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Committee of Experts on the Rights and the Best interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE)

First meeting (24-25 September 2020)

**Agenda item 6. Best interests of the child in care proceedings –
compilation of excerpts of relevant international and European
instruments**

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The best interests of the child in care proceedings

1. International and European legal instruments

a. International treaties

UN General Assembly, *United Nations Convention on the Rights of the Child (UNCRC)*, 1989.

[Available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>]

Article 3:

- 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
- 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*
- 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*

UN Committee on the Rights of the Child (CRC), General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1).

[Available at: http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf]

Paragraph 56: *Regarding religious and cultural identity, for example, when considering a foster home or placement for a child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (art. 20, para. 3), and the decision-maker must take into consideration this specific context when assessing and determining the child's best interests. The same applies in cases of adoption, separation from or divorce of parents. Due consideration of the child's best interests implies that children have access to the culture (and language, if possible) of their country and family of origin, and the opportunity to access information about their biological family, in accordance with the legal and professional regulations of the given country (see art. 9, para. 4).*

Paragraph 58: *The Committee recalls that it is indispensable to carry out the assessment and determination of the child's best interests in the context of potential separation of a child from his or her parents (arts. 9, 18 and 20). It also underscores that the elements mentioned above are concrete rights and not only elements in the determination of the best interests of the child.*

Paragraph 60: *Preventing family separation and preserving family unity are important components of the child protection system, and are based on the right provided for in article 9, paragraph 1, which requires "that a child shall not be separated from his or her parents against their will, except when [...] such separation is necessary for the best interests of the child". Furthermore, the child who is separated from one or both parents is entitled "to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests" (art. 9, para. 3). This also extends to any person holding custody rights, legal or customary primary caregivers, foster parents and persons with whom the child has a strong personal relationship.*

Paragraph 63: *Likewise, a child may not be separated from his or her parents on the grounds of a disability of either the child or his or her parents. Separation may be considered only in cases where the necessary assistance to the family to preserve the family unit is not effective enough to avoid a risk of neglect or abandonment of the child or a risk to the child's safety.*

Paragraph 64: *In case of separation, the State must guarantee that the situation of the child and his or her family has been assessed, where possible, by a multidisciplinary team of well-trained professionals with appropriate judicial involvement, in conformity with article 9 of the Convention, ensuring that no other option can fulfil the child's best interests.*

Paragraph 65: *When separation becomes necessary, the decision-makers shall ensure that the child maintains the linkages and relations with his or her parents and family (siblings, relatives and persons with whom the child has had strong personal relationships) unless this is contrary to the child's best interests. The quality of the relationships and the need to retain them must be taken into consideration in decisions on the frequency and length of visits and other contact when a child is placed outside the family.*

Paragraph 67: *The Committee is of the view that shared parental responsibilities are generally in the child's best interests. However, in decisions regarding parental responsibilities, the only criterion shall be what is in the best interests of the particular child. It is contrary to those interests if the law automatically gives parental responsibilities to either or both parents. In assessing the child's best interests, the judge must take into consideration the right of the child to preserve his or her relationship with both parents, together with the other elements relevant to the case.*

Paragraph 70: *Preservation of the family environment encompasses the preservation of the ties of the child in a wider sense. These ties apply to the extended family, such as grandparents, uncles/aunts as well friends, school and the wider environment and are particularly relevant in cases where parents are separated and live in different places.*

Article 9

- 1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately, and a decision must be made as to the child's place of residence.*
- 2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.*
- 3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.*
- 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.*

Article 12

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

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

UN Committee on the Rights of the Child (CRC), General Comment No. 12 (2009) on the right of the child to be heard. [Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f12&Lang=en]

Separation from parents and alternative care

53. *Whenever a decision is made to remove a child from her or his family because the child is a victim of abuse or neglect within his or her home, the view of the child must be taken into account in order to determine the best interests of the child. The intervention may be initiated by a complaint from a child, another family member or a member of the community alleging abuse or neglect in the family.*

54. *The Committee's experience is that the child's right to be heard is not always taken into account by States parties. The Committee recommends that States parties ensure, through legislation, regulation and policy directives, that the child's views are solicited and considered, including decisions regarding placement in foster care or homes, development of care plans and their review, and visits with parents and family.*

Adoption and kafalah of Islamic law

55. *When a child is to be placed for adoption or kafalah of Islamic law and finally will be adopted or placed in kafalah, it is vitally important that the child is heard. Such a process is also necessary when step-parents or foster families adopt a child, although the child and the adopting parents may have already been living together for some time.*

56. *Article 21 of the Convention states that the best interests of the child shall be the paramount consideration. In decisions on adoption, kafalah or other placement, the "best interests" of the child cannot be defined without consideration of the child's views. The Committee urges all States parties to inform the child, if possible, about the effects of adoption, kafalah or other placement, and to ensure by legislation that the views of the child are heard.*

C. The implementation of the right to be heard in different settings and situations

2. In alternative care

97. *Mechanisms must be introduced to ensure that children in all forms of alternative care, including in institutions, are able to express their views and that those views be given due weight in matters of their placement, the regulations of care in foster families or homes and their daily lives. These should include:*

- *Legislation providing the child with the right to information about any placement, care and/or treatment plan and meaningful opportunities to express her or his views and for those views to be given due weight throughout the decision-making process.*
- *Legislation ensuring the right of the child to be heard, and that her or his views be given due weight in the development and establishment of child-friendly care services.*
- *Establishment of a competent monitoring institution, such as a children's ombudsperson, commissioner or inspectorate, to monitor compliance with the rules and regulations governing the provision of care, protection or treatment of children in accordance with the obligations under article 3. The monitoring body should be mandated to have unimpeded access to residential facilities (including those for children in conflict with the law), to hear the views and concerns of the child directly, and to monitor the extent to which his or her views are listened to and given due weight by the institution itself.*

Article 18(1)

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

Article 20(1)

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

UN Committee on the Rights of the Child (CRC), General Comment No. 24 (2019) on children's rights in the child justice system. [Available at: [https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=RC%2fC%2fGC%2f24&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en)]

Paragraph 11: [...] As an absolute priority, children should be supported within their families and communities. In the exceptional cases that require an out-of-home placement, such alternative care should preferably be in a family setting, although placement in residential care may be appropriate in some instances, to provide the necessary array of professional services. It is to be used only as a measure of last resort and for the shortest appropriate period of time and should be subject to judicial review.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Hague Conference on Private International law, Hague Convention on the Civil Aspects of International Child Abduction, 1980. [Available at: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>]

Preamble

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody [...]

Perez-Vera, E., Explanatory Report on the HCCH Hague Convention on International Child Abduction, 1982. [Available at: <https://assets.hcch.net/upload/expl28.pdf>]

C. Importance attached to the best interests of the child

Paragraph 20: *Above all, one has to justify the reasons for including an examination of this matter within the context of a consideration of the Convention's objects. These reasons will appear clearly if one considers, on the one hand, that the interests of the child are often invoked in this regard, and on the other hand, that it might be argued that the Convention's object in securing the return of the child ought always to be subordinated to a consideration of the child's interests.*

Paragraph 21: *In this regard, one fact has rightly been highlighted, viz. that 'the legal standard of the best interests of the child' is at first view of such vagueness that it seems to resemble more closely a sociological paradigm than a concrete juridical standard. How can one put flesh on its bare bones without delving into the assumptions concerning the ultimate interests of a child which are derived from the moral framework of a particular culture? The word 'ultimate' gives rise to immediate problems when it is inserted into the equation since the general statement of the standard does not make it clear whether the interests of the child to be served are those of the immediate aftermath of the decision, of the adolescence of the child, of young adulthood, maturity, senescence or old age'.*

Paragraph 22: *On the other hand, it must not be forgotten that it is by invoking 'the best interests of the child' that internal jurisdictions have in the past often finally awarded the custody in question to the person who wrongfully removed or retained the child, it can happen that such a decision is the most just, but we cannot ignore the fact that recourse by internal authorities to such a notion involves the risk of their expressing particular cultural, social, etc. attitudes which themselves derive from a given national community and thus basically imposing their own subjective value judgments upon the national community from which the child has recently been snatched.*

Paragraph 23: *For these reasons, among others, the dispositive part of the Convention contains no explicit of their qualifying the Convention's stated object, which is to secure the prompt return of children who have been wrongfully removed or retained. However, its silence on this point ought not to lead one to the conclusion that the Convention ignores the social paradigm which declares the necessity of considering the interests of children in regulating all the problems which concern them. On the contrary, right from the start the signatory States declare themselves to be 'firmly convinced that the interests of children are of paramount importance in matters relating to their custody'; it is precisely of this conviction that they drew up the Convention, 'desiring to protect children internationally from the harmful effects of their wrongful removal or retention'.*

Paragraph 24: *These two paragraphs in the preamble reflect quite clearly the philosophy of the Convention in this regard. It can be defined as follows: the struggle against the great increase in international child abductions must always be inspired by the desire to protect children and should be based upon an interpretation of their true interests. Now, the right not to be removed or retained in the name of more or less arguable rights concerning its person is one of the most objective examples of what constitutes the interests of the child. In this regard, it would be as well to refer to Recommendation 874(1979) of the Parliamentary Assembly of the Council of Europe, the first general principle of which states that 'children must no longer be regarded as parents' property but must be recognized as individuals with their own rights and needs'. [...]*

HCCH, Guide to Good Practice Part VI – Article 13(1)(b), 2020. [Available at: <https://assets.hcch.net/docs/225b44d3-5c6b-4a14-8f5b-57cb370c497f.pdf>]

ii. Wrongful removal or retention is harmful to the child

The second underlying concept is that the wrongful removal or retention of a child is prejudicial to the child's welfare and that, save for the limited exceptions provided for in the Convention, it will be in the best interests of the child to return to the State of habitual residence.

f. Limited Exceptions to the duty to order return forthwith

24. Through the enumerated exceptions, the Convention recognises that the non-return of a wrongfully removed or retained child can sometimes be justified. The general concept that a prompt return is in the best interests of the child can therefore be rebutted in the individual case where an exception is established.

26. In particular, while the exceptions derive from a consideration of the interests of the child, they do not turn the return proceedings into custody proceedings. Exceptions are focussed on the (possible non-)return of the child. They should neither deal with issues of custody nor mandate a full "best interests assessment" for a child within return proceedings. The competent court or authority seised of return proceedings must apply the provisions of the Convention and avoid intervening on questions that are for the State of habitual residence to decide.

Hague Conference on Private International law, Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993. [Available at: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>]

Preamble

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children...

Article 1

The objects of the present Convention are -

- a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law;*
- b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;*
- c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.*

Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin -

- a) have established that the child is adoptable;*
- b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;*
- c) have ensured that*
 - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,*
 - (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,*
 - (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and*
 - (4) the consent of the mother, where required, has been given only after the birth of the child; and*
- d) have ensured, having regard to the age and degree of maturity of the child, that*
 - (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,*
 - (2) consideration has been given to the child's wishes and opinions,*

- (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and*
- (4) such consent has not been induced by payment or compensation of any kind.*

Article 16

- (1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall -*
- a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;*
 - b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;*
 - c) ensure that consents have been obtained in accordance with Article 4; and*
 - d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.*
- (2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.*

Article 21

- (1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular -*
- a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;*
 - b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;*
 - c) as a last resort, to arrange the return of the child, if his or her interests so require.*
- (2) Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.*

Article 24

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

HCCH, Guide to Good Practice I – Implementation and Operation of the Hague Intercountry Adoption Convention, 2008. [Available at: <https://www.hcch.net/en/publications-and-studies/details4/?pid=4388>]

2.1 Ensuring adoptions take place in the best interests of the child and with respect for his or her fundamental rights

41. One of the objectives of the Convention is “to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law.”

42. *The Preamble to the Convention refers to the Convention on the Rights of the Child. The child's fundamental rights as reflected in the latter Convention include:*

- *the child's best interests shall be a primary consideration in all actions concerning children;*
- *non-discrimination of any kind, irrespective of the child's or his parents' or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status;*
- *the right of a child who is capable of forming his or her own views to express these views freely and to have these views given due weight in accordance with the age and maturity of the child.*

43. *In achieving the best interests of the child in intercountry adoption, the 1993 Hague Convention recognises that:*

- *children should grow up in a family environment;*
- *permanency is preferable to temporary measures;*
- *intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin.*

44. *In practice, Contracting States and Central Authorities should guard against the misuse or arbitrary interpretation of the best interests principle to override the child's fundamental rights when applying this Convention.*

2.1.1 Subsidiarity

46. *The principle of subsidiarity is highlighted in the Preamble to the Convention and in Article 4 b). Article 4 b) provides that:*

"An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin [...] have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;"

47. *"Subsidiarity" means that States Party to the Convention recognise that a child should be raised by his or her birth family or extended family whenever possible. If that is not possible or practicable, other forms of permanent family care in the country of origin should be considered. Only after due consideration has been given to national solutions should intercountry adoption be considered, and then only if it is in the child's best interests. Intercountry adoption serves the child's best interests if it provides a loving permanent family for the child in need of a home. Intercountry adoption is one of a range of care options which may be open to children in need of a family.*

48. *The subsidiarity principle is central to the success of the Convention. It implies that efforts should be made to assist families in remaining intact or in being reunited, or to ensure that a child has the opportunity to be adopted or cared for nationally. It implies also that intercountry adoption procedures should be set within an integrated child protection and care system, which maintains these priorities. However, States should also ensure that efforts to achieve this goal do not unintentionally harm children by delaying unduly a permanent solution through intercountry adoption. States should guarantee permanency planning in the shortest possible time for each child deprived of his / her parents. Policies should work to promote family preservation and national solutions, rather than to hinder intercountry adoption.*

49. *This Guide encourages incorporating intercountry adoption within a comprehensive child and family welfare policy. Important steps toward this goal include coherent legislation, complementary procedures and co-ordinated competences. Such a policy would ultimately incorporate support to families in difficult situations, prevention of separation of children from their family, reintegration of children in care into their family of origin, kinship care, national adoption and more temporary measures such as foster and residential care. Matching for both national and intercountry adoption should be a professional, multi-disciplinary and qualitative decision taken in the shortest possible time on a case-by-case basis, after careful study of the situation of the child and the potential families, and with care being taken that the procedure does not unnecessarily harm the child through its methods of implementation. Such decisions would include systematic implementation of the subsidiarity principle, as appropriate.*

50. *The Convention refers to "possibilities" for placement of a child in the State of origin. It does not require that all possibilities be exhausted. This would be unrealistic; it would place an unnecessary burden on authorities; and it may delay indefinitely the possibility of finding a permanent home abroad for a child.*

51. The principle of subsidiarity should be interpreted in the light of the principle of the best interests of the child. For example:

- It is true that maintaining a child in his or her family of origin is important, but it is not more important than protecting a child from harm or abuse.
- Permanent care by an extended family member may be preferable, but not if the carers are wrongly motivated, unsuitable, or unable to meet the needs (including the medical needs) of the particular child.
- National adoption or other permanent family care is generally preferable, but if there is a lack of suitable national adoptive families or carers, it is, as a general rule, not preferable to keep children waiting in institutions when the possibility exists of a suitable permanent family placement abroad.
- Finding a home for a child in the country of origin is a positive step, but a temporary home in the country of origin in most cases is not preferable to a permanent home elsewhere.
- Institutionalisation as an option for permanent care, while appropriate in special circumstances, is not as a general rule in the best interests of the child.

52. It is noted that in-family adoptions (adoptions by a relative) come within the scope of the Convention (see Chapter 8.6.4 of this Guide). The question may arise as to where the child's best interests lie when the choice is between a permanent home in the State of origin and a permanent home abroad with a family member. Assuming that the two families in question are equally suitable to adopt the child, in most cases the child's interests may be best served by growing up with the biologically-related family abroad. This example illustrates that it is not subsidiarity itself which is the overriding principle of this Convention, but the child's best interests.

53. It is sometimes said that the correct interpretation of "subsidiarity" is that intercountry adoption should be seen as "a last resort". This is not the aim of the Convention. National solutions for children such as remaining permanently in an institution, or having many temporary foster homes, cannot, in the majority of cases, be considered as preferred solutions ahead of intercountry adoption. In this context, institutionalisation is considered as "a last resort."

2.1.3 Measures supporting the best interests principle

58. A number of specific measures in the 1993 Convention are intended to support the implementation of the best interests principle.

2.1.3.1 Ensuring the child is adoptable - meeting the requirements of Convention Chapters II and IV

59. One of the most important measures to protect the child's best interests in adoption and at the same time to combat abduction of, sale of and trafficking in children is to ensure that a child to be adopted is genuinely adoptable.

60. The Convention establishes a number of obligations and requirements to this effect. The obligation in Article 4 a) to ensure the child is adoptable requires different approaches in different countries. The meaning of "adoptable" or the criteria to determine "adoptability" will be established by the national law of each Contracting State. The procedure for establishing adoptability is discussed further in Chapter 7.

2.1.3.2 Preserving information

61. The best interests of the child who is the subject of an intercountry adoption, will be best protected if every effort is made to collect and preserve as much information as possible about the child's origins, background, family and medical history. Both the long-term and short-term interests of the child will be affected by this obligation in Articles 9 a) and 30 of the Convention (see also Chapter 6.1.2 in relation to abandoned children and the loss of their personal information).

62. The child's general history provides a link to his or her past and is important for knowledge and understanding of origins, identity and culture, and to establish or maintain personal connections if at any time he or she returns to the country of origin. The knowledge may contribute to the psychological well-being of the child in later life.

63. The child's medical history may provide important information on the child's current state of health and for diagnosing any medical problems the child could have, either during childhood or later in life. Preservation of information is discussed further in Chapter 9.1.

