



## Norwegian decisions to allow adoption of children against their mother's wishes violated the Convention

In today's Chamber judgments<sup>1</sup> in the cases of [A.S. v. Norway](#) (application no. 60371/15) and [Abdi Ibrahim v. Norway](#) (application no. 15379/16), the European Court of Human Rights held, unanimously, that there had been in both cases:

**a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.**

The cases concerned decisions by the Norwegian authorities and courts to take the applicants' children into care at a very young age and then allow them to be adopted by their foster families, against the applicants' wishes. Both applicants were refused any contact rights with their children.

The Court referred to the recent case of [Strand Lobben v. Norway](#), noting the "strict scrutiny" it had to apply when limitations had been placed on parental access after a child had been taken into care.

The Court found that the decision-making process on the children in these two cases had failed to give due account to the applicants' views and interests, leading to violations of their human rights.

### Principal facts

The two applicants in these cases were women whose children were taken into care, placed with a foster family and then adopted by the foster carers, against the applicants' wishes.

The applicant in the first case was A.S., a Polish national who was born in 1968, while the applicant in the second case was Mariya Abdi Ibrahim, a Somali national born in 1993.

The first applicant's son, born in 2009, was first placed in emergency care and then in foster care in 2012. She applied in 2014 to terminate the placement, but the City Court in March 2015 rejected her request, denied her any contact rights and withheld the foster family's address.

The City Court found, among other things, that the son had had developmental issues which had improved after his foster placement. The applicant had acknowledged that the 2012 care order had been justified but had argued that her parenting skills had improved after special courses.

The City Court questioned whether she had acknowledged her neglect of the child and could not see that the measures she had taken had had much effect on her parenting skills. It further observed that contact sessions with her son had shown that she could not see his perspectives and needs.

The City Court also found that he had become so attached to his foster family that he would be harmed if he was moved. The applicant was denied leave to appeal by both the High Court and the Supreme Court, whose decision was delivered in July 2015.

The second applicant's child, a son born in 2009 in Kenya before she moved to Norway, where she was granted refugee status, was taken into emergency foster care in December 2010. He was

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

subsequently placed with a Christian family, while the applicant had argued he should go to either her cousins or to a Somali or Muslim family.

The authorities applied to allow the foster family to adopt the child, which would lead to the applicant having no contact, and for the applicant's parental rights to be removed. She appealed: she did not ask for the child's return as he had spent a long time with foster parents to whom he had become attached, but she sought contact so he could maintain his cultural and religious roots.

The High Court ruled by a majority in May 2015 to dismiss the applicant's appeal and allow the adoption. Among other things, it examined issues arising from his being adopted by a Christian family, such as ethnicity, culture and religion. She was refused leave to appeal to the Supreme Court in September 2015.

## Complaints, procedure and composition of the Court

The applicant in the first case complained that the decisions refusing to terminate her child's foster placement, the refusal of contact, and the withholding of his address had constituted a violation of Article 8 (right to respect for private and family life). The application was lodged with the European Court of Human Rights on 25 November 2015.

The applicant in the second case complained about the withdrawal of her parental rights and the authorisation for adoption, relying on Article 8 and Article 9 (freedom of thought, conscience and religion). The application was lodged on 17 March 2016.

Judgment in both cases was given by a Chamber of seven judges, composed as follows:

Robert **Spano** (Iceland), *President*,  
Marko **Bošnjak** (Slovenia),  
Valeriu **Grițco** (the Republic of Moldova),  
Egidijus **Kūris** (Lithuania),  
Ivana **Jelić** (Montenegro),  
Arnfinn **Bårdsen** (Norway),  
Darian **Pavli** (Albania),

and also Hasan **Bakırcı**, *Deputy Section Registrar*.

## Decision of the Court

### *Considerations common to both cases*

The Court reiterated the principles related to child welfare as set out in *Strand Lobben*. Where public care had been imposed, the authorities had a duty to take measures to facilitate family reunification as soon as reasonably feasible.

Where there was a conflict of interests between a child and the parents, the authorities had to strike a fair balance, although a child's best interests could override those of a parent. Family ties could only be severed in very exceptional circumstances.

States had wide discretion ("a wide margin of appreciation") when deciding on taking a child into care, but the Court had to apply a "stricter scrutiny" of further limitations, such as restricting parental access, as they could lead to a parent and young child's family relations being curtailed.

