

APPENDIX

Author(s): Claire Breen, Jenny Krutzinna, Katre Luhamaa and Marit Skivenes

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Table 1: Characteristics of all cases on adoption from care / freeing for adoption decided by the Court in the period 1959-2018

(n=20) (M=mother, F=father, C=child/ren concerned)

Case and date decided	Age of child at: a) adoption ¹ b) judgement (ECtHR)	Main risks	Birth family composition ²	Extended family members ³	Violation of the ECtHR Art 8?	Dissent (Art.8)?
B v. UK (1987) ⁴	a) 6 years b) 9 years	M: mental health, parenting deficiencies, chaotic lifestyle F: domestic violence	M (divorced), maternal grandfather; 2 siblings	F (cohabiting)	Yes (procedural violations, contact restrictions)	No (17:0)
H v. UK (1987) ⁵	a) 4 years b) 11 years	M: disruptive behaviour, mental health, substance misuse. F: domestic violence.	M (remarried); M's new partner; F in mental hospital	None	Yes (procedural violations)	Yes (16:1)
O v. UK (1987) ⁶	a) 8 & 10 years b) 14 & 16 years	General: Housing issues (7 children)	F (divorced, left the country)	5 siblings (in voluntary care)	No	Yes (15:2)
R v. UK (1987) ⁷	a) adoption discontinued b) 7 & 6 years	F: domestic violence, alcohol misuse, criminal convictions. General: Housing issues.	M (cohabiting); 2 siblings	F (in-and-out of prison)	Yes (procedural violations)	No (17:0)
W v. UK (1987) ⁸	a) 6 years b) 8 years	General: Domestic difficulties. M: alcohol misuse, postnatal depression.	F (married to M); 2 older siblings	None	Yes (procedural violations)	No (17:0)
McMichael v. UK (1995) ⁹	a) 5 years b) 7 years	F: mental health, aggression. M: mental health.	F & M	None	Yes (procedural violations)	No (9:0) (6:3 for F)
Johansen v. Norway (1996) ¹⁰	a) pending b) 7 years	M: poor physical and mental health, incapability to care for the child.	M (F unknown), cohabiting with partner with 3 other children	1 older brother (taken into care)	No (care order) Yes (termination of contact, deprivation of parental rights)	Yes (8:1)

¹ Based on the information available in the decision of the ECtHR. Some children were adopted at a later stage.

² 'Birth family composition' includes only in-home family members, i.e. those C was or would be living with.

³ 'Extended family members' refers to members of C's extended birth family that are not living in the same household as C.

⁴ The European Court of Human Rights (1987), B. v. the United Kingdom, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=001-57453> (accessed June 26th, 2019)

⁵ The European Court of Human Rights (1987), H. v. the United Kingdom, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=001-57504> (accessed June 26th, 2019)

⁶ The European Court of Human Rights (1987), O. v. the United Kingdom, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=001-57551> (accessed June 26th, 2019)

⁷ The European Court of Human Rights (1987), R. v. the United Kingdom, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=001-57610> (accessed June 26th, 2019)

⁸ The European Court of Human Rights (1987), W. v. the United Kingdom, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=001-57600> (accessed June 26th, 2019)

⁹ The European Court of Human Rights (1995), McMichael v. the United Kingdom, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=002-9624> (accessed June 26th, 2019)

¹⁰ The European Court of Human Rights (1996), Johansen v. Norway, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=002-9567> (accessed June 26th, 2019)

Bronda v. Italy (1998) ¹¹	a) pending b) 14 years	M: mental illness. F: lost interest in C.	F & M (cohabiting, separated)	Maternal grandparents (applicants)	No	No (9:0)
E.P. v. Italy (1999) ¹²	a) 9 (freed for adoption), b) 18 years	M: mental illness, obsession with C's health	M	Maternal grandmother participated in national proceedings	Yes (termination of contact, no support for re-establishing the contact)	Yes (6:1)
P., C. and S. v. UK (2002) ¹³	a) 1 years b) 4 years	M: harm to the health of the first child from previous partner	M & F	Supported by paternal grandparents	Yes (care order removal; procedural violations)	Yes (6:1)
X v. Croatia (2008) ¹⁴	a) 4 years b) 9 years	M: mental illness, drug addiction. F: drug addiction.	M & F lived in same building. F deceased (2003)	Maternal grandmother is M's legal guardian (and temporarily C's).	Yes (procedural violations)	No (7:0)
Aune v. Norway (2010) ¹⁵	a) 7 years b) 12 years	M & F: suspicion of ill-treatment, drug abuse	M & F (cohabit)	Maternal & paternal grandparents, 2 siblings (older brother placed with maternal grandfather).	No	No (7:0)
R and H v. UK (2011) ¹⁶	a) 5 years b) 9 years	M: alcohol misuse, mental health.	M & F	Maternal grandmother (unsuitable as kinship carer due to her partner), 4 siblings (3 in care).	No	Yes (6:1)
Y.C. v. UK (2012) ¹⁷	a) pending (lives with prospective adopters) b) 11 years	M: alcohol misuse. F: domestic violence, alcohol misuse, disability (partly incapacitated).	M & F (cohabit, separated)	None	No	Yes (6:1)
A.K. and L. v. Croatia (2013) ¹⁸	a) 1 year b) 4 years	M: mild mental disability, physical disability (scoliosis).	M, maternal grandmother & uncle (mentally ill)	None	Yes (procedural violations)	No (7:0)