2.1.3.3 Matching with a suitable family

64. *Matching the needs of the child with the qualities of the adoptive parents and family is essential for the best interests of the child and should be done professionally. Prospective adoptive parents should be thoroughly and professionally assessed as suitable to adopt a child, particularly if the child has special needs.*

65. *Matching should not be done by the prospective adoptive parents, either by selecting an appealing child in person or through a photo listing. Although photo listings can be a useful method of promoting adoption generally, as well as allowing prospective adoptive parents to express interest in adopting a child, countries of origin should be careful that actual matching decisions are made by professionals and are based on the needs of the child with the qualities of the adoptive parents. Matching should not be done by computer. The procedure for matching is discussed in more detail in Chapters 6.4.6, 7.2.5, 7.2.7 and 7.4.6.*

Part II: The Framework for Protection of Children (the national and international framework)

251. *The child's best interests must be the fundamental principle that supports the development of an internal child care and protection system as well as a system for intercountry adoption. The implementation of the subsidiarity principle implies that there is a functioning care and protection system in place in the country and that sufficient human and financial resources are provided to allow a consideration of national solutions for a child before deciding that an intercountry adoption is in the child's best interests.*

6.4 Phase four: National adoption or permanent care

6.4.1 Permanency planning

292. *States should ensure that children are moved into permanent family placements as quickly as a proper consideration of the child's best interests will allow.*

6.4.2 Delaying permanency planning not in the child's best interests

294. *The inability to perform national adoptions may cause some States to consider stopping intercountry adoptions until a system can be developed and implemented. However, delaying permanent family placements for children while attempting to enact long-term reform of a child care and protection system in most cases runs contrary to the "best interests" principle. When implementing changes, the use of interim measures should be considered, to allow children in need of permanent family placement to find such a placement in a child-friendly time frame, especially where arrangements for the placement have already begun. Otherwise, children who are currently in institutions and in immediate need of a family may unfortunately remain there for years unless they are placed in permanent families through intercountry adoption. The question of transition or "pipeline" cases (cases started before a moratorium on adoption occurs, or cases not completed when the Convention enters into force) is discussed in detail in Chapter 8.3.2.*

7.1 The intercountry adoption process

311. *Once it is established that a child is adoptable, and possibilities for placement of the child within the State of origin have been given due consideration, the Central Authority or other competent authorities may determine that intercountry adoption is in the child's best interests.*

314. *Chapter IV begins, in Articles 14 and 15, with the procedure concerning the prospective adoptive parents (and not the child). This does not imply either a priority choice or a chronological order for the adoption procedure, to register prospective adoptive parents first, and then to search for adoptable children. On the contrary, the best interests of the child are always the priority, as this Guide tries to emphasise, from the first principles in Chapter 2 through all following chapters.*

315. *Unfortunately this priority is not always recognised in practice and too much emphasis may be given to the needs of adoptive parents looking for a child, rather than the child's need for a suitable family. Countries of origin should not be expected to register large numbers of files from prospective adoptive parents and then be under pressure from those parents to give priority to their requests.*

316. *Ideally, when the child's best interests are given priority, the competent authorities in the country of origin should undertake permanency planning, including a decision on whether a child is adoptable and in need of intercountry adoption. The receiving country may then be informed of the types of children in need of families before being asked for files of suitable prospective adoptive parents for these children. A country of origin which is able to "reverse the flow" of files in this way will achieve a child-centred intercountry adoption.*

Hague Conference on Private International law, *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children*, 1996. [Available at: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=70>]

Preamble

Confirming that the best interests of the child are to be a primary consideration, [...].

Article 8

(1) By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either

- request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or*
- suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State. [...]*

(4) The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child's best interests.

Article 9

(1) If the authorities of a Contracting State referred to in Article 8, paragraph 2, consider that they are better placed in the particular case to assess the child's best interests, they may either

- request the competent authority of the Contracting State of the habitual residence of the child, directly or with the assistance of the Central Authority of that State, that they be authorised to exercise jurisdiction to take the measures of protection which they consider to be necessary, or*
- invite the parties to introduce such a request before the authority of the Contracting State of the habitual residence of the child.*

Article 22

The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy, taking into account the best interests of the child.

Article 23

(1) The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.

(2) Recognition may however be refused [...]

d) if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child; [...].

Article 28

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the

authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

Article 33

(2) *The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests.*

HCCH Practical Handbook on the Operation of the 1996 Hague Child Protection Convention, 2014. [Available at: <https://www.hcch.net/en/publications-and-studies/details4/?pid=6096&dtid=3>]

A When can jurisdiction to take measures of protection be transferred? - Articles 8 and 9

5.3 A request to transfer jurisdiction can arise in two ways:

- *an authority having general jurisdiction under the Convention, if it considers that another authority without jurisdiction would be better placed in the particular case to assess the best interests of the child, can request to transfer jurisdiction to that authority (Art. 8);*
- *an authority which does not have jurisdiction but believes that it is better placed in the particular case to assess the child's best interests can request that it be allowed to exercise jurisdiction (Art. 9).*

5.4 *These articles permit a transfer of jurisdiction when the authority that has jurisdiction is not the best placed to assess the best interests of the child. The best interests of the child should be assessed "in the particular case", i.e., "at the moment when [the] need for protection is being felt, and for the purpose of responding to [that] need".*

B What conditions must be fulfilled before a transfer of jurisdiction can take place?

5.9 Under both Articles 8 and 9 jurisdiction may only be transferred when certain conditions are fulfilled:

- *Connection between the child and the Contracting State to whose authorities it is permissible to transfer jurisdiction The Contracting States whose authorities may have jurisdiction transferred to them, or who can request that jurisdiction be transferred to them, must have a connection with the child. The Contracting State must be one of the following:*
 - *a State of which the child is a national;*
 - *a State in which property of the child is located;*
 - *a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for an annulment of their marriage;*
 - *a State with which the child has a substantial connection.*
- *The best interests of the child. The authority making the request that jurisdiction be transferred must consider that this will allow for a better assessment of the child's best interests. The authority asked to assume or cede jurisdiction can only do so if it believes this is in the child's best interests.*
- *Agreement of the authorities of both Contracting States. [...]*

b. *European treaties*

i. Council of Europe

Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, 1950. [Available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf]

Article 8 – Right to respect for private and family life

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.*

Council of Europe, Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 1984. [Available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf]

Article 5 - Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

Council of Europe, European Social Charter (revised), 1996. [Available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cf93>]

Part I

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised: [...]

7. Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.

[...]

17. Children and young persons have the right to appropriate social, legal and economic protection.

Article 17 –The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. a. to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

b. to protect children and young persons against negligence, violence or exploitation;

c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;

Council of Europe, Convention on preventing and combating violence against women and domestic violence, 2011. [Available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>]

Article 26 – Protection and support for child witnesses

- 1. Parties shall take the necessary legislative or other measures to ensure that in the provision of protection and support services to victims, due account is taken of the rights and needs of child witnesses of all forms of violence covered by the scope of this Convention.*
- 2. Measures taken pursuant to this article shall include age-appropriate psychosocial counselling for child witnesses of all forms of violence covered by the scope of this Convention and shall give due regard to the best interests of the child.*

Article 45 – Sanctions and measures

2. Parties may adopt other measures in relation to perpetrators, such as: [...]

- withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way.*

Article 56 – Measures of protection

A child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child.

Explanatory report available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016800d383a>

Council of Europe, *European Convention on the Adoption of Children (revised)*, 2008. [Available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680084823>]

Preamble

Considering that the acceptance of common revised principles and practices with respect to the adoption of children, taking into account the relevant developments in this area during the last decades, would help to reduce the difficulties caused by the differences in national laws and at the same time promote the interests of children who are adopted; [...]

Recognising that the best interests of the child shall be of paramount consideration, [...].

Article 4 – Granting of an adoption

- 1. The competent authority shall not grant an adoption unless it is satisfied that the adoption will be in the best interests of the child.*
- 2. In each case the competent authority shall pay particular attention to the importance of the adoption providing the child with a stable and harmonious home.*

Article 6 – Consultation of the child

If the child's consent is not necessary according to Article 5, paragraphs 1 and 3, he or she shall, as far as possible, be consulted and his or her views and wishes shall be taken into account having regard to his or her degree of maturity. Such consultation may be dispensed with if it would be manifestly contrary to the child's best interests.

Article 14 – Revocation and annulment of an adoption

1. *An adoption may be revoked or annulled only by decision of the competent authority. The best interests of the child shall always be the paramount consideration.*

Explanatory report available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/202>

Council of Europe, Convention on Contact Concerning Children, 2003. [Available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370f>]

Preamble

Recognising that, as provided in the different international legal instruments of the Council of Europe as well as in Article 3 of the United Nations Convention on the Rights of the Child of 20 November 1989, the best interests of the child shall be a primary consideration; [...]

Taking into account Article 9 of the United Nations Convention on the Rights of the Child which provides for the right of a child, who is separated from one or both parents, to maintain personal relations and direct contact with both parents on a regular basis, except when this is contrary to the child's best interests; [...]

Agreeing on the need for children to have contact not only with both parents but also with certain other persons having family ties with children and the importance for parents and those other persons to remain in contact with children, subject to the best interests of the child; [...].

Article 4 – Contact between a child and his or her parents

1. *A child and his or her parents shall have the right to obtain and maintain regular contact with each other.*
2. *Such contact may be restricted or excluded only where necessary in the best interests of the child.*
3. *Where it is not in the best interests of a child to maintain unsupervised contact with one of his or her parents the possibility of supervised personal contact or other forms of contact with this parent shall be considered.*

Article 6 –The right of a child to be informed, consulted and to express his or her views

1. *A child considered by internal law as having sufficient understanding shall have the right, unless this would be manifestly contrary to his or her best interests:*

- *to receive all relevant information;*
- *to be consulted;*
- *to express his or her views.*

2. *Due weight shall be given to those views and to the ascertainable wishes and feelings of the child.*

Article 7 – Resolving disputes concerning contact

When resolving disputes concerning contact, the judicial authorities shall take all appropriate measures:

- a. *to ensure that both parents are informed of the importance for their child and for both of them of establishing and maintaining regular contact with their child;*
- b. *to encourage parents and other persons having family ties with the child to reach amicable agreements with respect to contact, in particular through the use of family mediation and other processes for resolving disputes;*
- c. *before taking a decision, to ensure that they have sufficient information at their disposal, in particular from the holders of parental responsibilities, in order to take a decision in the best interests of the child and, where necessary, obtain further information from other relevant bodies or persons.*

Article 8 – Contact agreements

- 1. States Parties shall encourage, by means they consider appropriate, parents and other persons having family ties with the child to comply with the principles laid down in Articles 4 to 7 when making or modifying agreements on contact concerning a child. These agreements should preferably be in writing.*
- 2. Upon request, judicial authorities shall, except where internal law otherwise provides, confirm an agreement on contact concerning a child, unless it is contrary to the best interests of the child.*

Explanatory report available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d380d>

Council of Europe, *European Convention on the Exercise of Children’s Rights*, 1996. [Available at: <https://rm.coe.int/168007cc53>].

Preamble

Convinced that the rights and best interests of children should be promoted and to that end children should have the opportunity to exercise their rights, in particular in family proceedings affecting them;

Recognising that children should be provided with relevant information to enable such rights and best interests to be promoted and that due weight should be given to the views of children;

Recognising the importance of the parental role in protecting and promoting the rights and best interests of children and considering that, where necessary, States should also engage in such protection and promotion;

Considering, however, that in the event of conflict it is desirable for families to try to reach agreement before bringing the matter before a judicial authority,

Article 1 – Scope and object of the Convention

1 This Convention shall apply to children who have not reached the age of 18 years.

2 The object of the present Convention is, in the best interests of children, to promote their rights, to grant them procedural rights and to facilitate the exercise of these rights by ensuring that children are, themselves or through other persons or bodies, informed and allowed to participate in proceedings affecting them before a judicial authority.

3 For the purposes of this Convention proceedings before a judicial authority affecting children are family proceedings, in particular those involving the exercise of parental responsibilities such as residence and access to children.

Article 3 – Right to be informed and to express his or her views in proceedings

A child considered by internal law as having sufficient understanding, in the case of proceedings before a judicial authority affecting him or her, shall be granted, and shall be entitled to request, the following rights:

- a. to receive all relevant information;*
- b. to be consulted and express his or her views;*
- c. to be informed of the possible consequences of compliance with these views and the possible consequences of any decision.*

Article 4 – Right to apply for the appointment of a special representative

1 Subject to Article 9, the child shall have the right to apply, in person or through other persons or bodies, for a special representative in proceedings before a judicial authority affecting the child where internal law precludes the holders of parental responsibilities from representing the child as a result of a conflict of interest with the latter.

2 States are free to limit the right in paragraph 1 to children who are considered by internal law to have sufficient understanding.

Article 5 – Other possible procedural rights

Parties shall consider granting children additional procedural rights in relation to proceedings before a judicial authority affecting them, in particular:

- a. the right to apply to be assisted by an appropriate person of their choice in order to help them express their views;*
- b. the right to apply themselves, or through other persons or bodies, for the appointment of a separate representative, in appropriate cases a lawyer;*
- c. the right to appoint their own representative;*
- d. the right to exercise some or all of the rights of parties to such proceedings.*

Article 6 – Decision-making process

In proceedings affecting a child, the judicial authority, before taking a decision, shall:

- a. consider whether it has sufficient information at its disposal in order to take a decision in the best interests of the child and, where necessary, it shall obtain further information, in particular from the holders of parental responsibilities;*
- b. in a case where the child is considered by internal law as having sufficient understanding:*
 - ensure that the child has received all relevant information;*
 - consult the child in person in appropriate cases, if necessary privately, itself or through other persons or bodies, in a manner appropriate to his or her understanding, unless this would be manifestly contrary to the best interests of the child;*
 - allow the child to express his or her views;*
- c. give due weight to the views expressed by the child.*

Article 7 – Duty to act speedily

In proceedings affecting a child the judicial authority shall act speedily to avoid any unnecessary delay and procedures shall be available to ensure that its decisions are rapidly enforced. In urgent cases the judicial authority shall have the power, where appropriate, to take decisions which are immediately enforceable.

Article 8 – Acting on own motion

In proceedings affecting a child the judicial authority shall have the power to act on its own motion in cases determined by internal law where the welfare of a child is in serious danger.

Article 9 – Appointment of a representative

1 In proceedings affecting a child where, by internal law, the holders of parental responsibilities are precluded from representing the child as a result of a conflict of interest between them and the child, the judicial authority shall have the power to appoint a special representative for the child in those proceedings.

2 Parties shall consider providing that, in proceedings affecting a child, the judicial authority shall have the power to appoint a separate representative, in appropriate cases a lawyer, to represent the child.

Article 10

1 In the case of proceedings before a judicial authority affecting a child the representative shall, unless this would be manifestly contrary to the best interests of the child:

- a. provide all relevant information to the child, if the child is considered by internal law as having sufficient understanding;*
- b. provide explanations to the child if the child is considered by internal law as having sufficient understanding, concerning the possible consequences of compliance with his or her views and the possible consequences of any action by the representative;*
- c. determine the views of the child and present these views to the judicial authority.*

2 Parties shall consider extending the provisions of paragraph 1 to the holders of parental responsibilities.

Article 11

Parties shall consider extending the provisions of Articles 3, 4 and 9 to proceedings affecting children before other bodies and to matters affecting children which are not the subject of proceedings.

Article 13 – Mediation or other processes to resolve disputes

In order to prevent or resolve disputes or to avoid proceedings before a judicial authority affecting children, Parties shall encourage the provision of mediation or other processes to resolve disputes and the use of such processes to reach agreement in appropriate cases to be determined by Parties.

Article 14 – Legal aid and advice

Where internal law provides for legal aid or advice for the representation of children in proceedings before a judicial authority affecting them, such provisions shall apply in relation to the matters covered by Articles 4 and 9.

ii. European Union

European Union, Charter of Fundamental Rights of the European Union, 2012. [Available at: https://www.europarl.europa.eu/charter/pdf/text_en.pdf].

Article 24 - The rights of the child

- 1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.*
- 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.*
- 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.*

Explanations relating to the Charter of Fundamental Rights available at: [https://eur-lex.europa.eu/legal-content/EN/ALL/;ELX_SESSIONID=p2QjJGDQt45pwjsnB0pyYthlGIBJQpyLj1150pPKCknxpxVHLXBD!1743625223?uri=CELEX:32007X1214\(01\)](https://eur-lex.europa.eu/legal-content/EN/ALL/;ELX_SESSIONID=p2QjJGDQt45pwjsnB0pyYthlGIBJQpyLj1150pPKCknxpxVHLXBD!1743625223?uri=CELEX:32007X1214(01))

Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction. [Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELLAR%3A524570fa-9c9a-11e9-9d01-01aa75ed71a1>] Applicable from 1 August 2022.

Preamble

(19) The grounds of jurisdiction in matters of parental responsibility are shaped in the light of the best interests of the child and should be applied in accordance with them. Any reference to the best interests of the child should be interpreted in light of Article 24 of the Charter of Fundamental Rights of the European Union ('the Charter') and the United Nations Convention on the Rights of the Child of 20 November 1989 ('UN Convention on the Rights of the Child') as implemented by national law and procedure.

(20) To safeguard the best interests of the child, jurisdiction should in the first place be determined according to the criterion of proximity. Consequently, jurisdiction should lie with the Member State of the habitual residence of the child, except for certain situations set out in this Regulation, for instance, where there is a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.

Article 10 - Choice of court

1. The courts of a Member State shall have jurisdiction in matters of parental responsibility where the following conditions are met:

(a) the child has a substantial connection with that Member State, in particular by virtue of the fact that:

(i) at least one of the holders of parental responsibility is habitually resident in that Member State;

(ii) that Member State is the former habitual residence of the child; or

(iii) the child is a national of that Member State;

(b) the parties, as well as any other holder of parental responsibility have:

(i) agreed freely upon the jurisdiction, at the latest at the time the court is seised; or

(ii) expressly accepted the jurisdiction in the course of the proceedings and the court has ensured that all the parties are informed of their right not to accept the jurisdiction; and

(c) the exercise of jurisdiction is in the best interests of the child.

Article 12 - Transfer of jurisdiction to a court of another Member State

1. In exceptional circumstances, a court of a Member State having jurisdiction as to the substance of the matter may, upon application from a party or of its own motion, if it considers that a court of another Member State with which the child has a particular connection would be better placed to assess the best interests of the child in the particular case, stay the proceedings or a specific part thereof and either:

(a) set a time limit for one or more of the parties to inform the court of that other Member State of the pending proceedings and the possibility to transfer jurisdiction and to introduce an application before that court; or

(b) request a court of another Member State to assume jurisdiction in accordance with paragraph 2.

2. The court of the other Member State may, where due to the specific circumstances of the case this is in the best interests of the child, accept jurisdiction within six weeks after:

(a) its seisure in accordance with point (a) of paragraph 1; or

(b) receipt of the request in accordance with point (b) of paragraph 1.

Article 13 - Request for transfer of jurisdiction by a court of a Member State not having jurisdiction

1. *In exceptional circumstances and without prejudice to Article 9, if a court of a Member State which does not have jurisdiction under this Regulation, but with which the child has a particular connection in accordance with Article 12(4), considers that it is better placed to assess the best interests of the child in the particular case, it may request a transfer of jurisdiction from the court of the Member State of the habitual residence of the child.*
2. *Within six weeks following receipt of the request pursuant to paragraph 1, the requested court may accept to transfer its jurisdiction, if it considers that due to the specific circumstances of the case such a transfer is in the best interests of the child. Where the requested court accepts to transfer jurisdiction, it shall inform the requesting court without delay. In the absence of such acceptance within the timeframe, the requesting court shall not have jurisdiction.*

Article 25 - Alternative dispute resolution

As early as possible and at any stage of the proceedings, the court either directly or, where appropriate, with the assistance of the Central Authorities, shall invite the parties to consider whether they are willing to engage in mediation or other means of alternative dispute resolution, unless this is contrary to the best interests of the child, it is not appropriate in the particular case or would unduly delay the proceedings.

Article 39 - Grounds for refusal of recognition of decisions in matters of parental responsibility

1. *The recognition of a decision in matters of parental responsibility shall be refused:*
(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is invoked, taking into account the best interests of the child; [...]

Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. [Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003R2201&from=EN>] Regulation repealed from 1 August 2022.

Preamble

(12) The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.

(13) In the interest of the child, this Regulation allows, by way of exception and under certain conditions, that the court having jurisdiction may transfer a case to a court of another Member State if this court is better placed to hear the case. However, in this case the second court should not be allowed to transfer the case to a third court.