### *Case of A.S. v. Norway*

The Court noted that the March 2015 City Court judgment refusing the applicant's request to end her son's foster placement had stated that such care was expected to be "long term". Furthermore,

the proceedings before that point had also carried the assumption of an extended placement. The situation had thus been cemented from the outset, in particular through a strict regime of visits.

The Court found no grounds to second-guess the City Court's assessment of aspects of the case. However, it observed that a finding that the applicant had shortcomings in her basic and intuitive parental skills was particularly challenging as it had to rest on vague and subjective criteria.

The Court also emphasised that the City Court's decision, which had effectively represented the end-point for the applicant's family life with her son, had to be based on a sufficiently broad and updated factual basis, particularly where she had argued that her parenting skills had improved.

The City Court had assessed a number of relevant issues, but it was striking that it had nevertheless rejected all the evidence in the applicant's favour with limited or no reasoning. Furthermore, the March 2015 judgment had been based on old reports: her parenting skills had last been assessed independently in 2012, while the foster parents had been the ones who had reported on the child's development from 2013 to 2015, without further independent corroboration.

The decision to refuse to terminate foster care had been based to a large extent on the child's negative reactions to contact sessions with the applicant. However, those reactions had also been reported on by the foster parents as they had been with him between the sessions. Psychologists had disagreed as to why the child had reacted negatively to his mother. In short, the City Court had provided limited grounds for its finding about the nature and cause of the child's negative reactions.

The Court, emphasising the gravity of the interference in question and the seriousness of the interests at stake, did not consider that the decision-making process leading to the orders against the applicant had been conducted to ensure that all her views and interests had been duly taken into account. It concluded that there had been a violation of Article 8.

#### *Case of Abdi Ibrahim v. Norway*

The Court decided to consider the applicant's complaints under Article 8 alone.

It noted that Ms Abdi Ibrahim had not sought her child's return but had asked the courts to refuse his adoption and the removal of her parental rights, maintaining her contact rights. Nevertheless, the authorities had still been under an obligation to facilitate their family life, at the minimum by maintaining a relationship via regular contact in a way that was in the child's best interests.

The Court noted that from the outset her contact with her child had been severely limited by the authorities, thus already leading to a danger of their family ties being completely broken.

It was thus difficult to see how the authorities had fulfilled their duty to facilitate family reunification, especially when an initial care order was to be seen as a temporary measure and that adoption, the most far-reaching outcome, was only to be foreseen after careful consideration by the courts had led to a conclusion that reunification was not possible.

Furthermore, domestic authorities could not use a breakdown in family relations as a reason to authorise adoption when they had themselves created that situation by failing in their obligation to take measures to reunite a family.

A key issue in the High Court judgment had been that the child had reacted negatively to the few contact sessions that had taken place with the applicant.

However, it was not possible to draw clear conclusions about future contact from so few meetings. The High Court had also provided limited grounds for its findings on the nature and cause of the child's reactions during the meetings, which had nevertheless been crucial for its finding that adoption should go ahead. There had been little to suggest that contact would always be negative so as to conclude that breaking off all contact with the applicant would be in the child's best interests.

Lastly, the High Court had focussed on the potential harm from the child being removed from his foster parents, rather than on the grounds for terminating all contact with his mother. The High Court had thus apparently given more importance to the foster parents' opposition to an "open adoption", which would have allowed for contact, than to Ms Abdi Ibrahim's interest in continuing to have a family life with her child.

The Court concluded that the authorities had not given enough weight to the applicant and her child enjoying a family life, a finding it based on the case as a whole and on reasons which had spoken for maintaining contact, notably relating to their cultural and religious background.

The Court, emphasising the gravity of the interference and the seriousness of the interests at stake, did not consider that the decision-making process leading to the withdrawal of the applicant's parental responsibilities for her child and to his adoption had been conducted so as to ensure that all the applicant's views and interests had been duly taken into account.

There had therefore been a violation of Article 8.

#### **Just satisfaction (Article 41)**

The Court held that Norway was to pay the applicant in the first case 25,000 euros (EUR) in respect of non-pecuniary damage. The applicant in the second case did not claim compensation for damage.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.