¹¹ The European Court of Human Rights (1998), *Bronda v. Italy*, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=002-6859> (accessed June 26th, 2019)

¹² The European Court of Human Rights (1999), *E.P. v. Italy*, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=002-6185> (accessed June 26th, 2019)

¹³ The European Court of Human Rights (2002), *P., C. and S. v. the United Kingdom*, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=002-5238> (accessed June 26th, 2019)

¹⁴ The European Court of Human Rights (2008), *X. v. Croatia*, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=002-1976> (accessed June 26th, 2019)

¹⁵ The European Court of Human Rights (2010), *Aune v. Norway*, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=002-784> (accessed June 26th, 2019)

¹⁶ The European Court of Human Rights (2011), *R. and H. v. The United Kingdom*, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=001-104972> (accessed June 26th, 2019)

¹⁷ The European Court of Human Rights (2012), *Y.C. v. the United Kingdom*, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=002-86> (accessed June 26th, 2019)

¹⁸ The European Court of Human Rights (2013), *A.K. and L. v. Croatia*, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=002-7389> (accessed June 26th, 2019)



Table 2: References within the 20 Court judgments on adoptions from care

	B. v. UK	H. v. UK	O. v. UK	R. v. UK	W. v. UK	McMichael v. UK	Johansen v. Norway	Bronda v. Italy	E.P. v. Italy	P., C. and S. v. UK	X v. Croatia	Aune v. Norway	R. and H. v. UK	Y.C. v. UK	A.K. and L. v. Croatia	R.M.S. v. Spain	S.H. v. Italy	Strand Lobben v. Norway	Hasan v. Norway	S.S. v. Slovenia
B. v. UK (1987)		1	1	1	1															
H. v. UK (1987)	1		1	1	1															
O. v. UK (1987)	1	1		1	1															
R. v. UK (1987)	1	1	1		1															
W. v. UK (1987)	1	1	1	1																
McMichael v. UK (1995)	1		1		1															
Johansen v. Norway (1996)					1	1														
Bronda v. Italy (1998)							1													
E.P. v. Italy (1999)							1													
P., C. and S. v. UK (2002)					1	1	1		1											
X v. Croatia (2008)	1						1													
Aune v. Norway (2011)							1													
R. and H. v. UK (2011)	1				1		1			1	1	1								
Y.C. v. UK (2012)	1				1		1				1		1							
A.K. and L. v. Croatia (2013)	1						1			1	1		1							
R.M.S. v. Spain (2013)					1		1			1										
S.H. v. Italy (2015)					1		1			1		1		1		1				
Strand Lobben v. Norway (2017)							1					1	1	1	1					
Hasan v. Norway (2018)							1			1		1	1	1						
S.S. v. Slovenia (2018)											1	1	1	1	1		1			
N of references in 20 judgments	9	4	5	4	11	2	12	0	1	5	4	5	5	4	2	1	1	0	0	0
Total possible references, %	47 %	21 %	26 %	21 %	58 %	14 %	92 %	0 %	9 %	50 %	44 %	63 %	71 %	67 %	40 %	25 %	33 %	0 %	0 %	0 %
Total possible references, n	19	19	19	19	19	14	13	12	11	10	9	8	7	6	5	4	3	2	1	0

Search was conducted in NVIVO using the search and coding functions. Full name of each judgment was searched for in the collection of judgments excluding the judgment that was searched for. The search is only conducted in the Court's reasoning. The search result indicates the number of times a particular judgment was referred to in the total possible number of cases.