Article 12 - Prorogation of jurisdiction

1. *The courts of a Member State exercising jurisdiction by virtue of Article 3 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application where:*
(a) at least one of the spouses has parental responsibility in relation to the child;

and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised, and is in the superior interests of the child.

2. The jurisdiction conferred in paragraph 1 shall cease as soon as:

(a) the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final;

(b) in those cases where proceedings in relation to parental responsibility are still pending on the date referred to in (a), a judgment in these proceedings has become final;

(c) the proceedings referred to in (a) and (b) have come to an end for another reason.

3. The courts of a Member State shall also have jurisdiction in relation to parental responsibility in proceedings other than those referred to in paragraph 1 where:

(a) the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State;

and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the court is seised and is in the best interests of the child.

4. Where the child has his or her habitual residence in the territory of a third State which is not a contracting party to the Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, jurisdiction under this Article shall be deemed to be in the child's interest, in particular if it is found impossible to hold proceedings in the third State in question.

Article 15 - Transfer to a court better placed to hear the case

1. By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:

(a) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or

(b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5. [...]

5. The courts of that other Member State may, where due to the specific circumstances of the case, this is in the best interests of the child, accept jurisdiction within six weeks of their seisure in accordance with paragraph 1(a) or 1(b). In this case, the court first seised shall decline jurisdiction. Otherwise, the court first seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

Article 23 - Grounds of non-recognition for judgments relating to parental responsibility

A judgment relating to parental responsibility shall not be recognised:

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child;

c. Council of Europe recommendations and resolutions

i. Council of Europe Committee of Ministers Recommendations

Council of Europe, Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents. [Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807b3175]

Underlying values

This recommendation is written on the basis that:

- *in all matters concerning children, children's rights and best interests should be of primary consideration, also bearing in mind that children with imprisoned parents have committed no crime and should not be treated as being in conflict with the law as a result of the actions, or alleged actions, of their parents;*
- *all children, without discrimination and regardless of the legal status of their parents, are guaranteed the enjoyment of all rights covered by the United Nations Convention on the Rights of the Child, including the right to have their best interests protected, the right to development, the right to have their views respected, and the right to maintain personal relations and direct contact with their parents on a regular basis;*

II. Basic principles

1. *Children with imprisoned parents shall be treated with respect for their human rights and with due regard for their particular situation and needs. These children shall be provided with the opportunity for their views to be heard, directly or indirectly, in relation to decisions which may affect them. Measures that ensure child protection, including respect for the child's best interests, family life and privacy shall be integral to this, as shall be the measures which support the role of the imprisoned parent from the start of detention and after release.*
2. *Where a custodial sentence is being contemplated, the rights and best interests of any affected children should be taken into consideration and alternatives to detention be used as far as possible and appropriate, especially in the case of a parent who is a primary caregiver.*

IV. Conditions of imprisonment

12. *Prior to, or on admission, individuals with caregiving responsibilities for children shall be enabled to make arrangements for those children, taking into account the best interests of the child.*
16. *Apart from considerations regarding requirements of administration of justice, safety and security, the allocation of an imprisoned parent to a particular prison, shall, where appropriate, and in the best interests of their child, be done such as to facilitate maintaining child-parent contact, relations and visits without undue burden either financially or geographically.*
27. *Arrangements should be made to facilitate an imprisoned parent, who wishes to do so, to participate effectively in the parenting of their children, including communicating with school, health and welfare services and taking decisions in this respect, except in cases where it is not in the child's best interests.*
36. *Infants may stay in prison with a parent only when it is in the best interests of the infant concerned and in accordance with national law. Relevant decisions to allow infants to stay with their parent in prison shall be made on a case-by-case basis. Infants in prison with a parent shall not be treated as prisoners and shall have the same rights and, as far as possible, the same freedoms and opportunities as all children.*

38. *Decisions as to when an infant is to be separated from their imprisoned parent shall be based on individual assessment and the best interests of the child within the scope of the applicable national law.*

39. *The transition of the infant to life outside prison shall be undertaken with sensitivity, only when suitable alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials, where appropriate.*

Council of Europe, Recommendation CM/Rec(2015)4 of the Committee of Ministers to member States on preventing and resolving disputes on child relocation. [Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c44a6]

Scope

This recommendation applies to situations where there is, or may be, a disagreement on the relocation of a child, either within the jurisdiction of the member State (subject to principle 7) or abroad.

This recommendation applies in particular to situations where, as a result of his or her relocation, a child would be at risk of losing contact, or of a significant disruption to contact, with his or her parents or with other holders of parental responsibilities.

Rights of the child

2. *The best interests of the child shall be a primary consideration in securing agreements and resolving disputes in matters of child relocation.*

3. *The child should have the right to be informed and consulted, and to express his or her views on the proposed relocation. Due weight should be given to the child's views in accordance with his or her age and degree of maturity.*

Avoiding disputes

4. *Measures aimed at avoiding disputes on child relocation or its consequences should be in place. Such measures might include:*

- provisions that encourage parents or other holders of parental responsibilities to reflect on a possible future relocation of the child by agreeing on relocation issues such as prior notice, duration and geographical limits;*
- rules on notification to the effect that the person proposing to change the child's habitual residence should be required to inform the other parent or other holders of parental responsibilities in writing prior to the proposed relocation and within specific time limits, in order to avoid unilateral relocations;*
- services (public or private) for advice, counselling and mediation to assist parents or other holders of parental responsibilities in reaching an agreement.*

Dispute resolution

5. *Alternative means of dispute resolution should be promoted in order to reach agreements on child relocation without the need to have recourse to the competent authority, without prejudice to principle 6.*

6. *Parents or other holders of parental responsibilities should have the right to bring any unresolved dispute on child relocation to a competent authority for decision.*

7. *In the absence of agreement, the child's habitual residence should not be changed without a decision of the competent authority, except in circumstances provided for by national law.*

8. *In resolving disputes on child relocation, the competent authority should ensure that all relevant factors are taken into consideration, giving such weight to each factor as is appropriate in the circumstances of the individual case. The examination shall focus on the best interests of the child.*

9. *The decision of the competent authority should be made without any presumption for or against changing the child's habitual residence.*

10. *As time is of the essence in disputes over child relocation, particularly as far as the child is concerned, member States should ensure that disputes are resolved by the competent authority as quickly as possible.*

11. *Consideration should be given to facilitating direct judicial communications between the authorities of member States on international child relocation cases.*

Council of Europe, Recommendation CM/Rec(2011)12 of the Committee of Ministers to member States on children's rights and social services friendly to children and families. [Available at: <https://rm.coe.int/168046ccea>]

Preamble

Recalling the final communiqué of the Conference of European Ministers responsible for Family Affairs held in Vienna in June 2009, which stressed that all policies and decisions affecting children must respect children's rights and the child's best interest;

I. Scope and purpose

1. *The recommendation addresses children's rights in social services planning, delivery and evaluation which must be adapted to their needs as well as to those of their families. It is based on the principle of the best interest of the child and the child's rights to provision, participation and protection.*

III. Fundamental principles

A. Provisions in the best interest of the child

1. *Social services for children and families should establish the overt goal that the best interest of the child be the primary consideration.*

2. *Bearing in mind that the parents have the primary responsibility for the upbringing and development of the child, social service delivery should ensure that there is a supportive environment for the child by providing the appropriate level and diversity of services and resources necessary for positive parenting and the empowerment of parenting skills.*

B. The child's rights to participation

1. *Social services in their work should ensure that the child is heard and taken seriously. Children should be considered and treated as full bearers of rights, as active subjects in the planning, delivery and evaluation of social services. Children should be empowered to exercise their rights in accordance with their capacity, given due weight to their age, development and individual circumstances. More or less formal measures, protocols and procedures should be envisaged to this end.*

2. *Participation should not only be perceived in terms of the evolving capacities of the child, the positive outcome in the future, but also in terms of the quality of the child's life in the present. Thus children should be seen as they are today, not only as beings "in the making".*

3. *Participation in social services delivery for children and families can be on different levels, both individually and as a group:*

- i. *consultative participation, recognising that children have expertise and perspectives which need to inform and affect adult decision making;*
- ii. *collaborative participation, offering children the opportunity to be actively involved at any stage of decision making, initiatives, projects or services;*
- iii. *child-led participation, facilitating the initiative of children and their own advocacy in relation to the various activities and services established to meet their needs.*

4. *In all processes where social services are provided to children, these should have the right to:*

- a. *be informed in a child-friendly way about their rights to access social services, about services available as well as about the possible consequences of alternative course of action;*
- b. *receive all relevant information about their situation;*
- c. *be supported to express their views;*
- d. *be listened to;*
- e. *have their views taken into account in the decision-making process according to their age and level of maturity;*
- f. *be informed about decisions taken and to what extent their views have been taken into account.*

5. *The right to be heard is a right of the child, not a duty for the child.*

6. *Partnership with parents and parental involvement in the delivery of personal social services for children and families should be ensured without diminishing the child's right to be heard and taken seriously.*

C. The child's right to protection

1. *Social services for children and families should ensure the protection of children from all forms of neglect, abuse, violence and exploitation by preventive measures as well as through appropriate and effective interventions. These should aim for the preservation of family strength and unity, especially in families facing difficulties.*

3. *Decisions of out-of-home placement must only be made on the basis of the best interest of the child. The choice of care should be appropriate to both the present and future needs of the child.*

4. *Social service delivery for children and families for protecting vulnerable children should, inter alia, adhere to the following principles:*

- a. *prevention and early intervention;*
- b. *child-focused partnership with parents;*
- c. *careful assessment of the individual child's needs with regard to protective factors (including strength) as well as risk factors in the child's social environment;*
- d. *prevention of re-victimisation of the child.*

Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted on 17 November 2010. [Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3]

III. Fundamental principles

B. Best interests of the child

1. *Member states should guarantee the effective implementation of the right of children to have their best interests be a primary consideration in all matters involving or affecting them.*

2. *In assessing the best interests of the involved or affected children:*

- a. *their views and opinions should be given due weight;*
- b. *all other rights of the child, such as the right to dignity, liberty and equal treatment should be respected at all times;*
- c. *a comprehensive approach should be adopted by all relevant authorities so as to take due account of all interests at stake, including psychological and physical well-being and legal, social and economic interests of the child.*

3. *The best interests of all children involved in the same procedure or case should be separately assessed and balanced with a view to reconciling possible conflicting interests of the children.*

4. *While the judicial authorities have the ultimate competence and responsibility for making the final decisions, member states should make, where necessary, concerted efforts to establish multidisciplinary approaches with the objective of assessing the best interests of children in procedures involving them.*

E. Rule of law

2. *Elements of due process such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal, should be guaranteed for children as they are for adults and should not be minimised or denied under the pretext of the child's best interests. This applies to all judicial and nonjudicial and administrative proceedings.*

IV. Child-friendly justice before, during and after judicial proceedings

A. General elements of child-friendly justice

5. Multidisciplinary approach

17. *A common assessment framework should be established for professionals working with or for children (such as lawyers, psychologists, physicians, police, immigration officials, social workers and mediators) in proceedings or interventions that involve or affect children to provide any necessary support to those taking decisions, enabling them to best serve children's interests in a given case.*

B. Child-friendly justice before judicial proceedings

24. *Alternatives to judicial proceedings such as mediation, diversion (of judicial mechanisms) and alternative dispute resolution should be encouraged whenever these may best serve the child's best interests. The preliminary use of such alternatives should not be used as an obstacle to the child's access to justice.*

D. Child-friendly justice during judicial proceedings

3. Right to be heard and to express views

47. *A child should not be precluded from being heard solely on the basis of age. Whenever a child takes the initiative to be heard in a case that affects him or her, the judge should not, unless it is in the child's best interests, refuse to hear the child and should listen to his or her views and opinion on matters concerning him or her in the case.*

4. Avoiding undue delay

50. *In all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law.*

V. Promoting other child-friendly actions

Member states are encouraged to: [...]

I. ensure that all concerned professionals working in contact with children in justice systems receive appropriate support and training, and practical guidance in order to guarantee and implement adequately the rights of children, in particular while assessing children's best interests in all types of procedures involving or affecting them.

Council of Europe, Recommendation Rec(2005)5 of the Committee of Ministers to member States on the rights of children living in residential institutions. [Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805daac2]

Preamble

Considering that the type of placement must primarily take account of the needs and best interests of the child and, where appropriate, his or her personal views on the matter; due weight should be given to these views in accordance with the child's age and his or her degree of maturity;

Basic principles

- *The placement of a child should remain the exception and have as the primary objective the best interests of the child and his or her successful social integration or re-integration as soon as possible; the placement must guarantee full enjoyment of the child's fundamental rights;*
- *the placement should not be longer than necessary and should be subject to periodic review with regard to the child's best interests that should be the primary consideration during his or her placement; the parents should be supported as much as possible with a view to harmoniously reintegrating the child in the family and society;*

Guidelines and quality standards

To ensure the implementation of these principles and rights, the following guidelines and standards should be taken into account:

- *when circumstances allow, a placement should be selected which is as close as possible to the child's environment and organised to allow parents to exercise their responsibilities and to maintain parent-child contact on a regular basis;*
- *a small family-style living unit should be provided;*
- *priority should be given to the physical and mental health of the child and his or her full, harmonious development as the essential conditions for the success of the care plan;*
- *an individual care plan should be drawn up which is based on both the development of the child's capacities and abilities and respect for his or her autonomy, as well as on maintaining contacts with the outside world and preparation for living outside the institution in the future; [...].*

Council of Europe, Recommendation Rec(2002)8 of the Committee of Ministers to member states on child day-care. [Available at: <https://rm.coe.int/native/09000016804d786c>]

Preamble

Taking into account the central importance of children's rights as they are enshrined in the United Nations Convention on the Rights of the Child, and in particular Article 3 of the convention which states that "In all actions concerning children (...) the best interests of the child shall be a primary consideration", and its Article

12 which states that "State Parties shall assure to the child (...) the right to express (...) views freely in all matters affecting the child";

B. General principles

1. *Child day-care is for children: it must therefore be organised in their best interests.*

Council of Europe, Recommendation Rec(95)6 of the Committee of Ministers to member States on the application of the European Convention on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children. [Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680504c6e]

Preamble

Realising that a delay in the repatriation of a child may occur when neither parent is able or willing to pay for the costs of the repatriation and may result in the child being placed in care until the repatriation can take place; [...]

Agreeing on the need to resolve matters relating to the repatriation of children as soon as possible and in the best interests of the children themselves, [...]

Council of Europe, Recommendation Rec(91)9 of the Committee of Ministers to member States on emergency measures in family matters. [Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804bfa85]

Preamble

Noting that, in many cases, the courts and other competent authorities dealing with family matters do not succeed in providing rapid solutions where the interests of children and other persons in need of special protection and assistance are in serious danger;

Recognising that existing emergency measures do not always enable the courts and other competent bodies to deal satisfactorily with certain urgent cases and in particular with cases where children have been improperly removed or their welfare is in serious danger; [...]

Principle 1

Courts and other competent authorities dealing with family matters should have sufficient emergency powers and resources to protect children and other persons in need of special protection and assistance and whose interests are in serious danger.

Particular protection should be given to a child whose welfare is in serious danger owing to neglect or any other physical or mental ill-treatment or who has been or may be improperly removed from a person entitled to custody.

Principle 3

1. *Simple and expeditious procedures should be available to ensure that decisions are reached very quickly. To this end, the following measures could be used:*

- *lodging a request by simple application;*
- *allowing a court or competent authority to act on its own motion;*
- *provisional measures taken without a hearing;*

- *using all modern communication technology to facilitate the introduction and conduct of any proceedings, the transmission of requests and exchanges of information between courts and other competent authorities and the different parties to the proceedings;*
- *allowing the court or competent authority to play an active role in conducting the case and in calling for and taking evidence;*
- *preventing any party from improperly delaying emergency measures.*

2. National authorities should ensure that information on emergency measures is given to the public and to those to whom a person in need of such measures may turn for help.

3. Legal aid and advice should be provided rapidly when required.

4. Courts and other competent authorities should have the power to grant decisions which are immediately enforceable.

5. Courts and other competent authorities should be given sufficient powers to ensure that their decisions are rapidly enforced.

Council of Europe, Recommendation Rec(87)6 of the Committee of Ministers to member States on foster families.

[Available at:

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804d4593]

Preamble

Recognising that the law should protect the welfare of children;

Recognising that it is normally in a child's interests to remain with his family of origin and that an improvement in support for these families would ensure that the need for fostering is reduced;

Considering that it is possible to improve the legal systems relating to the fostering of children in order to promote the development of the personality of the child and to protect his person and his moral and material interests;

Considering that an improvement of the situation of foster parents might contribute to the welfare of children;

Principle 2

The personal relationships of the child with his family of origin should be maintained and information concerning the well-being of the child should be given to that family, provided that this is not detrimental to the essential interests of the child.

Principle 3

The foster parents should be presumed to have the power to exercise, on behalf of the legal representatives of the child, those parental responsibilities which are necessary to care for the child in day-to-day or urgent matters.

Principle 4

As far as possible before any important decision is taken concerning the person of the child, the foster parents should be given the opportunity to express their views.

Council of Europe, Recommendation Rec(84)4 of the Committee of Ministers to member States on parental responsibilities. [Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804de2e4]

Principle 2

Any decision of the competent authority concerning the attribution of parental responsibilities or the way in which these responsibilities are exercised should be based primarily on the interests of the child. However, the equality between parents should also be respected and no discrimination should be made, in particular on grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Principle 3

When the competent authority is required to take a decision relating to the attribution or exercise of parental responsibilities and affecting the essential interests of the children, the latter should be consulted if their degree of maturity with regard to the decision so permits.

Principle 4

When the persons having parental responsibilities exercise them in a way which is detrimental to the essential interests of the child, the competent authority should take, of its own motion or on application, any appropriate measures.

Principle 8

In all cases both parents should be under a duty to maintain the child. The parent with whom the child does not live should have at least the possibility of maintaining personal relationships with the child unless such relationships would be seriously harmful to the interests of the child.

Principle 9

2. Where the parent who exercises alone some parental responsibilities dies, his responsibilities should be exercised by the surviving parent unless the interests of the child require any other measures.

3. Where there is no longer any parent living, the competent authority should take a decision concerning the attribution of parental responsibilities. National legislation may provide that these responsibilities may be given to a member of the family or to a person designated by the last parent to die, unless the interests of the child require any other measures.

