case – as much as months, between each contact session. While the domestic authorities were obliged to facilitate contact to the extent possible without exposing A to undue hardship, in order to guard, strengthen and develop family ties, thus enhancing the prospect of being able to reunify the family in the future, the decisions on contact rights in this case aimed instead only at upholding A's cognitive and intellectual understanding of who her parents were (see paragraphs 21 and 35 above). Moreover, and bearing in mind the overarching purpose of contact visits in facilitating the strengthening of family ties, the decision to permit such visits to be invariably supervised by the child care authorities must be justified on special grounds in every case.

70. The Court does not overlook the fact that the decisions on contact rights taken by the County Social Welfare Board and the City Court did not formally prevent the child-welfare services from organising contact beyond the applicants' legal rights, and bears in mind that A was ultimately returned to the applicants. Furthermore, the Court 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. However, in the instant case, the Board and the City Court – which had found that A was a normally functioning child whose development was adequate for her age (see paragraph 30 above) and that positive descriptions had been given of

the applicants' interactions with A during previous visits (see paragraph 35 above) – did not explain, other than with very general references to the child's need for stability, why it would be contrary to A's best interests to see the applicants more than only four or six times a year.

71. On the basis of the above, the Court finds that there has been a violation of Article 8 of the Convention in respect of the restrictions on contact between the applicants and A.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicants claimed 10,000 euros (EUR) each in respect of non-pecuniary damage.

74. The Government stated that since an award of non-pecuniary damage was intended to compensate for the actual harmful consequences of a violation, such as distress and frustration, the applicants should be requested to specify the form of non-pecuniary harm at issue.

75. The Court finds that the applicants must have sustained non-pecuniary damage through distress, in view of the violation found above. It awards them each EUR 10,000 in respect of that damage.

B. Costs and expenses

76. The applicants also claimed EUR 2,300 for their lawyer's work in the proceedings before the Court, not including value-added tax (VAT).

77. The Government did not object to the applicants' claim for reimbursement of legal costs.

78. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, the fact that the sums claimed have not been disputed by the Government and the above criteria, the Court considers it reasonable to award the sum of EUR 2,300, not including VAT, to cover costs and expenses for the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 8 of the Convention in respect of the placement of the applicants' daughter in public care;

3. *Holds* that there has been a violation of Article 8 of the Convention in respect of the restrictions on contact between the applicants and their daughter;

4. *Holds*
   (a) that the respondent State is to pay the applicants, 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:
      (i) EUR 10,000 (ten thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,300 (two thousand three hundred euros) jointly, 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.

Done in English, and notified in writing on 19 November 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı — Deputy Registrar

Robert Spano — President