Council of Europe, Resolution Res(77)33 of the Committee of Ministers on placement of children. [Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804cefd2]

I. General principles

1. To recognise that all arrangements for placement should be based on the following principles:

1.1. The need for placement should be avoided as far as possible through preventive measures of support for families in accordance with their special problems and needs;

1.2. A request for placement should be considered as a warning signal of a difficult family situation; consequently efforts to meet the child's needs should always be related to an understanding of the problems of his family and arrangements for the child should as a rule be coupled to specific arrangements for helping the parents;

1.3. *The arrangements made for the child (including a decision to leave him in his family or to place him) should try to ensure the highest possible degree of satisfaction of his developing emotional needs and his physical wellbeing as well as any preventive medical, educational or other care necessary to meet any special problems he may have;*

These arrangements should provide, as far as possible and when this is in the best interests of the child:

- *maintenance of links to his family;*
- *stability of care and bonds of affection, taking into account the child's developmental stage in regard to the formation of emotional attachments;*
- *respect of his individuality;*
- *a cultural and social environment which is appropriate and acceptable to society;*
- *integration into a local community and preferably the same one as the family's;*
- *for adolescents opportunities for assuming responsibility, for achieving independence and for taking up adult roles;*

1.4. *The decisions about the child's placement should normally be taken after advice given by a multidisciplinary team; similar advice should be available at each review;*

1.5. *A plan for the child should be drawn up based on an assessment of the family, of the child himself and of the possible solutions available, in the light of the objectives mentioned above;*

This plan should incorporate in particular:

- *a decision on the best initial mode of placement for the child;*
- *a review of the child's situation after a period which will vary according to age and individual circumstances (being shorter in the case of very young children), but which should not normally exceed six months, after which there should be further reviews at regular intervals;*

1.6. *Long-term placement of very young children in residential units should be avoided as much as possible; thus adoption in the light of the European Convention on the Adoption of Children should be facilitated and encouraged to the greatest possible extent.*

ii. Council of Europe Parliamentary Assembly Resolutions

Council of Europe, Parliamentary Assembly Resolution 2232 (2018) on Striking a balance between the best interest of the child and the need to keep families together. [Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=25014&lang=EN&search=YWx0ZXJuYXRpdmUgY2FyZSBjaGlsZHJlbnxjYXRIZ29yeV9zdHJfZW46IkFkb3B0ZWQgdGV4dCI=>]

1. *Recalling its Resolution 2049 (2015) and Recommendation 2068 (2015) “Social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States”, the Parliamentary Assembly reaffirms that children have the right to be protected from all types of violence, abuse and neglect. However, they also have the right not to be separated from their parents against their will, except when competent authorities subject to judicial review determine that such separation is absolutely necessary in the best interests of the child. Even when such separation is necessary, children have the right to maintain personal relations and direct contact with both parents on a regular basis, unless it is contrary to their best interests.*

2. *Despite the existence of clear international and European standards in this area of children's rights, there continues to be a lack of uniform application in decisions on child removal, adoption, placement and reunification across Council of Europe member States. Further action to bridge the gap between these*

standards and their implementation is thus needed, as well as improved data collection and research which could inform policy makers on how to implement these standards in the best possible way.

4. The Assembly reaffirms that the best interests of the child should be a primary consideration in all actions concerning children, in accordance with the United Nations Convention on the Rights of the Child. However, the implementation of this principle in practice depends on the context and the specific circumstances. It is sometimes easier to say what is not in the best interests of children, for example coming to serious harm at the hands of their parents or being removed from their family without good cause.

5. It is with this caveat in mind that the Assembly reiterates the recommendations it made in Resolution 2049 (2015) and recommends that Council of Europe member States focus on the process in order to achieve the best results for children and their families alike. Member States should:

5.1. ensure child-friendly processes throughout removal, placement and reunification: this includes guaranteeing full child participation by having properly trained and educated staff speak to, and listen to, the child, whose views should not only be heard, but also taken into account as long as this view is not against the best interests of the child; [...]

5.4. ensure that all personnel involved in removal and placement decisions, including judges, are suitably qualified and regularly trained (including on international and European standards), have sufficient resources to take decisions in an appropriate time frame, and are not overburdened with too heavy a caseload; [...]

5.6. where the decision to remove a child from their family has been made, ensure that:

5.6.1. such decisions are a proportionate response to a credible and verified assessment by competent authorities, subject to judicial review, that there is a real risk of actual and serious harm to the children involved;

5.6.2. a detailed decision is provided to the parents and a copy of the decision is also retained; that the decision is explained in an age-appropriate way to the child or that the child is otherwise granted access to the decision. The decision should outline the circumstances that led to the determination and provide reasons for the removal;

5.6.3. removing children is a last resort and is only applied for the necessary period of time;

5.6.4. siblings are kept together in care in all cases where it is not against the best interests of the child;

5.6.5. as long as it is in the best interests of the child, children are cared for within the wider family unit so as to minimise the disruption of family bonds for the children involved;

5.6.6. regular consideration is given to family reunification and/or family access as is appropriate taking into account the best interests and views of the child;

5.6.7. visitation and contact arrangements facilitate the maintenance of family bonds and work towards reunification, unless manifestly inappropriate;

5.6.8. all related court proceedings are independent, with the equality of arms guaranteed, as well as parity between the resources available to the family and to the child welfare system;

5.6.9. religious, ethnic and cultural background and sibling bonds are taken into account when placing children in alternative care;

Council of Europe, Parliamentary Assembly Resolution 2049 (2015) on Social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States. [Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=21737&lang=EN>]

1. Children have the right to be protected from all types of violence, abuse and neglect. But they also have the right not to be separated from their parents against their will, except when competent authorities subject to judicial review determine that such separation is necessary in the best interests of the child. Even when such separation is necessary, children have the right to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

2. In most Council of Europe member States, it is the social services which take the initial decision to remove a child from his or her family (in particular in urgent cases where the child is deemed to be in immediate danger), or which apply to the court to have such a decision taken. In the majority of member States, this initial decision is taken on the basis of the child being judged to be at risk or imminent risk of suffering serious harm, in particular physical, sexual or psychological abuse, or of being badly neglected.

5. Financial and material poverty should never be the only justification for the removal of a child from parental care, but should be seen as a sign for the need to provide appropriate support to the family.

Moreover, showing that a child could be placed in a more beneficial environment for his or her upbringing is not enough to remove a child from his or her parents, and even less of a reason to sever family ties completely.

6. The Parliamentary Assembly is concerned about the violation of children's rights in some countries (or regions thereof), when social services take some children into care too rashly and do not make enough effort to support families before and/or after removal and placement decisions. These unwarranted decisions usually have a – sometimes unintended – discriminatory character, and can constitute serious violations of the rights of the child and his or her parents, which are made all the more tragic when the decisions are irreversible (such as in cases of adoption without parental consent).

7. The Assembly is also concerned about the violation of children's rights in some countries (or regions thereof), when social services do not take children into care quickly enough, and return children too rashly to abusive or neglectful parents. These decisions can constitute equally – or more – serious violations of the rights of the child, and can put his or her life and health in danger. Removal decisions taken by social services are very fraught, and should thus only be taken by social workers with special professional training and qualifications, an appropriate caseload and in an appropriate time frame.

8. The Assembly thus recommends that member States: [...]

8.2. put into place laws, regulations and procedures which truly put the best interest of the child first in removal, placement and reunification decisions;

8.3. continue and strengthen their efforts to ensure that all relevant procedures are conducted in a child-friendly manner, and that the children concerned have their views taken into account according to their age and level of maturity;

8.4. make visible and root out the influence of prejudice and discrimination in removal decisions, including by appropriately training all professionals involved; [...]

8.6. ensure that any (temporary) placement of a child in alternative care, where it has become necessary as a measure of last resort, be accompanied by measures aimed at the child's subsequent reintegration into the family, including the facilitation of appropriate contact between the child and his or her family, and be subject to periodic review;

8.7. avoid, except in exceptional circumstances provided for in law and subject to effective (timely and comprehensive) judicial review, severing family ties completely, removing children from parental care at birth, basing placement decisions on the effluxion of time, and having recourse to adoptions without parental consent;

8.8. ensure that the personnel involved in removal and placement decisions are guided by appropriate criteria and standards (if possible in a multidisciplinary way), are suitably qualified and regularly trained, have sufficient resources to take decisions in an appropriate time frame, and are not overburdened with too great a caseload; [...]

8.10. ensure that, except in urgent cases, initial removal decisions are based only on court orders, in order to avoid unwarranted removal decisions and to prevent biased assessments.

Council of Europe, Parliamentary Assembly Resolution 1909 (2012) on Intercountry adoption: ensuring that the best interests of the child are upheld. [Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=19221&lang=EN&search=YWx0ZXJuYXRpdmUgY2FyZSBjaGlzZHJlbnxjYXRlZ29yeV9zdHJfZW46lkFkb3B0ZWQgdGV4dCI=>]

1. *Intercountry adoption is one of several possible care options for children without parental care. It may be the option of choice for children without parental care whose safety cannot otherwise be ensured (in particular for children who, in their home countries, face extreme poverty, neglect, exploitation and/or conflict situations).*

2. *However, intercountry adoption also represents an interference with the fundamental rights and personal identity of a child. Above all intended as a humanitarian act, transferring a child from the context of its biological family, its family environment and home country to a foreign country and a new family is necessarily a traumatising experience and needs to be handled with utmost care and sensitivity for the child's individual situation.*

3. *In this context, the Parliamentary Assembly points to the central role of the United Nations Convention on the Rights of the Child of 1989 providing that the best interests of children shall be a primary consideration in all decisions concerning them. Children should grow up in a family environment, in an atmosphere of happiness, love and understanding. The main object of adoption is to find a family for a child and not a child for a family.*

4. *The Assembly is concerned by persisting reports of cases of intercountry adoption where the best interest of children has evidently not been the paramount consideration or where their human rights have been severely violated. Certain children fall victim to "child laundering" practices, involving the abduction and sale of children, the coercion or manipulation of birth parents and their family environment, falsification of documents and bribery. Both sending and receiving countries involved in intercountry adoptions must therefore live up to their responsibilities to prevent and fight such criminal activities at a global level.*

6. *In view of recent trends which continue to make intercountry adoption a possible and interesting care option for many children, the Assembly reiterates its call to Council of Europe member States to reinforce their relevant policies to pursue the practice of intercountry adoption under secure conditions while respecting the best interests of the child, by: [...]*

6.3. *developing coherent national policies aimed at establishing fully supervised procedures of intercountry adoption involving a public central authority, which may – thanks to a sufficient level of resources – function as a competence centre and ensure a certain supervision of adoption standards and practice;*

6.4. *developing strict rules and standards for the setting up, operation and supervision of specialist child adoption agencies in order to prevent their unregulated multiplication and competition from leading to insufficiently supervised adoption procedures or other unsafe practices;*

6.5. *ensuring that the origins and personal identity of children are fully documented throughout the adoption process and beyond and that children have the possibility of accessing all information concerning them at the age of 18 at the latest;*

6.6. *ensuring that adoption services and agencies work in a child-friendly manner as promoted by Recommendation CM/Rec(2011)12 of the Committee of Ministers on children's rights and social services adapted to children and families, in particular with a view to the participation of children in decisions concerning them;*

6.8. *as regards countries receiving adoptive children in particular, conceiving national adoption policies and procedures according to the following principles:*

6.8.1. *developing strong national adoption systems, as a means of responding to the interest of prospective adopters in the most secure manner and preventing them from turning to nonaccredited agencies or independent adoptions which could expose them to illegal activities;*

6.8.2. *establishing authorisation procedures ensuring that prospective adopters are suitable to adopt and obliged to follow specific training preparing them to welcome a foreign child, possibly even a child with special needs (due to illness or disability);*

6.8.3. *ensuring that foreign children being adopted are fully monitored well before, during and after the actual legal act of adoption for an adequate number of years, and that families receive support throughout and after the adoption process;*

6.8.4. *declaring moratoria if, for whatever reason (humanitarian disasters for example), safe adoption procedures can no longer be ensured, but maintain open lines of communication between central authorities involved to avoid legal vacuums and traumatising uncertainties for the children;*

6.9. *as regards the sending countries in particular, conceiving national adoption policies and procedures according to the following principles:*

6.9.1. *establishing authorisation procedures ensuring that children foreseen for intercountry adoption are truly in need and that no better care alternative exists in their country of origin;*

Council of Europe, Parliamentary Assembly Resolution 1762 (2010) on Children without parental care: urgent need for action. [Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=17912&lang=EN&search=YWx0ZXJuYXRpdmUgY2FyZSBjaGlzZHJlbncjYXRlZ29yeV9zdHJfZW46IkFkb3B0ZWQgdGV4dCI=>]

2. *The biological family is under normal circumstances the best place for a child. Public policies undertaken with a view to the well-being of children should therefore, above all, aim at maintaining the child within his or her birth family context. Only if circumstances do not allow for this stability should alternative care arrangements be made along the lines set out below.*

3. *With regard to the plight of children without parental care, the Assembly notably welcomes the recent adoption, in November 2009, of the United Nations Guidelines for the Alternative Care of Children, which emphasise the necessity of ensuring that children have a stable home. The guidelines also restrict the use of residential care to cases where it is necessary and appropriate for the individual child, whilst recommending that alternative care for young children be provided in family-based settings.*

6. *The Assembly therefore calls on member states to: [...]*

6.3. *address the issue of children without parental care at all possible levels of intervention by:*

6.3.1. *implementing new international standards, such as the recent United Nations Guidelines for the Alternative Care of Children, through the development of national action plans;*

6.3.2. *continuing to implement existing European standards, notably the Committee of Ministers Recommendation Rec(2005)5 on the rights of children living in residential institutions, through relevant national action;*

7. *As regards the two main challenges identified, namely the “new risks” children are facing and the process of further de-institutionalisation of childcare arrangements, especially when it comes to the implementation of common standards through national policies, the Assembly calls on member states to:*

7.3. *as an integral part of national action plans for the implementation of the United Nations Guidelines for the Alternative Care of Children, follow systematic and innovative approaches to de-institutionalisation based on a broad understanding of this concept, by: [...]*

7.3.4. developing effective national strategies preventing children from being separated from their biological families by strengthening the families' capacity to care for, protect and empower their children, by providing relevant training to professionals in social services and by strengthening the participation of children and families in decisions concerning them;

Council of Europe, Parliamentary Assembly Resolution 1714 (2010) on Children who witness domestic violence. [Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=17826&lang=EN&search=YWx0ZXJuYXRpdmUgY2FyZSBjaGlsZHJlbnxiYXRlZ29yeV9zdHJfZW46lkFkb3B0ZWQgdGV4dCI=>]

6. The Assembly further invites Council of Europe member states to:

6.4. *strengthen the special consideration in legal and administrative procedures for children having witnessed domestic violence, for example by:*

6.4.2. *providing the children concerned with physical protection during relevant proceedings and through custody and contact rights following situations of domestic violence;*

6.4.5. *taking into account the best interest of the child who has witnessed domestic violence when ruling on parental authority and contact of the author of domestic violence with the child concerned;*

Council of Europe, Parliamentary Assembly Recommendation 1071 (1988) on Child welfare – Providing institutional care for infants and children. [Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=15105&lang=EN&search=YWx0ZXJuYXRpdmUgY2FyZSBjaGlsZHJlbnxiYXRlZ29yeV9zdHJfZW46lkFkb3B0ZWQgdGV4dCI=>]

The Assembly,

9. *Recommends that the Committee of Ministers invite the governments of member States:*

a. *to set up, in the context of European co-operation, a permanent body to:*

1. *assess and monitor progress with the decompartmentalisation of services and government departments dealing with child welfare;*
2. *promote the introduction in every country of a specific policy for child care in and outside the family; [...]*

b. *to make plans to set up administrations (ministries or departments) which could one day propose guidelines for common action on the care of young children, the training of child-care staff and the harmonisation of their status in order to provide conditions that enable families to raise their children properly ; [...]*

d. International and European judgments

Issues relating to the best interests of the child in care proceedings fall under or are grounded in Article 8 ECHR.

[Chbihi Loudoudi and Others v. Belgium](#), No. 52265/10, 16 December 2014, para. 131. [Text only available in French]

131. *Il ressort au surplus de la jurisprudence de la Cour que, lorsque des mineurs d'âge sont concernés, l'intérêt « supérieur » de l'enfant doit constituer la principale considération des autorités nationales dans l'évaluation de la proportionnalité aux fins de la Convention (paragraphe 92, ci-dessus ; voir, parmi d'autres, Nunez, précité,*

§ 84, *Kanagaratnam c. Belgique*, no 15297/09, § 67, 13 décembre 2011, et *Popov c. France*, nos 39472/07 et 39474/07, § 109, 19 janvier 2012 et *Jeunesse*, précité, § 109).

[Ignaccolo-Zenide v. Romania](#), No. 31679/96, 25 January 2000, para. 94.

94. *That being so, it must be determined whether there has been a failure to respect the applicant's family life. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities. There are in addition positive obligations inherent in an effective "respect" for family life. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see the Keegan v. Ireland judgment of 26 May 1994, Series A no. 290, p. 19, § 49).*

As to the State's obligation to take positive measures, the Court has repeatedly held that Article 8 includes a parent's right to the taking of measures with a view to his or her being reunited with his or her child and an obligation on the national authorities to take such action (see, for example, the following judgments: Eriksson v. Sweden, 22 June 1989, Series A no. 156, pp. 26-27, § 71; Margareta and Roger Andersson v. Sweden, 25 February 1992, Series A no. 226-A, p. 30, § 91; Olsson v. Sweden (no. 2), 27 November 1992, Series A no. 250, pp. 35-36, § 90; and Hokkanen v. Finland, 23 September 1994, Series A no. 299-A, p. 20, § 55).

[Keegan v. Ireland](#), No. 16969/90, 26 May 1994, para. 49.

49. *The Court recalls that the essential object of Article 8 (art. 8) is to protect the individual against arbitrary action by the public authorities. There may in addition be positive obligations inherent in an effective "respect" for family life. However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are, none the less, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see, for example, the Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A no. 172, p. 18, para. 41, and the above-mentioned Johnston and Others judgment, p. 25, para. 55).*

[Olsson v. Sweden \(No. 1\)](#), No. 10465/83, 24 March 1988, para. 81.

81. *As for the remaining aspects of the implementation of the care decision, the Court would first observe that there appears to have been no question of the children's being adopted. The care decision should therefore have been regarded as a temporary measure, to be discontinued as soon as circumstances permitted, and any measures of implementation should have been consistent with the ultimate aim of reuniting the Olsson family.*

In point of fact, the steps taken by the Swedish authorities ran counter to such an aim. The ties between members of a family and the prospects of their successful reunification will perforce be weakened if impediments are placed in the way of their having easy and regular access to each other. Yet the very placement of Helena and Thomas at so great a distance from their parents and from Stefan (see paragraph 18 above) must have adversely affected the possibility of contacts between them. This situation was compounded by the restrictions imposed by the authorities on parental access; whilst those restrictions may to a certain extent have been warranted by the applicants' attitude towards the foster families (see paragraph 26 above), it is not to be excluded that the failure to establish a harmonious relationship was partly due to the distances involved. It is true that regular contacts were maintained between Helena and Thomas, but the reasons given by the Government for not placing them together (see paragraph 79 above) are not convincing. It is also true that Stefan had special needs, but this is not sufficient to justify the distance that separated him from the other two children.

The Administrative Court of Appeal, in its judgment of 16 February 1987 (see paragraph 31 above), itself commented as follows on the applicants' access to Helena and Thomas:

"Of course, the extremely bad relations between Mr. and Mrs. Olsson on the one hand and Helena and Thomas and their respective foster parents on the other hand are not due only to the Olssons. However, the Administrative Court of Appeal considers it strange that the parents' negative attitude to the foster parents resulted in their not meeting the youngest children for over two years, nor even showing any particular interest in talking to the children on the telephone, for instance. Even if there has been some difficulty for the social council to assist in establishing better relations - due to the action of the parents' representative, for instance, and the children's own attitude - it would have been desirable for the social council to have been more active and not, for instance, to have limited the right of access to once every three months."

[Olsson v. Sweden \(No. 2\)](#), No. 74/1991/326/398, 30 October 1992, para. 90.

90. In doing so, the Court notes firstly that, both under Swedish law and under Article 8 (art. 8) of the Convention, the lifting of the care order implied that the children should, in principle, be reunited with their natural parents. In cases like the present, Article 8 (art. 8) includes a right for the natural parents to have measures taken with a view to their being reunited with their children (see, as the most recent authority, the Rieme v. Sweden judgment of 22 April 1992, Series A no. 226-B, p. 71, para. 69) and an obligation for the national authorities to take such measures.

However, neither the right of the parents nor its counterpart, the obligation of the national authorities, is absolute, since the reunion of natural parents with children who have lived for some time in a foster family needs preparation. The nature and extent of such preparation may depend on the circumstances of each case, but it always requires the active and understanding co-operation of all concerned. Whilst national authorities must do their utmost to bring about such co-operation, their possibilities of applying coercion in this respect are limited since the interests as well as the rights and freedoms of all concerned must be taken into account, notably the children's interests and their rights under Article 8 (art. 8) of the Convention. Where contacts with the natural parents would harm those interests or interfere with those rights, it is for the national authorities to strike a fair balance (see, mutatis mutandis, the Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A no. 172, p. 18, para. 41).

In sum, what will be decisive is whether the national authorities have made such efforts to arrange the necessary preparations for reunion as can reasonably be demanded under the special circumstances of each case.

It is for the Court to review whether the national authorities have fulfilled this obligation. In doing so, it will leave room for a margin of appreciation, if only because it has to base itself on the case-file, whereas the domestic authorities had the benefit of direct contact with all those concerned.

[R.K. and A.K. v. the United Kingdom](#), No. 38000/05, 30 September 2008, para. 32-37.

32. It is not disputed in the present case that the proceedings instituted as regarded M., and the interim care order which resulted in M. being placed away from the applicants, constituted an interference with the applicants' right to respect for their family life within the meaning of the first paragraph of Article 8. It must therefore be determined whether this interference was justified under the second paragraph, namely whether it was "in accordance with the law", pursued an aim or aims that are legitimate under paragraph 2 of this provision and can be regarded as "necessary in a democratic society".

33. The Court finds no reason to doubt that the interference complied with the first two criteria, as conforming with domestic law requirements and pursuing the legitimate aim of protecting the rights of others, namely the child who had suffered injury.

34. As to whether the interference was "necessary in a democratic society", the Court's case-law interprets this phrase as requiring consideration in particular of whether, in the light of the case as a whole, the reasons adduced to justify the measures were "relevant and sufficient", and whether the decision-making process involved in measures of interference were fair and afforded due respect to the interests safeguarded by Article 8. Account must also be given to the fact that the national authorities have the benefit of direct contact with

all the persons concerned. It is not the Court's task to substitute itself for the domestic authorities in the exercise of their responsibilities regarding custody and access issues. While the authorities enjoy a wide margin of appreciation, in particular when assessing the necessity of taking a child into care, a stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by those authorities on parental rights of access (see, amongst many authorities, T.P. and K.M., cited above, §§ 71-72).

35. *In the present case, the Court notes that the applicants have made various complaints about the conduct of various professionals involved in the case, essentially referring to an accumulation of errors and alleging a lack of safeguards in place to prevent the erroneous diagnosis that the injuries were caused non-accidentally (see paragraph 28 above).*

36. *The Court would re-iterate that mistaken judgments or assessments by professionals do not per se render child-care measures incompatible with the requirements of Article 8. The authorities, medical and social, have duties to protect children and cannot be held liable every time genuine and reasonably-held concerns about the safety of children vis-à-vis members of their families are proved, retrospectively, to have been misguided. In the present case, it is incontrovertible that M., a baby of only a few months, suffered a serious and unexplained fracture. It is not disputed that OI is a very rare condition and also difficult to diagnose in very small infants. The Court does not consider that the social or medical authorities can be faulted for not reaching an immediate diagnosis of OI or, in the absence of such a diagnosis, acting on the basis that the injury could have been caused by the parents. No doubt it would have been better if the triage nurse had taken more accurate notes as to the family's account of what had happened and trouble had been taken to obtain interpretation in medical staff's conversations with A.K. who did not understand English. However, it is not apparent that this would have dissipated concerns at this early stage since there would still not have been any clear indication of how the fracture had occurred. Furthermore, it may be noted that, even when official interpretation was available, in court, the testimony of A.K. was not found to be convincing.*

37. *The applicants' complaints very much amount to criticising the way in which the professionals, medical and legal, were prepared to suspect the worst on the information available to them and failed immediately to perceive their innocence or give them the benefit of any doubt. Nonetheless, it must also be noted that, while an interim care order was issued with a view to protecting M., steps were also taken to place the baby within her extended family and in close proximity to the applicants' own home so that they could easily and frequently visit. And crucially, as soon as a further fracture occurred outwith the applicants' care, further tests were quickly pursued and within weeks M. was returned home.*

[Fröhlich v. Germany](#), No. 16112/15, 26 July 2018, para. 41.

41. *The Court also reiterates that the member States' margin of appreciation is wide in respect of the determination of a child's legal status, but is more limited regarding questions of contact and information rights (A.I. v. Poland, no. 28609/08, § 68, 18 February 2014; L.D. and P.K. v. Bulgaria, nos. 7949/11 and 45522/13, 59, 8 December 2016). There will, however, usually be a wide margin of appreciation if the State is required to strike a balance between competing private and public interests or Convention rights (S.H. and Others v. Austria [GC], no. 57813/00, § 94, 3 November 2011; Mandet v. France, no. 30955/12, § 52, 14 January 2016 with further references).*

[Sahin v. Germany](#), No. 30943/96, 8 July 2003, para. 65.

65. *The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. Thus, the Court has recognised that the authorities enjoy a wide margin of appreciation when deciding on custody matters. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed (see Elsholz v. Germany [GC], no. 25735/94, § 49, ECHR 2000-VIII, and Kutzner, cited above, § 67).*

66. Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents. In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see *Elsholz*, cited above, § 50; *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 71, ECHR 2001-V; *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I; and *Nuutinen v. Finland*, no. 32842/96, § 128, ECHR 2000-VIII).

[Sommerfeld v. Germany](#), No. 31871/96, 8 July 2003, para. 63.

63. The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. Thus, the Court has recognised that the authorities enjoy a wide margin of appreciation, in particular when deciding on custody. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed (see *Elsholz v. Germany* [GC], no. 25735/94, § 49, ECHR 2000-VIII; and *Kutzner*, cited above, § 67).

[K.A. v. Finland](#), No. 27751/95, 14 January 2003, para. 138-139.

138. As the Court has reiterated time and again, the taking of a child into public care should normally be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and any measures implementing such care should be consistent with the ultimate aim of reuniting the natural parent and the child. The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the responsible 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. After a considerable period of time has passed since the child was originally taken into public care, the interest of a child not to have his or her *de facto* family situation changed again may override the interests of the parents to have their family reunited.

139. Whereas the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into public care, a stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by those authorities on parental rights of access. Such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed. The minimum to be expected of the authorities is to examine the situation anew from time to time to see whether there has been any improvement in the family's situation. The possibilities of reunification will be progressively diminished and eventually destroyed if the biological parents and the child are not allowed to meet each other at all, or only so rarely that no natural bonding between them is likely to occur (see *K. and T. v. Finland*, cited above, §§ 151, 154-155, 173, 178-179).

[Strand Lobben and others v. Norway](#), No. 37283/13, 10 September 2019, para. 202-213, 220-225.

202. The first paragraph of Article 8 of the Convention guarantees to everyone the right to respect for his or her family life. As is well established in the Court's case-law, the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by this provision. Any such interference constitutes a violation of this Article unless it is "in accordance with the law", pursues an aim or aims that is or are legitimate under its second paragraph and can be regarded as "necessary in a democratic society" (see, among other authorities, *K. and T. v. Finland* [GC], no. 25702/94, § 151, ECHR 2001-VII; and *Johansen*, cited above, § 52).

203. In determining whether the latter condition was fulfilled, the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify that measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 (see, among many other authorities, *Paradiso and Campanelli*, cited above, § 179). The notion of necessity further implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued, regard being had to the fair balance which has to be struck between the relevant competing interests (*ibid.*, § 181).

204. In so far as the family life of a child is concerned, the Court reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance (see, among other authorities, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 135, ECHR 2010). Indeed, the Court has emphasised that in cases involving the care of children and contact restrictions, the child's interests must come before all other considerations (see *Jovanovic*, cited above, § 77, and *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX).

205. At the same time, it should be noted that regard for 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. 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 (*K. and T. v. Finland*, cited above, § 178).

206. In instances where the respective interests of a child and those of the parents come into conflict, Article 8 requires that the domestic authorities should strike a fair balance between those interests and that, in the balancing process, particular importance should be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parents (see, for instance, *Sommerfeld v. Germany* [GC], no. 31871/96, § 64, ECHR 2003-VIII (extracts)), and the references therein).

207. Generally, the best interests of the child dictate, on the one hand, that the child's ties with its family must be maintained, except in cases where the family has proved particularly unfit, since severing those ties means cutting a child off from its roots. It follows that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family (see *Gnahoré*, cited above, § 59). On the other hand, it is clearly also in the child's interest to ensure its development in a sound environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see, among many other authorities, *Neulinger and Shuruk*, cited above, § 136; *Elsholz v. Germany* [GC], no. 25735/94, § 50, ECHR 2000-VIII; and *Maršálek v. the Czech Republic*, no. 8153/04, § 71, 4 April 2006). An important international consensus exists to the effect that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child (see Article 9 § 1 of the United Nations Convention on the Rights of the Child, recited in paragraph 134 above). In addition, it is incumbent on the Contracting States to put in place practical and effective procedural safeguards for the protection of the best interests of the child and to ensure their implementation (see the United Nations Committee on the Rights of the Child General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, paragraphs 85 and 87, quoted at paragraph 136 above).

208. Another guiding principle is that a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child (see, for instance, *Olsson v. Sweden* (no. 1), 24 March 1988, § 81, Series A no. 130). The above-mentioned 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 (see, for example, *K. and T. v. Finland*, cited above, § 178). In this type of case the adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between the child and the parent with whom it does not live (see, *inter alia*, *S.H. v. Italy*, no. 52557/14, § 42, 13 October 2015). Thus, where the authorities are responsible for a situation of family breakdown because they have failed in

their above-mentioned obligation, they may not base a decision to authorise adoption on the grounds of the absence of bonds between the parents and the child (see *Pontes v. Portugal*, no. 19554/09, §§ 92 and 99, 10 April 2012). Furthermore, the ties between members of a family and the prospects of their successful reunification will perforce be weakened if impediments are placed in the way of their having easy and regular access to each other (see *Scozzari and Giunta*, cited above, § 174; and *Olsson* (No. 1), cited above, § 81). However, when a considerable period of time has passed since the child was originally taken into public care, the interest of a child not to have his or her *de facto* family situation changed again may override the interests of the parents to have their family reunited (see *K. and T. v. Finland*, cited above, § 155).

209. As regards replacing a foster home arrangement with a more far-reaching measure such as deprivation of parental responsibilities and authorisation of adoption, with the consequence that the applicants' legal ties with the child are definitively severed, it is to be reiterated that "such measures should only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests" (see, for example, *Johansen*, cited above, § 78, and *Aune*, cited above, § 66). It is in the very nature of adoption that no real prospects for rehabilitation or family reunification exist and that it is instead in the child's best interests that he or she be placed permanently in a new family (see *R. and H. v. the United Kingdom*, no. 35348/06, § 88, 31 May 2011).

210. In determining whether the reasons for the impugned measures were relevant and sufficient for the purpose of paragraph 2 of Article 8 of the Convention, the Court will have regard to the fact that perceptions as to the appropriateness of intervention by public authorities in the care of children vary from one Contracting State to another, depending on such factors as traditions relating to the role of the family and to State intervention in family affairs and the availability of resources for public measures in this particular area. However, consideration of what is in the best interests of the child is in every case of crucial importance. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned, often at the very stage when care measures are being envisaged or immediately after their implementation. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for the regulation of the care of children and the rights of parents whose children have been taken into public care, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see, for example, *K. and T. v. Finland*, cited above, § 154; and *Johansen*, cited above, § 64).

211. The margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake, such as, on the one hand, the importance of protecting a child in a situation which is assessed as seriously threatening his or her health or development and, on the other hand, the aim to reunite the family as soon as circumstances permit. The Court thus recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care (see, for example, *K. and T. v. Finland*, cited above, § 155; and *Johansen*, cited above, § 64). However, this margin is not unfettered. For example, the Court has in certain instances attached weight to whether the authorities, before taking a child into public care, had first attempted to take less drastic measures, such as supportive or preventive ones, and whether these had proved unsuccessful (see, for example, *Olsson* (no. 1), cited above, §§ 72-74; *R.M.S. v. Spain*, no. 28775/12, § 86, 18 June 2013, § 86; and *Kutzner v. Germany*, no. 46544/99, § 75, ECHR 2002-I). A stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by the authorities on parental rights of access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed (see *K. and T. v. Finland*, cited above, *ibid.*, and *Johansen*, cited above, *ibid.*).

212. In cases relating to public-care measures, the Court will further have regard to the authorities' decision-making process, to determine whether it has been conducted such as to secure that the views and interests of the natural parents are made known to and duly taken into account by the authorities and that they are able to exercise in due time any remedies available to them (see, for instance, *W. v. the United Kingdom*, 8 July 1987, § 63, Series A no. 121, and *Elsholz*, cited above, § 52). What has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with

the requisite protection of their interests and have been able fully to present their case (see, for example, *W. v. the United Kingdom*, cited above, § 64; *T.P. and K.M. v. the United Kingdom [GC]*, no. 28945/95, § 72, ECHR 2001-V (extracts); *Neulinger and Shuruk*, cited above, § 139; and *Y.C. v. the United Kingdom*, no. 4547/10, § 138, 13 March 2012). From the foregoing considerations it follows that natural parents' exercise of judicial remedies with a view to obtaining family reunification with their child cannot as such be held against them. In addition, in cases of this kind there is always the danger that any procedural delay will result in the *de facto* determination of the issue submitted to the court before it has held its hearing. Equally, effective respect for family life requires that future relations between parent and child be determined solely in the light of all relevant considerations and not by the mere effluxion of time (see *W. v. the United Kingdom*., cited above, § 65).

213. Whether the decision-making process sufficiently protected a parent's interests depends on the particular circumstances of each case (see, for example, *Sommerfeld*, cited above, § 68). With a view to its examination of the present instance, the Court observes that in the aforementioned case it was called upon to examine the issue of ordering a psychological report on the possibilities of establishing contact between the child and the applicant. It observed that as a general rule it was for the national courts to assess the evidence before them, including the means to ascertain the relevant facts (see *Vidal v. Belgium*, 22 April 1992, § 33, Series A no. 235-B). It would be going too far to say that domestic courts are always required to involve a psychological expert on the issue of awarding contact to a parent not having custody, but this issue depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned (see *Sommerfeld*, cited above, § 71).

[...]

220. The Court is fully conscious of the primordial interest of the child in the decision-making process. However, the process leading to the withdrawal of parental responsibilities and consent to adoption shows that the domestic authorities did not attempt to perform a genuine balancing exercise between the interests of the child and his biological family (see paragraphs 207 and 208 above), but focused on the child's interests instead of trying to combine both sets of interests, and moreover did not seriously contemplate any possibility of the child's reunification with his biological family. In this context, the Court, in particular, is not persuaded that the competent domestic authorities duly considered the potential significance of the fact that at the time when the first applicant applied to have the care order lifted or, in the alternative, to be granted extended contact rights she was going through substantial changes in her life: in the same summer and autumn as the impugned proceedings commenced she married and had a second child. In this regard, as the City Court's decision was largely premised on an assessment of the first applicant's lack of capacity to provide care, the factual basis on which it relied in making that assessment appears to disclose several shortcomings in the decision-making process.

221. The Court notes that the decisions under consideration had been taken in a context where there had only been very limited contact between the first applicant and X. The Board, in its decision of 2 March 2009, and the High Court, in its judgment of 22 April 2010 (overturning the City Court's judgment of 19 August 2009), had relied on the consideration that it was most likely that the foster care arrangement would be a long-term one, and that X would grow up in the foster home (see paragraphs 31, 43 and 75 above). The High Court stated that contact sessions could thus serve as a means of maintaining contact between the mother and son, so that he would be familiar with his roots. The purpose was not to establish a relationship with a view to the child's future return to the care of his biological mother (*ibid.*). As regards the implementation of the contact arrangements, the Court also notes that these had not been particularly conducive to letting the first applicant freely bond with X, for example with regard to where the sessions had been held and who had been present. Although the contact sessions had often not worked well, it appears that little was done to try out alternative arrangements for implementing contact. In short, the Court considers that the sparse contact that had taken place between the applicants since X was taken into foster care had provided limited evidence from which to draw clear conclusions with respect to the first applicant's caring skills.

222. Furthermore, the Court regards it as significant that there were no updated expert reports since those that had been ordered during the previous proceedings between 2009 and 2010 relating to the taking into public care. Those were the report by psychologist B.S. and family therapist E.W.A, ordered by the child welfare

services and concerning X's reactions to the contact sessions in the beginning of September 2009 (see paragraph 58 above), and the report by psychologist M.S., who had been appointed by the High Court on 15 November 2009 (see paragraph 61 above). The former dated back to 20 February 2010 and the latter to 3 March 2010 (see paragraphs 62 and 63 above respectively). When the City Court delivered its judgment on 22 February 2012, both reports were two years old. Indeed, alongside other witnesses such as family members, psychologists B.S. and M.S. also gave evidence during the hearing held by the City Court in 2012 (see paragraph 98 above). However, the two psychologists had not carried out any examinations since those prior to their reports dating back to early 2010 and only one of the reports, the one by psychologist M.S., had been based on observations of the interplay between the applicants, and then only on two occasions (see paragraph 63 above).

223. The Court does not overlook the fact that the child welfare services had sought information from the first applicant concerning her new family that she apparently refused to provide (see paragraphs 85 and 115 above). At the same time it notes that counsel for the first applicant had expressly requested that a new expert assessment be made but that the High Court dismissed the request (see paragraphs 114 and 118 above). Nor had the City Court ordered a new expert examination *proprio motu* in the course of the proceedings before it. While it would generally be for the domestic authorities to decide whether expert reports were needed (see, for example, *Sommerfeld*, cited above, § 71), the Court considers that the lack of a fresh expert examination substantially limited the factual assessment of the first applicant's new situation and her caring skills at the material time. In those circumstances, contrary to what the City Court seems to suggest, it could not reasonably be held against her that she had failed to appreciate that repeated legal proceedings could be harmful for the child in the long run (see paragraphs 104 and 218 above).

224. In addition, from the City Court's reasoning it transpires that in assessing the first applicant's caring skills it had paid particular regard to X's special care needs, seen in the light of his vulnerability. However, whereas X's vulnerability had formed a central reason for the initial decision to place him in foster care (see, for instance, paragraphs 31 and 42 above), the City Court's judgment contained no information on how that vulnerability could have continued despite the fact that he had lived in foster care since the age of three weeks. It also contained barely any analysis of the nature of his vulnerability, beyond a brief description by experts that X was easily stressed and needed a lot of quiet, security and support, and stating his resistance to and resignation toward having contact with the first applicant, notably when faced with her emotional outbursts (see paragraphs 101 to 102 above). In the view of the Court, having regard to the seriousness of the interests at stake, it was incumbent on the competent authorities to assess X's vulnerability in more detail in the proceedings under review.

225. Against this background, taking particular account of the limited evidence that could be drawn from the contact sessions that had been implemented (see paragraph 221 above), in conjunction with the failure – notwithstanding the first applicant's new family situation – to order a fresh expert examination into her capacity to provide proper care and the central importance of this factor in the City Court's assessment (see paragraphs 222-3 above) and also of the lack of reasoning with regard to X's continued vulnerability (see paragraph 224 above), the Court does not consider that the decision-making process leading to the impugned decision of 22 February 2012 was conducted so as to ensure that all views and interests of the applicants were duly taken into account. It is thus not satisfied that the said procedure was accompanied by safeguards that were commensurate with the gravity of the interference and the seriousness of the interests at stake.

[Neulinger and Shuruk v. Switzerland](#), No. 41615/07, 6 July 2010, para. 134-136

134. In this area the decisive issue is whether a fair balance between the competing interests at stake – those of the child, of the two parents, and of public order – has been struck, within the margin of appreciation afforded to States in such matters (see *Maumousseau and Washington*, cited above, § 62), bearing in mind, however, that the child's best interests must be the primary consideration (see, to that effect, *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX), as is indeed apparent from the Preamble to the Hague Convention, which provides that "the interests of children are of paramount importance in matters relating to their custody". The child's best interests may, depending on their nature and seriousness, override those of the parents (see *Sahin v. Germany* [GC], no. 30943/96, § 66, ECHR 2003-VIII). The parents' interests, especially in

having regular contact with their child, nevertheless remain a factor when balancing the various interests at stake (ibid.; see also Haase v. Germany, no. 11057/02, § 89, ECHR 2004-III, and Kutzner v. Germany, no. 46544/99, § 58, ECHR 2002-I, and the numerous authorities cited therein).

135. *The Court notes that there is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (see the numerous references in paragraphs 49-56 above, and in particular Article 24 § 2 of the European Union’s Charter of Fundamental Rights). As indicated, for example, in the Charter, “[e]very child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests”.*

136. *The child’s interest comprises two limbs. On the one hand, it dictates that the child’s ties with its family must be maintained, except in cases where the family has proved particularly unfit. It follows that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to “rebuild” the family (see Gnahoré, cited above, § 59). On the other hand, it is clearly also in the child’s interest to ensure its development in a sound environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child’s health and development (see, among many other authorities, Elsholz v. Germany [GC], no. 25735/94, § 50, ECHR 2000-VIII, and Maršálek v. the Czech Republic, no. 8153/04, § 71, 4 April 2006).*

[Gnahoré v. France](#), No. 40031/98, 19 September 2000, para. 59.

59. *The Court emphasises that in cases of this type the child’s interest must come before all other considerations. However, when properly analysed, that interest is seen to comprise two limbs.*

On the one hand, the interest clearly entails ensuring that the child develops in a sound environment and that under no circumstances can a parent be entitled under Article 8 to have measures taken that would harm the child’s health and development (see the Johansen judgment cited above, p. 1008, § 78, and E.P. v. Italy, no. 31127/96, § 62, 16 November 1999, unreported).

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

In the interest not only of the parent concerned, but also of the child, the ultimate aim of any “care order” must be to “reunit[e] the ... parent with his or her child” (see the following judgments: Olsson (no. 1) and Johansen, cited above, pp. 36-37, § 81, and pp. 1008-09, § 78, respectively; and E.P. v. Italy cited above, § 64). Indeed, that is the spirit of the provisions of the Civil Code (Articles 375 et seq.) governing the care order made in respect of the applicant’s son and the measures relating to the applicant’s right to contact: under Article 375-2 of the Civil Code and the case-law of the French courts a minor may be removed from his “present home” as part of an educative assistance measure only in exceptional circumstances.

[Jansen v. Norway](#), No. 2822/16, 6 September 2018, para. 88-93, 104.

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

89. *In accordance with the Court’s established case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, is proportionate to the legitimate aim pursued, regard*

being had to the fair balance which has to be struck between the relevant competing interests. In determining whether an interference was “necessary in a democratic society”, the Court takes into account that a margin of appreciation is left to the national authorities, whose decision remains subject to review by the Court for conformity with the requirements of the Convention (see *Paradiso and Campanelli*, cited above, § 180).

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

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

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

93. According to the Court’s case-law, measures that totally deprive an applicant of his or her family life with the child and are inconsistent with the aim of reuniting them should “only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child’s best interests” (see, for instance, *Johansen*, cited above, § 78, and *Aune v. Norway*, no. 52502/07, § 66, 28 October 2010). It should also be reiterated that in *Gnahoré v. France*, cited above, § 59; see also *Görgülü v. Germany*, no. 74969/01, § 48, 26 February 2004), the Court held:

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

[...]

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

[Ribić v. Croatia](#), No. 27148/12, 2 April 2015, para. 92.

92. Given that an effective respect for family life requires that future relations between parent and child be determined solely in the light of all the relevant considerations and not by the mere passage of time (see *Diamante and Pelliccioni v. San Marino*, no. 32250/08, § 177, 27 September 2011), the ineffective, and in particular delayed, conduct of custody and contact proceedings may give rise to a breach of positive obligations under Article 8 of the Convention (see *Eberhard and M. v. Slovenia*, no. 8673/05 and 9733/05, § 127, 1 December 2009, and *S.I. v. Slovenia*, no. 45082/05, § 69, 13 October 2011) as procedural delay may lead to a de facto determination of the matter at issue (see *H. v. the United Kingdom*, 8 July 1987, § 89, Series A no. 120). Therefore, in cases concerning a person's relationship with his or her child there is a duty to exercise exceptional diligence in view of the risk that the passage of time may result in a de facto determination of the matter. This duty, which is decisive in assessing whether a case has been heard within a reasonable time as required by Article 6 § 1 of the Convention, also forms part of the procedural requirements implicit in Article 8 (see, for example, *Süß v. Germany*, no. 40324/98, § 100, 10 November 2005, and *Strömblad v. Sweden*, no. 3684/07, § 80, 5 April 2012).

[Cincimino v. Italy](#), No. 68884/13, 28 April 2016, para. 73-75. [Text only available in French].

73. Il en résulte ainsi que, depuis 2006, il n'y a eu aucune nouvelle expertise psychiatrique indépendante au sujet de la requérante pour évaluer si elle continuait à souffrir d'un trouble de la personnalité et, dans l'affirmative, s'il existait encore, du point de vues des intérêts de l'enfant, des raisons pertinentes et suffisantes pour des mesures ne permettant aucun contact entre la requérante et son enfant âgée désormais de douze ans. Les juridictions se sont limitées à répéter les considérations déjà faites dans les décisions précédentes, alors que des indications avaient été données – certes par des experts nommés par la requérante – que sa situation s'était entre-temps améliorée.

74. Eu égard à ce qui précède, et en particulier à l'absence d'une expertise récente et indépendante sur la requérante, force est de conclure que le processus décisionnel n'a pas satisfait aux exigences procédurales inhérentes à l'article 8 de la Convention (voir paragraphe 64 ci-dessus).

75. La Cour conclut en conséquence que l'État a méconnu à l'égard de la requérante les obligations positives mises à sa charge par l'article 8 de la Convention. Partant, il y a eu violation de cette disposition.

[Strumia v. Italy](#), No. 53377/19, 23 June 2016, para. 122-125. [Text only available in French].

122. En effet, les autorités n'ont pas fait preuve de la diligence qui s'imposait en l'espèce et sont restées en deçà de ce qu'on pouvait raisonnablement attendre d'elles. En particulier, les juridictions internes n'ont pas pris les mesures appropriées pour créer les conditions nécessaires à la pleine réalisation du droit de visite du père de l'enfant (*Bondavalli*, précité § 81, *Macready c. République tchèque*, nos 4824/06 et 15512/08, § 66, 22 avril 2010, et *Piazzì*, précité, § 61). Elles n'ont pas pris, dès le début de la séparation quand l'enfant avait seulement trois ans et avait une attitude positive vis-à-vis du requérant, des mesures utiles visant à l'instauration de contacts effectifs et elles ont ensuite toléré pendant environ huit ans que la mère, par son comportement, empêchât l'établissement d'une véritable relation entre le requérant et l'enfant. La Cour relève que le déroulement de la procédure devant le tribunal fait plutôt apparaître une série de mesures automatiques et stéréotypées, telles que des demandes successives de renseignements et une délégation du suivi de la famille aux services sociaux assortie de l'obligation pour ceux-ci de faire respecter le droit de visite du requérant (*Lombardo*, précité § 92, et *Piazzì*, précité, § 61). Ainsi, la Cour estime-t-elle que les autorités ont laissé se consolider une situation de fait installée au mépris des décisions judiciaires.

123. Au final, si les tribunaux ont été inspirés dans leurs démarches par l'intérêt de la mineure dûment établi (*Zavřel*, précité, § 53), l'objectif poursuivi par eux n'a pas été atteint : huit ans après la séparation de ses parents, l'enfant n'a aucune relation avec son père et la seule solution envisageable consisterait en son placement en institut.

124. Eu égard à ce qui précède et nonobstant la marge d'appréciation de l'État défendeur en la matière, la Cour considère que les autorités nationales n'ont pas déployé les efforts adéquats et suffisants pour faire respecter le droit de visite du requérant et qu'elles ont méconnu le droit de l'intéressé au respect de sa vie familiale.

125. Partant, il y a eu violation de l'article 8 de la Convention.

[B.B. and F.B. v. Germany](#), No. 18734/09 and 9424/11, 14 March 2013, para. 47.

47. In considering the reasons adduced to justify the measures, and in assessing the decision-making process, the Court will give due account to the fact that the national authorities had the benefit of direct contact with all of the persons concerned. It is not the Court's task to substitute itself for the domestic authorities in the exercise of their responsibilities regarding custody issues (compare, among many other authorities, *Haase v. Germany*, no. 11057/02, § 89, ECHR 2004-III). The Court reiterates that the authorities enjoy a wide margin of appreciation when assessing the necessity of taking a child into care. A stricter scrutiny is called for, however, in respect of any further limitations, such as restrictions placed by those authorities on parental rights of access (see, for example, *Elsholz v. Germany [GC]*, no. 25735/94, § 64, ECHR 2000-VIII and *A.D. and O.D. v. the United Kingdom*, no. 28680/06, § 83, 16 March 2010).

[Johansen v. Norway](#), No. 17383/90, 7 august 1996, para. 64.

64. In determining whether the impugned measures were "necessary in a democratic society", the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify them were relevant and sufficient for the purposes of paragraph 2 of Article 8 (art. 8-2) (see, *inter alia*, the *Olsson v. Sweden* (no. 1) judgment of 24 March 1988, Series A no. 130, p. 32, para. 68).

In so doing, the Court will have regard to the fact that perceptions as to the appropriateness of intervention by public authorities in the care of children vary from one Contracting State to another, depending on such factors as traditions relating to the role of the family and to State intervention in family affairs and the availability of resources for public measures in this particular area. However, consideration of what is in the best interest of the child is in any event of crucial importance. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned (see the *Olsson v. Sweden* (no. 2) judgment of 27 November 1992, Series A no. 250, pp. 35-36, para. 90), often at the very stage when care measures are being envisaged or immediately after their implementation. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for the regulation of the public care of children and the rights of parents whose children have been taken into care, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation (see, for instance, the *Hokkanen v. Finland* judgment of 23 September 1994, Series A no. 299-A, p. 20, para. 55).

The margin of appreciation so to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake (see the *Sunday Times v. the United Kingdom* (no. 1) judgment of 26 April 1979, Series A no. 30, pp. 35-37, para. 59). Thus, the Court recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care. However, a stricter scrutiny is called for both of any further limitations, such as restrictions placed by those authorities on parental rights and access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed.

It is against this background that the Court will examine whether the measures constituting the interferences with the applicant's exercise of her right to family life were "necessary".

[Wunderlich v. Germany](#), No. 18925/15, 10 January 2019, para. 47.

47. In considering the reasons adduced to justify the measures in question the Court will give due account to the margin of appreciation to be accorded to the competent national authorities, which had the benefit of direct contact with all of the persons concerned, often at the very stage when care measures are being envisaged or immediately after their implementation (see *Kutzner v. Germany*, no. 46544/99, § 66, ECHR 2002-I). The margin of appreciation will vary in the light of the nature of the issues and the seriousness of the interests at stake, such as, on the one hand, the importance of protecting a child in a situation which is assessed as seriously threatening his or her health or development and, on the other hand, the aim to reunite the family as soon as circumstances permit (*K. and T. v. Finland [GC]*, no. 25702/94, § 155, ECHR 2001-VII; *Mohamed Hasan v. Norway*, no. 27496/15, § 145, 26 April 2018). The Court reiterates that the authorities enjoy a wide margin of appreciation when assessing the necessity of taking a child into care (see *K. and T. v. Finland*, cited above, § 155). In addition, the Court will have regard to the fact that perceptions as to the appropriateness of intervention by public authorities in the care of children vary from one Contracting State to another, depending on such factors as traditions relating to the role of the family and to State intervention in family affairs and the availability of resources for public measures in this particular area. However, consideration of what is in the best interest of the child is in any event of crucial importance (see *Kutzner*, cited above, § 66).

[A.D. and O.D. v. United Kingdom](#), No. 28680/06, 16 March 2010, para. 83.

83. In considering the reasons adduced to justify the measures, and in assessing the decision-making process, the Court will give due account to the fact that the national authorities had the benefit of direct contact with all of the persons concerned. It is not the Court's task to substitute itself for the domestic authorities in the exercise of their responsibilities regarding custody and access issues. The Court reiterates that the authorities enjoy a wide margin of appreciation when assessing the necessity of taking a child into care. A stricter scrutiny is called for, however, in respect of any further limitations, such as restrictions placed by those authorities on parental rights of access (see, for example, *T.P. and K.M. v. the United Kingdom [GC]*, no. 28945/95, §§ 71 - 72, ECHR 2001-V (extracts)).

[Zelikha Magomadova v. Russia](#), No. 58724/14, 8 October 2019, para. 112.

112. In the light of the foregoing, the Court rejects the Government's argument that, in the absence of any objective obstacles, the applicant failed to have contact with her children and support them financially (see paragraph 93 above). The unreasonableness of those court findings is so striking and palpable on the face of it that they can only be regarded as grossly arbitrary. By relying on those findings as grounds for depriving the applicant of her parental authority, the courts arbitrarily applied the relevant provisions of national law. In this connection, the Court notes the ruling of 27 May 1998, where the Supreme Court of Russia stated that only in the event of proven guilty conduct might parents be deprived of their parental authority on the grounds established in Article 69 of the Russian Family Code; that parents who failed to fulfil their parental obligations for reasons beyond their control should not be deprived of their parental authority; and that even where a parent's guilty conduct was established, deprivation of parental authority should not be automatic (see paragraph 75 above).

[S.S. v. Slovenia](#), No. 40938/16, 30 October 2018, para. 85-87, 96-97 and 103-104.

85. The Court further reiterates the guiding principle whereby a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child (see, in particular, *Olsson v. Sweden* (no. 1), 24 March 1988, § 81, Series A no. 130). 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 (see *K. and T. v. Finland*, cited above, § 178).

86. While family reunification might not always be possible, in cases where the authorities have decided to replace the foster home arrangement with a more far-reaching type of measure, namely deprivation of parental responsibilities and authorisation of adoption, the Court has had regard to the principle that “such measures should only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child’s best interests”(see, among others, *Aune v. Norway*, no. 52502/07, § 66, 28 October 2010). However, Article 8 does not require that domestic authorities make endless attempts at family reunification; it only requires that they take all the necessary steps that can reasonably be demanded to facilitate the reunion of the child and his or her parents. Equally, when a considerable period of time has passed since a child was originally taken into public care, the interest of a child not to have his or her *de facto* family situation changed again may override the interests of the parents to have their family reunited (see *R. and H. v. the United Kingdom*, no. 35348/06, § 88, 31 May 2011, and *K. and T. v. Finland*, cited above, § 155). Thus, in the field of adoption, the Court had already accepted that it may be in the child’s interest to promote the process of establishing bonds with his or her foster parents (see *S.H. v. Italy*, cited above, § 39)

87. Lastly, as to the decision-making process, in similar cases the Court has relied on the following principles, summarised in *Y.C. v. the United Kingdom* (no. 4547/10, §§ 138 -139, 13 March 2012):

“138. As to the decision-making process, what has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests and have been able fully to present their case (see *Neulinger and Shuruk [v. Switzerland [GC]]*, § 139, [no. 41615/07, ECHR 2010], and *R. and H.*, cited above, § 75). Thus it is incumbent upon the Court to ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature, and made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what would be the best solution for the child (see, *mutatis mutandis*, *Neulinger and Shuruk*, cited above, § 139). In practice, there is likely to be a degree of overlap in this respect with the need for relevant and sufficient reasons to justify a measure in respect of the care of a child.

139. The need to involve the parents fully in the decision-making process is all the greater where the proceedings may culminate in a child being taken from his biological parents and placed for adoption (*R. and H.*, cited above, § 76).”

[...]

96. The Court reiterates at the outset that the deprivation of parental responsibilities can be justified only in exceptional circumstances. It observes in this connection that the decisions taken by the courts in this field are often irreversible, particularly in a case such as the present one, where the child was put up for adoption. This is accordingly a domain in which there is an even greater call than usual for protection against arbitrary interferences (see *X v. Croatia*, no. 11223/04, § 47, 17 July 2008).

97. Bearing the above in mind, the Court observes that in the present case the domestic courts were called upon to make a difficult assessment and balancing of the applicant’s rights and those of E. Finding no realistic possibility of the applicant resuming care of E., and taking into account the negative impact that the contact sessions had on E. and the lack of an emotional connection between them, the domestic courts considered it in E.’s best interests to withdraw the applicant’s parental rights (see paragraphs 43, 45 and 48 above). Those decisions were based on, *inter alia*, the reports of the court-appointed experts who had examined the applicant and established that she was not in a position to take care of E. In particular, the expert in psychiatry noted that, despite treatment, the applicant would not be able to assume care of E. (see paragraph 41 above). The expert psychologist found that she had diminished empathy, that her understanding of the child’s needs was limited, that the contact was burdensome for E., and that there was no emotional connection between the applicant and E. (see paragraph 42 above). Having regard to the above and the information in the case file, including the *Cerknica Centre*’s reports and records highlighting the difficulties encountered in trying to assist the applicant and the lack of any significant progress made in establishing ties between the applicant and E. (see paragraph 27 above), the Court does not consider unreasonable the domestic courts’ conclusion that the withdrawal of the applicant’s parental rights was in E.’s best interests.

[...]

103. *Against the above background, the Court is satisfied that there were such exceptional circumstances in the present case as to justify the withdrawal of the applicant's parental rights, and that those measures were motivated by an overriding requirement pertaining to E.'s best interests (see the case-law quoted in paragraph 86 above).*

104. *Having regard to the positive steps taken to assist the applicant and to the relevant and sufficient reasons adduced in support of the decision to deprive the applicant of her parental rights, the Court considers that there has been no violation of Article 8 of the Convention in the present case.*

[Aune v. Norway](#), No. 52502/07, 28 October 2010, para. 66.

66. *The only question that the Court may entertain in the present case is whether it was "necessary" to replace the foster home arrangement with a more far-reaching type of measure, namely deprivation of parental responsibilities and authorisation of adoption, with the consequence that the applicant's legal ties with A would be broken. In examining this question the Court will have regard to its case-law, namely that "such measures should only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests" (see Johansen v. Norway, 7 August 1996, § 78, Reports of Judgments and Decisions 1996 III). It should also be reiterated that in Gnahoré v. France, no. 40031/98, § 59, ECHR 2000 IX; see also Görgülü v. Germany, no. 74969/01, § 48, 26 February 2004), the Court held:*

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

[R.M.S. v. Spain](#), No. 28775/12, 18 June 2013, para. 92. [Text only available in French].

92. *Ainsi, le temps écoulé, conséquence de l'inertie de l'administration, et la propre inertie des juridictions internes, qui n'ont pas estimé déraisonnables les motifs donnés par l'administration pour priver une mère de sa fille sur la seule base de motifs économiques – la santé mentale de la requérante, initialement invoquée, n'ayant fait l'objet d'aucune expertise –, ont contribué de façon décisive à l'absence de toute possibilité de regroupement familial entre la requérante et sa fille. La requérante et sa fille se sont vues pour la dernière fois le 27 septembre 2005 et, depuis lors, la requérante n'a pas cessé de la réclamer, tant devant les organes compétents de l'administration que devant les juridictions internes.*

[Akinribosun v. Italy](#), No. 9056/14, 16 July 2015, para. 83-84. [Text only available in French].

83. *En l'espèce, la Cour est d'avis que la nécessité, qui était primordiale, de préserver autant que possible le lien entre le requérant et sa fille n'a pas été dûment prise en considération – sachant que l'intéressé se trouvait par ailleurs en situation de vulnérabilité, compte tenu de ce qu'il était étranger et venait de sortir de prison après deux ans de détention injuste, puisqu'il a été acquitté.*

La Cour note que la décision de rompre le lien familial n'ait été précédée d'une évaluation sérieuse et attentive de la capacité du requérant à exercer son rôle de parent, et notamment d'aucune expertise psychologique, et qu'aucune tentative de sauvegarder le lien n'ait été envisagée. Les autorités n'ont pas déployé des efforts adéquats pour préserver le lien familial entre le requérant et sa fille et en favoriser le développement. Les autorités judiciaires se sont bornées à prendre en considération l'existence de certaines difficultés, alors que celles-ci auraient pu, selon toute vraisemblance, être surmontées au moyen d'une assistance sociale ciblée. Le requérant ne s'est vu offrir aucune chance de renouer des liens avec sa fille : en effet aucun expert n'a été mandaté pour évaluer ses compétences ou son profil psychologique. De plus, une seule rencontre a été

autorisée avec l'enfant. Aucun parcours de rapprochement ou de thérapie familiale n'a été envisagé. Au demeurant, aucune explication convaincante pouvant justifier la suppression du lien de filiation paternelle entre le requérant et sa fille n'a été fournie par le Gouvernement.

84. Eu égard à ces considérations et nonobstant la marge d'appréciation de l'État défendeur en la matière, la Cour conclut que les autorités italiennes, en envisageant que la solution d'une rupture du lien familial, n'ont pas déployé des efforts adéquats et suffisants pour faire respecter le droit du requérant à vivre avec son enfant, élément de son droit au respect de sa vie familiale, garanti par l'article 8. Il y a donc eu violation de cette disposition.

[K. and T. v. Finland](#), No. 25702/94, 12 July 2001, para. 170, 174, 178-179, and 194.

170. Accordingly, the Court finds that there has been a violation of Article 8 of the Convention in respect of the emergency care order concerning J., and no violation of Article 8 in respect of the emergency care order concerning M.

[...]

174. In the light of the foregoing, the Court is satisfied that the taking of the children into public care on 15 July 1993 was based on reasons which were not only relevant but also sufficient for the purposes of paragraph 2 of Article 8 and that the decision-making process satisfied the requirements of that provision. Accordingly, the Court finds that in respect of neither child was there a violation of Article 8 of the Convention as a result of the decision to make the so-called normal care orders.

[...]

178. The Grand Chamber, like the Chamber, would first recall the guiding principle whereby a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child (see, in particular, *Olsson* (no. 1), cited above, pp. 36-37, § 81). 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.

179. In the instant case, the Court notes that enquiries were made in order to ascertain whether the applicants would be able to bond with the children (see paragraph 67 above). They did not, however, amount to a serious or sustained effort directed towards facilitating family reunification such as could reasonably be expected for the purposes of Article 8 § 2 – especially since they constituted the sole effort on the authorities' part to that effect in the seven years during which the children have been in care. The minimum to be expected of the authorities is to examine the situation anew from time to time to see whether there has been any improvement in the family's situation. The possibilities of reunification will be progressively diminished and eventually destroyed if the biological parents and the children are not allowed to meet each other at all, or only so rarely that no natural bonding between them is likely to occur. The restrictions and prohibitions imposed on the applicants' access to their children, far from preparing a possible reunification of the family, rather contributed to hindering it. What is striking in the present case is the exceptionally firm negative attitude of the authorities.

Consequently, the Grand Chamber agrees with the Chamber that there has been a violation of Article 8 of the Convention as a result of the authorities' failure to take sufficient steps towards a possible reunification of the applicants' family regardless of any evidence of a positive improvement in the applicants' situation.

[...]

194. Like the Chamber, the Grand Chamber considers that, in so far as the complaint concerning the access restrictions is covered by the finding of a breach of Article 8 as a result of the failure to take sufficient steps for the reunification of the family, it is not necessary to examine the impugned measures as a possible separate source of violation. As regards the present situation, including the period after the delivery of the above-mentioned Chamber judgment, the Grand Chamber likewise arrives at the same conclusion as the Chamber. It

observes that, whilst national authorities must do their utmost to facilitate reunion of the family, any obligation to apply coercion in this area must be limited since the best interests of the child must be taken into account. Where contacts with the parents appear to threaten those interests, it is for the national authorities to strike a fair balance between them and those of the parents (see, *inter alia*, *Hokkanen*, cited above, p. 22, § 58). Having regard to the situation of the children in this later period, it cannot be found that the assessment of the Finnish child welfare authorities fell foul of Article 8 § 2. In that respect, the Court finds no violation of Article 8 of the Convention.

[Haddad v. Spain](#), No. 16572/17, 18 June 2019, para. 54, 57-74. [Text only available in French].

54. Comme la Cour l'a affirmé à de nombreuses reprises, l'éclatement d'une famille constitue en effet une mesure très grave qui doit reposer sur des considérations inspirées par l'intérêt de l'enfant et avoir assez de poids et de solidité (*Scozzari et Giunta c. Italie* [GC], nos 39221/98 et 41963/98, § 148, CEDH 2000-VIII). À cet égard et s'agissant de l'obligation pour l'État de prendre des mesures positives, la Cour a affirmé à maintes reprises que l'article 8 implique le droit d'un parent à des mesures propres à le réunir avec son enfant et l'obligation pour les autorités nationales de les prendre (voir, par exemple, *Eriksson c. Suède*, 22 juin 1989, § 71, série A no 156, et *Olsson c. Suède* (no 2), 27 novembre 1992, § 90, série A no 250). Dans ce genre d'affaire, le caractère adéquat d'une mesure se juge à la rapidité de sa mise en œuvre, car le passage du temps peut avoir des conséquences irréversibles sur les relations entre l'enfant et le parent qui ne vit pas avec lui (*Maumousseau et Washington*, précité, § 83 ; *S.H. c. Italie*, no 52557/14, § 42, 13 octobre 2015). La décision de prise en charge d'un enfant doit en principe être considérée comme une mesure temporaire, à suspendre dès que les circonstances s'y prêtent, et tout acte d'exécution doit concorder avec un but ultime : unir à nouveau le parent par le sang et l'enfant (*K. et T. c. Finlande*, précité, § 178). Lorsqu'une période de temps considérable s'est écoulée depuis que l'enfant a été placé pour la première fois sous assistance, l'intérêt qu'a l'enfant à ne pas voir sa situation familiale de facto changer de nouveau peut l'emporter sur l'intérêt des parents à la réunion de leur famille. Dès lors, la Cour reconnaît que les autorités jouissent d'une grande latitude pour apprécier la nécessité de prendre en charge un enfant, mais il faut exercer un contrôle plus rigoureux à la fois sur les restrictions supplémentaires, comme celles apportées par les autorités aux droits et aux visites des parents, et sur les garanties destinées à assurer la protection effective du droit des parents et enfants au respect de leur vie familiale (*K. et T. c. Finlande* [GC], précité, § 155). L'obligation positive de prendre des mesures afin de faciliter la réunion de la famille dès que cela sera vraiment possible s'impose aux autorités compétentes dès le début de la période de prise en charge et avec de plus en plus de force, mais doit toujours être mise en balance avec le devoir de considérer l'intérêt supérieur de l'enfant. Par ailleurs, les obligations positives ne se limitent pas à veiller à ce que l'enfant puisse rejoindre son parent ou avoir un contact avec lui, mais elles englobent également l'ensemble des mesures préparatoires permettant de parvenir à ce résultat (voir, *mutatis mutandis*, *Kosmopoulou c. Grèce*, no 60457/00, § 45, 5 février 2004, et *Amanalachioai c. Roumanie*, no 4023/04, § 95, 26 mai 2009).

[...]

57. La Cour relève que, le 15 juin 2012, les trois enfants du requérant dont sa fille mineure, âgée à l'époque d'un an et demi, ont été placés dans un centre d'accueil à Madrid, à la demande de leur mère, et déclarés en situation légale d'abandon. À la suite du déménagement de leur mère, les enfants ont été placés dans des centres d'accueil de Murcie. Le requérant n'en a pas été informé (paragraphe 8 et 9 ci-dessus).

58. Dans une affaire comme celle de l'espèce, le juge se trouve en présence d'intérêts souvent difficilement conciliables, à savoir ceux de l'enfant et ceux de ses parents biologiques et notamment, dans la présente cause, ceux du père biologique et ceux de la famille d'accueil. Dans la recherche de l'équilibre entre ces différents intérêts, l'intérêt supérieur de l'enfant doit être une considération primordiale (*Moretti et Benedetti c. Italie*, no 16318/07, § 67, 27 avril 2010).

59. En l'espèce, la Cour observe que les autorités administratives ont motivé leurs décisions concluant à la nécessité de l'accueil familial préadoptif de la fille du requérant en se référant aux maltraitances physiques et émotionnelles graves que ce dernier aurait infligées à ses enfants, à l'instabilité émotionnelle et à l'intelligence

limitée de leur mère (paragraphes 14 et 21 ci-dessus) ainsi qu'à l'absence de contact du requérant et ses enfants entre le 28 juin 2012, date du placement de ces derniers dans des centres d'accueil, et le 19 novembre 2013, date du premier contact du requérant avec le service de protection des mineurs (paragraphe 21 ci-dessus) et à l'absence de lien d'attachement entre le requérant et sa fille (paragraphe 24 ci-dessus). La Cour relève qu'à aucun moment de cette procédure administrative l'acquiescement du requérant, le 27 septembre 2013, de toutes les charges retenues contre lui et l'annulation des mesures d'éloignement prises initialement à son encontre l'empêchant entre-temps de garder le contact avec ses enfants (paragraphe 20 ci-dessus) n'ont été pris en compte.

60. La Cour observe que la décision du juge de première instance de Murcie, datée du 11 février 2015 (paragraphe 25 ci-dessus) entérinant la décision de la direction générale des affaires sociales relative au placement préadoptif de la fille du requérant en famille d'accueil persistait à ne pas prendre en compte la nouvelle situation pénale du requérant depuis le 27 septembre 2013, date de son acquiescement. Elle note que le juge de première instance de Murcie ne se prononçait d'ailleurs pas sur les capacités éducatives et psychosociales du requérant pour récupérer la garde de sa fille mineure. La décision se bornait à prendre en compte les arguments déjà développés dans les rapports établis par l'administration.

61. La Cour observe que la question de savoir si le processus décisionnel a suffisamment protégé les intérêts d'un parent dépend des circonstances propres à chaque affaire (*W. c. Royaume-Uni*, 8 juillet 1987, § 64, série A no 121; *Elsholz c. Allemagne* [GC], no 25735/94, § 52, CEDH 2000-VIII). Pour ce faire, elle doit vérifier si les juridictions nationales se sont livrées à un examen approfondi de l'ensemble de la situation familiale et de toute une série d'éléments, d'ordre factuel, affectif, psychologique, matériel et médical notamment, et si elles ont procédé à une appréciation équilibrée et raisonnable des intérêts respectifs (voir, *mutatis mutandis*, *Neulinger et Shuruk c. Suisse* [GC], no 41615/07, § 139, CEDH 2010). La Cour relève à cet égard que, au cours de la procédure devant le juge de première instance et l'Audiencia provincial, le requérant a eu la possibilité de présenter les arguments en faveur de sa cause dans le cadre des procédures judiciaires où il était représenté par un avocat au moins à partir du 19 novembre 2013 (paragraphe 20 ci-dessus). La Cour ne décèle en conséquence aucun manquement formellement imputable aux juridictions internes à cet égard mais plutôt une inertie de ces dernières dans la prise en compte des conclusions des rapports élaborés par les différents organes de l'administration intervenus tout au long de l'examen de l'affaire.

62. La Cour rappelle que, dans les affaires touchant la vie familiale, la rupture du contact avec un enfant très jeune peut conduire à une altération croissante de sa relation avec son parent (voir, entre autres, *Pini et autres c. Roumanie*, nos 78028/01 et 78030/01, § 175, CEDH 2004-V (extraits), et *K.A.B. c. Espagne*, précité, § 103). Il en va ainsi dans la présente affaire. Les rapports des 28 février et 18 décembre 2014 (paragraphes 21 et 23 ci-dessus) ont démontré que la fille du requérant était bien intégrée dans sa famille d'accueil depuis le 24 septembre 2013 (paragraphe 17 ci-dessus). Le passage du temps a eu pour effet de rendre définitive une situation qui était censée être provisoire, compte tenu du très jeune âge de l'enfant lorsque la situation légale d'abandon a été constatée et que la mise sous tutelle est intervenue (paragraphe 8 ci-dessus).

63. La Cour rappelle qu'il ne lui appartient pas de substituer son appréciation à celle des autorités nationales compétentes quant aux mesures qui auraient dû être prises, car ces autorités sont en principe mieux placées pour procéder à une telle évaluation. Tout en reconnaissant qu'en l'espèce les juridictions internes se sont appliquées de bonne foi à préserver le bien-être de la mineure, la Cour constate l'existence de graves manques de diligence dans la procédure menée par les autorités responsables de la tutelle, du placement de l'enfant et de son éventuelle adoption (*K.A.B. c. Espagne*, précité, § 104) et, notamment, lors de la prise en compte des nouvelles circonstances entourant la procédure pénale entamée contre le requérant et de son acquiescement définitif pour les délits qui avaient justifié la mesure d'éloignement provisoire de ses enfants.

64. À cet égard et comme elle l'a déjà mentionné au paragraphe 54 ci-dessus, la Cour rappelle que l'article 8 de la Convention implique le droit pour un parent à des mesures propres à le réunir avec son enfant et l'obligation pour les autorités nationales de les prendre. Toutefois, l'obligation pour les autorités nationales de prendre des mesures à cet effet n'est pas absolue, car il arrive que la réunion d'un parent avec ses enfants ne puisse avoir lieu immédiatement et requière des préparatifs. La nature et l'étendue de ceux-ci dépendent des circonstances de chaque espèce, mais la compréhension et la coopération de l'ensemble des personnes

concernées en constituent toujours un facteur important. Si les autorités nationales doivent s'évertuer à faciliter pareille collaboration, une obligation pour elles de recourir à la coercition en la matière ne saurait être que limitée : il leur faut tenir compte des intérêts et des droits et libertés de ces mêmes personnes, et notamment des intérêts supérieurs de l'enfant et des droits que lui reconnaît l'article 8 de la Convention. Dans ce genre d'affaires, le caractère adéquat d'une mesure se juge à la rapidité de sa mise en œuvre (Maumousseau et Washington, précité, § 83, 6 décembre 2007, et Mincheva, précité, § 86).

65. Le point décisif en l'espèce consiste donc à savoir si les autorités nationales ont pris toutes les mesures nécessaires et adéquates que l'on pouvait raisonnablement exiger d'elles pour faciliter le retour de la fille du requérant dans les plus brefs délais auprès de son père, tel que celui-ci le réclamait, pour qu'ils puissent mener une vie familiale normale, avec les frères de la mineure, avant de la placer dans une famille adoptive.

66. Dans les circonstances de l'espèce, on peut certes comprendre que les trois enfants du requérant aient été placés sous tutelle de l'administration puisque c'était leur propre mère qui le demandait. Cela étant, cette décision aurait dû s'accompagner dans les meilleurs délais des mesures les plus appropriées permettant d'évaluer en profondeur la situation des enfants et leurs rapports avec leurs parents, au besoin avec le père et la mère séparément, le tout dans le respect du cadre légal en vigueur. Les enfants ont été séparés de leur père apparemment contre le gré de celui-ci, qui était sous le coup d'une procédure pénale pour violences conjugales à la suite d'une plainte déposée par leur mère. Bien qu'il ressorte du dossier qu'il n'a pas séjourné en prison, il ne faut pas perdre de vue que le requérant ne pouvait pas approcher ses enfants, et qu'il est donc resté éloigné et sans aucun contact avec ces derniers pendant toute la durée de la procédure pénale. Cette situation était particulièrement grave compte tenu de l'âge de sa fille, qui n'avait qu'un an et demi lors de son placement sous tutelle à Madrid. La Cour n'est guère convaincue par les raisons que l'administration et les juridictions internes ont estimé suffisantes pour justifier le placement en accueil préadoptif de la mineure. Elle observe qu'à aucun moment de la procédure administrative n'ont été pris en compte le très jeune âge de la fille du requérant au moment de la séparation de ce dernier et de son épouse, la relation affective préalable existant entre la mineure et ses géniteurs, le délai écoulé depuis leur séparation, ainsi que les conséquences qui en découlaient pour tous les trois ainsi que pour la relation de l'enfant avec ses frères.

67. Il faut toutefois garder à l'esprit la mention faite dans le rapport d'orientation du 20 juin 2013 aux maltraitances physiques du requérant envers ses enfants, ce qu'il conteste, et le déséquilibre psychique de l'épouse du requérant (Bertrand c. France (déc.), no 57376/00, 19 février 2002, et Couillard Maugery c. France, no 64796/01, § 261, 1er juillet 2004). Néanmoins, l'hypothèse des maltraitances physiques n'a pas été prouvée et ne figure que dans le rapport susmentionné (paragraphe 14 ci-dessus), le Gouvernement n'ayant pas donné d'autres indications à cet égard. Elle semble faire référence au contenu de la plainte pour violences conjugales déposée par l'épouse du requérant, charges dont il a été acquitté par la suite. Quant au déséquilibre psychique de l'épouse du requérant, cela ne suffit pas à démontrer une éventuelle influence négative du requérant mais plutôt le contraire, notamment après son acquittement. Preuve en est que l'intéressé s'est vu accorder la garde de ses deux fils et qu'il persiste dans sa volonté de récupérer également la garde de sa fille mineure. Les tribunaux n'ont pas constaté de déficits affectifs (voir, a contrario, Kutzner c. Allemagne, no 46544/99, § 68, CEDH 2002-I), question qu'ils ont manqué d'examiner chez le requérant, ni d'état de santé inquiétant des enfants. S'il est vrai que, dans certaines affaires déclarées irrecevables par la Cour, le placement des enfants avait pu être motivé par des conditions de vie insatisfaisantes ou des privations matérielles, cela n'avait toutefois jamais constitué le seul motif servant de base à la décision des tribunaux nationaux, en ce que d'autres éléments tels que l'état psychique des parents ou leur incapacité affective, éducative et pédagogique s'y ajoutaient (Rampogna et Murgia c. Italie (déc.), no 40753/98, 11 mai 1999, M.G. et M.T.A. c. Italie (déc.), no 17421/02, 28 juin 2005, et Wallová et Walla c. République tchèque, no 23848/04, §§ 72–74, 26 octobre 2006). Cela n'a pas été le cas dans la présente affaire, du moins en ce qui concerne le requérant. Ses capacités éducatives et affectives par rapport à sa fille mineure n'ont pas non plus été formellement mises en cause, et ses deux enfants également mineurs habitent maintenant de nouveau chez lui. La prise en charge de la fille du requérant a été ordonnée à la suite de la demande de sa mère à cause des difficultés bien précises qu'elle traversait à l'époque des faits, sans qu'il ait été tenu compte des demandes du requérant.

68. La Cour estime que les autorités administratives espagnoles auraient dû envisager d'autres mesures moins radicales que l'accueil familial préadoptif de la fille mineure du requérant et, en tout état de cause, prendre en

compte les demandes du père de l'intéressée à partir du moment où sa situation pénale avait été clarifiée. La Cour considère que le rôle des autorités de protection sociale est précisément d'aider les personnes en difficulté, en l'espèce notamment la mère des enfants, qui s'est vue contrainte de placer volontairement ses enfants compte tenu de sa situation familiale grave, de les guider dans leurs démarches et de les conseiller. Elle observe par ailleurs que tant le juge de première instance no 3 de Murcie dans son jugement du 11 février 2015 que l'Audiencia provincial dans son arrêt du 7 avril 2016 ont refusé de prendre en compte les arguments que le requérant entendait faire valoir pour s'opposer au placement de sa fille en famille d'accueil en vue de son adoption (paragraphe 26 ci-dessus) et se sont limités à confirmer les décisions adoptées par l'administration sur la base des arguments utilisés par cette dernière et mécaniquement reproduits tout au long des procédures ultérieures. La Cour estime en effet que les autorités administratives n'ont fait que reproduire successivement leurs décisions sans procéder à de nouvelles constatations ni apprécier, sur la base d'éléments tangibles, l'évolution des circonstances, ce qui montrait clairement une volonté de l'administration de placer l'enfant en accueil familial préadoptif.

69. La Cour rappelle sa jurisprudence citée au paragraphe 54 ci-dessus, selon laquelle l'article 8 de la Convention implique le droit d'un parent à des mesures propres à le réunir avec son enfant et l'obligation pour les autorités nationales de prendre ces mesures. Elle observe que, malgré l'opposition du requérant à l'accueil familial préadoptif de sa fille (paragraphe 22 et 26 ci-dessus), cette option a été retenue au seul motif de l'absence de contacts entre la mineure et son père depuis plusieurs années, alors que les rencontres entre eux avaient précisément été suspendues par décision du juge no 1 de Coslada saisi d'une plainte pour violences conjugales. Les autorités compétentes sont donc responsables de l'interruption des contacts entre le requérant et sa fille, du moins depuis l'acquiescement de l'intéressé, et elles ont failli à leur obligation positive de prendre des mesures afin de permettre à ce dernier de bénéficier d'un contact régulier avec la mineure (Pontes c. Portugal, no 19554/09, § 92, 10 avril 2012). La Cour estime qu'il faut normalement considérer la prise en charge d'un enfant comme une mesure temporaire, à suspendre dès que la situation s'y prête et que tout acte d'exécution doit concorder avec un but ultime : unir à nouveau le parent naturel et l'enfant (Johansen c. Norvège, 7 août 1996, § 78, Recueil 1996-III).

70. La Cour estime que la prise en considération de la vulnérabilité de l'épouse du requérant au moment du placement de sa fille en accueil institutionnel aurait pu jouer un rôle important pour comprendre la situation dans laquelle se trouvaient l'enfant et sa mère. De même, l'acquiescement définitif du requérant et la levée de l'interdiction de tout contact avec ses enfants, interdiction qui expliquait précisément l'absence reprochée desdits contacts, ne semble pas avoir retenu l'attention du juge. Celui-ci s'est limité à prendre en considération, dans son jugement du 11 février 2015, l'accord donné par l'organisme chargé de la protection des mineurs et par la famille d'accueil au placement de la mineure en accueil familial, malgré l'absence de consentement des parents biologiques. Les services de protection de l'enfance, les juridictions internes et le Gouvernement se sont en effet basés principalement sur des rapports élaborés par les différents organes administratifs intervenus tout au long de la procédure et, par conséquent également au cours de la période pendant laquelle le requérant ne pouvait pas démontrer son aptitude à être père puisqu'il se trouvait privé de l'autorité parentale et faisait l'objet d'une procédure pénale. Cette attitude de l'administration n'a toutefois pas changé suite à l'acquiescement définitif du requérant.

71. La Cour note en outre que le rapport d'orientation du 28 février 2014 du service de protection des mineurs concluait qu'il ne fallait pas autoriser le requérant à rendre visite à sa fille, car près de deux ans s'étaient écoulés depuis le placement de cette dernière pendant lesquels ils ne s'étaient jamais vus. Selon ce rapport, la mineure « s'était parfaitement adaptée lors de la procédure d'accueil préadoptif » (paragraphe 21 ci-dessus). Il est intéressant de souligner que, bien que le rapport note que les deux autres enfants montraient toujours « de la peur et un manque de confiance envers la figure paternelle », le requérant s'est rapidement vu rendre la garde de ses fils qui, eux, n'avaient pas fait l'objet d'une procédure de préadoption.

72. La Cour estime que la procédure aurait dû s'entourer des garanties appropriées permettant de protéger les droits du requérant et de prendre en compte ses intérêts. Ainsi, le temps écoulé, conséquence de l'inertie de l'administration, et l'inertie des juridictions internes, qui n'ont pas qualifié de déraisonnables les motifs donnés par l'administration pour continuer de priver un père de sa fille sur la seule base de l'absence de contacts,

interdits par ailleurs judiciairement, ont contribué de façon décisive à l'absence de toute possibilité de regroupement familial entre le requérant et sa fille.

73. Eu égard à ces considérations et nonobstant la marge d'appréciation de l'État défendeur en la matière, la Cour conclut que les autorités espagnoles n'ont pas déployé des efforts adéquats et suffisants pour faire respecter le droit du requérant à vivre avec son enfant en compagnie des frères de cette dernière, méconnaissant ainsi son droit au respect de sa vie privée et familiale garanti par l'article 8 de la Convention.

74. Partant, il y a eu violation de l'article 8.

[S.H. v. Italy](#), No. 52557/14, 13 October 2015, para. 58.

58. Having regard to the above considerations and notwithstanding the State's margin of appreciation in the relevant sphere, the Court concludes that the Italian authorities, by exclusively envisaging a definitive and irreversible break-up of the family bond despite the availability of other solutions that would have both protected the children's interest and preserved the family relationship, failed to expend adequate and sufficient efforts to ensure compliance with the applicant's right to live with her children, thus flouting her right to respect for family life as guaranteed by Article 8 of the Convention. There was therefore a violation of that provision.

[Scozzari and Giunta v. Italy](#), No. 39221/98 and 41963/98, 13 July 2000, para. 181 and 215.

181. Article 8 demands that decisions of courts aimed in principle at facilitating visits between parents and their children so that they can re-establish relations with a view to reunification of the family be implemented in an effective and coherent manner. No logical purpose would be served in deciding that visits may take place if the manner in which the decision is implemented means that de facto the child is irreversibly separated from its natural parent. Accordingly, the relevant authorities, in this case the Youth Court, have a duty to exercise constant vigilance, particularly as regards action taken by social services, to ensure the latter's conduct does not defeat the authorities' decisions.

[...]

215. The fact of the matter is that the absence of any time-limit on the care order, the negative influence of the people responsible for the children at "Il Forteto", coupled with the attitude and conduct of social services, are in the process of driving the first applicant's children towards an irreversible separation from their mother and long-term integration within "Il Forteto". While a number of factors point to there having been a considerable improvement in the children's psychological and physical condition since the placement (see paragraphs 118-22 above), that process, which, it will be remarked, undermines both the role of the courts dealing with the case and of their decisions, presents a real danger that the relations between the first applicant and her children will be severed.

[Blyudik v. Russia](#), No. 46401/08, 25 June 2019, para. 75.

75. The Court notes its previous finding under Article 5 § 1 (d) of the Convention as regards the unlawfulness of the placement of the applicant's daughter K. in a closed educational institution for minors in the absence of any grounds under domestic law for such placement (see paragraphs 54-55 above). The interference with the applicant's and his daughter's right to respect for their family life was, therefore, not "in accordance with the law", as required by Article 8 § 2 of the Convention. In view of this conclusion, the Court is not required to determine whether this interference pursued a legitimate aim and, if so, whether it was proportionate to the aim pursued. The Court is, however, struck by the considerable distance [2.500 km] between the closed educational institution where the applicant's daughter was placed and her home city.

2. Relevant International and European Guidance

a. United Nations

UN, Human Rights Council, *UN Guidelines for the Alternative Care of Children* UN Doc. A/HRC/11/L.13, 15 June 2009. [Available at: https://www.unicef.org/protection/alternative_care_Guidelines-English.pdf]

I. Purpose

1. The present Guidelines are intended to enhance the implementation of the Convention on the Rights of the Child and of relevant provisions of other international instruments regarding the protection and well-being of children who are deprived of parental care or who are at risk of being so.

2. Against the background of these international instruments and taking account of the developing body of knowledge and experience in this sphere, the Guidelines set out desirable orientations for policy and practice. They are designed for wide dissemination among all sectors directly or indirectly concerned with issues relating to alternative care, and seek in particular:

(a) To support efforts to keep children in, or return them to, the care of their family or, failing this, to find another appropriate and permanent solution, including adoption and kafala of Islamic law;

(b) To ensure that, while such permanent solutions are being sought, or in cases where they are not possible or are not in the best interests of the child, the most suitable forms of alternative care are identified and provided, under conditions that promote the child's full and harmonious development;

II. General principles and perspectives

A. The child and the family

6. All decisions, initiatives and approaches falling within the scope of the present Guidelines should be made on a case-by-case basis, with a view, notably, to ensuring the child's safety and security, and must be grounded in the best interests and rights of the child concerned, in conformity with the principle of non-discrimination and taking due account of the gender perspective. They should respect fully the child's right to be consulted and to have his/her views duly taken into account in accordance with his/her evolving capacities, and on the basis of his/her access to all necessary information. Every effort should be made to enable such consultation and information provision to be carried out in the child's preferred language.

7. In applying the present Guidelines, determination of the best interests of the child shall be designed to identify courses of action for children deprived of parental care, or at risk of being so, that are best suited to satisfying their needs and rights, taking into account the full and personal development of their rights in their family, social and cultural environment and their status as subjects of rights, both at the time of the determination and in the longer term. The determination process should take account of, inter alia, the right of the child to be heard and to have his/her views taken into account in accordance with his/her age and maturity.

B. Alternative care

14. Removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration. Removal decisions should be regularly reviewed and the child's return to parental care, once the original causes of removal have been resolved or have disappeared, should be in the best interests of the child, in keeping with the assessment foreseen in paragraph 49 below.

17. Siblings with existing bonds should in principle not be separated by placements in alternative care unless there is a clear risk of abuse or other justification in the best interests of the child. In any case, every effort should be made to enable siblings to maintain contact with each other, unless this is against their wishes or interests.

18. Recognizing that, in most countries, the majority of children without parental care are looked after informally by relatives or others, States should seek to devise appropriate means, consistent with the present Guidelines, to ensure their welfare and protection while in such informal care arrangements, with due respect for cultural, economic, gender and religious differences and practices that do not conflict with the rights and best interests of the child.

21. The use of residential care should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests.

IV. Preventing the need for alternative care

A. Promoting parental care

44. When a public or private agency or facility is approached by a parent or legal guardian wishing to relinquish a child permanently, the State should ensure that the family receives counselling and social support to encourage and enable them to continue to care for the child. If this fails, a social worker or other appropriate professional assessment should be undertaken to determine whether there are other family members who wish to take permanent responsibility for the child, and whether such arrangements would be in the best interests of the child. Where such arrangements are not possible or are not in the best interests of the child, efforts should be made to find a permanent family placement within a reasonable period.

48. When the child's sole or main carer may be the subject of deprivation of liberty as a result of preventive detention or sentencing decisions, non-custodial remand measures and sentences should be taken in appropriate cases wherever possible, the best interests of the child being given due consideration. States should take into account the best interests of the child when deciding whether to remove children born in prison and children living in prison with a parent. The removal of such children should be treated in the same way as other instances where separation is considered. Best efforts should be made to ensure that children remaining in custody with their parent benefit from adequate care and protection, while guaranteeing their own status as free individuals and access to activities in the community.

B. Promoting family reintegration

49. In order to prepare and support the child and the family for his/her possible return to the family, his/her situation should be assessed by a duly designated individual or team with access to multidisciplinary advice, in consultation with the different actors involved (the child, the family, the alternative caregiver), so as to decide whether the reintegration of the child in the family is possible and in the best interests of the child, which steps this would involve and under whose supervision.

VI. Determination of the most appropriate form of care

57. Decision-making on alternative care in the best interests of the child should take place through a judicial, administrative or other adequate and recognized procedure, with legal safeguards, including, where appropriate, legal representation on behalf of children in any legal proceedings. It should be based on rigorous assessment, planning and review, through established structures and mechanisms, and should be carried out

on a case-by-case basis, by suitably qualified professionals in a multidisciplinary team, wherever possible. It should involve full consultation at all stages with the child, according to his/her evolving capacities, and with his/her parents or legal guardians. To this end, all concerned should be provided with the necessary information on which to base their opinion. States should make every effort to provide adequate resources and channels for the training and recognition of the professionals responsible for determining the best form of care so as to facilitate compliance with these provisions.

B. Legal responsibility for the child

101. In situations where the child's parents are absent or are incapable of making day-to-day decisions in the best interests of the child, and the child's placement in alternative care has been ordered or authorized by a competent administrative body or judicial authority, a designated individual or competent entity should be vested with the legal right and responsibility to make such decisions in the place of parents, in full consultation with the child. States should ensure that a mechanism is in place for designating such an individual or entity.

103. Persons exercising such legal responsibility should be reputable individuals with relevant knowledge of children's issues, an ability to work directly with children and an understanding of any special and cultural needs of the children to be entrusted to them. They should receive appropriate training and professional support in this regard. They should be in a position to make independent and impartial decisions that are in the best interests of the children concerned and that promote and safeguard each child's welfare.

104. The role and specific responsibilities of the designated person or entity should include: [...]

(c) Contributing to the identification of a stable solution in the best interests of the child; [...]

(f) Ensuring that, if repatriation or family reunification is carried out, it is done in the best interests of the child;

VIII. Care provision for children outside their country of habitual residence

B. Provision of care for a child already abroad

146. As soon as an unaccompanied or separated child is taken into care, all reasonable efforts should be made to trace his/her family and re-establish family ties, when this is in the best interests of the child and would not endanger those involved.

150. The effective involvement of consular services or, failing that, legal representatives of the country of origin should be foreseen, when this is in the best interests of the child and would not endanger the child or his/her family.

IX. Care in emergency situations

A. Application of the Guidelines

155. Organizations and authorities should make every effort to prevent the separation of children from their parents or primary caregivers, unless the best interests of the child so require, and ensure that their actions do not inadvertently encourage family separation by providing services and benefits to children alone rather than to families.

B. Care arrangements

161. *Should family reintegration prove impossible within an appropriate period or be deemed contrary to the best interests of the child, stable and definitive solutions, such as adoption or kafala of Islamic law, should be envisaged; failing this, other long-term options should be considered, such as foster care or appropriate residential care, including group homes and other supervised living arrangements.*

b. Council of Europe

Council of Europe and SOS Children's Villages International, Securing children's rights: a Guide for professionals working with children in alternative care, 2014. [Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046ceaf>]

Principle 4: best interests of the child

In all decisions affecting children, the best interests of the child have to be put first. You need to do whatever is best for the child's protection, development and well-being.

Of course, the child's own views on what is "best" are also very important.

- *Those looking after the child's welfare may need help – from the child – in understanding why a proposed solution is not what the child wants.*
- *Social care professionals may need to try other methods of explaining or communicating with the child in order to reach a common solution.*
- *If the child appears to lack the capacity to understand his or her best interests, it may be necessary to override these interests – particularly if safety is a real concern.*
- *At the very least, the child needs to feel that he or she has been listened to and his or her views have been taken seriously. [...]*

Taking a child into alternative care is a decision that should not be taken lightly. If there are other ways of supporting children in their family environment this should always be pursued, as long as it is what the child wants, and in his or her best interests. [...]

If the decision that alternative care is genuinely in the best interests of the child and the only way of ensuring their well-being and development, you will need to explore the best options for placing the child and any siblings. Other relevant stakeholders will also need to be brought in: it is important to make sure that the new care environment is appropriate for the child, and the best possible option to meet the child's key needs.

Best interests of the child

Adults should do what is best for children. They should make decisions that will have the greatest positive impact on the development of children and young people. Importance should be paid to ensure the participation of children and young people.