References between the 20 adoption judgments

As Wheatle¹⁹ observes, the Court has to guarantee the interpretative integrity of its practice and the practice has to be both backward and forward-looking. Therefore, the Court makes consistent references to its previous case law as it places the concrete judgment in the context of its previous case law. The Court's judgments do more than only arbitrate the national legislation against the ECHR rights held by the applicant and solve the concrete dispute before it. Instead, they elucidate, clarify, and sometimes develop the rights protected by the Convention.²⁰ The number of references to the previous case law differs in time and is dependent on the issue discussed. The 20 adoption cases refer extensively to each other as well as to other case law.

Table 2 gives an overview of the references between the 20 judgments. The table shows that among the 20 cases, *Johansen v. Norway* (1996) has received the most references – 12 within 13 later judgments and eight references in core judgments. This judgment is referred to both as establishing general principles applicable for interpreting Article 8, as well as in the context of particular principles relating to care measures and adoption. *Johansen v. Norway* (1996) clarifies the meaning and importance of the 'best interest' principle in care order and adoption cases and defines it as a principle that requires the focus on the rights and needs of the child while, if necessary, overriding the rights of the parents. In this context, this judgment is referred to in *E.P. v. Italy* (1999), *P.C. and S v. UK* (2002), *R. and H. v. UK* (2011), *S.H. v. Italy* (2015) and *Strand Lobben v. Norway* (2017). The same principle is concretised in the context of care and adoption, whereby a measure that would cut a child from its roots could only be justified in exceptional circumstances or by the overriding requirement of the child's best interests. In this context, *Johansen v. Norway* (1996) is referred to in *P.C. and S v. UK* (2002), *Aune v. Norway* (2011); *Strand Lobben v. Norway* (2017); *Hasan v. Norway* (2018), with different wording in *S.H. v. Italy* (2015)).

Aune v. Norway (2011), *R. and H. v. UK* (2011) and *Y.C. v. UK* (2012) are also referred to in more than two-thirds of the following judgments. While *R. and H. v. UK* (2011) and *Aune v. Norway* (2011) are often referred to together with *Johansen* as creating general principles of child protection and the best interests principle, *Aune v. Norway* (2011) is also referred to as creating a principle whereby contact between the adopted child and the biological parents after adoption can be an appropriate arrangement for protecting both the rights of the child and those of the biological parents (in this context referred to in *Strand Lobben v. Norway* (2017) and *S.S. v. Slovenia* (2018)).

Y.C. v. UK (2012, para 138) summarises the task of the national courts in deciding appropriate care measures as follows: 'in-depth examination of the entire family situation and a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature'; this should result in 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' (referred to in this context in *S.H. v. Italy* (2015), *Hasan v. Norway* (2018), *S.S. v. Slovenia* (2018)). *R. and H. v. UK* (2011) is also relevant within the context of procedural rights that guarantee the inclusion of the biological parents in the legal process of child protection where parental rights are limited or removed.

¹⁹ Se-shauna Wheatle, *Principled Reasoning in Human Rights Adjudication*, Hart Studies in Comparative Public Law, volume 15 (Oxford; Portland, Oregon: Hart Publishing, 2017), 107.

²⁰ Alain Zysset, 'Searching for the Legitimacy of the European Court of Human Rights: The Neglected Role of "Democratic Society"', *Global Constitutionalism* 5, no. 1 (March 2016): 121–24; 133–138., <https://doi.org/10.1017/S2045381716000022>.

The Grand Chamber follows the same pattern in the *Strand Lobben v. Norway* (GC, 2019),²¹ and uses all of the same judgments as the basis for its argumentation.²²

Other judgments referred to in the 20 cases

The 20 judgments rely heavily on the Court's other case law, albeit less than, e.g. *Johansen*. Forty-four cases are referred to in the 20 judgments at least twice. Ten judgments are referred to four or more times, and six or more references to five cases. The Court refers to its other previous case law mainly as a way of showing the existence and context of the applicable principles and interpretation; when the Court is using a case in such a way, it mostly refers to more than one case. At times, it also uses such case law in order to place the case into the broader context of similar cases. All of these references are made within the section where the Court discusses the general principles applicable in Article 8 cases.

The most referred to cases are *Neulinger and Shuruk v. Switzerland* (GC, 2010)²³ and *K. and T. v. Finland* (GC, 2001),²⁴ with seven and eight references, respectively. These cases include a number of principles; most of these references are made in the context of the best interests of the child that dictates that the child's ties with the family must be maintained except in cases where the family is particularly unfit, and stress that a safe and secure environment is in the best interest of the child. *Gnahoré v. France* (2000)²⁵ is referred to six times and the context of guiding the assessment of the best interests principle in a case when a family is 'particularly unfit': "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".

Kutzner v. Germany (2002)²⁶ is referred to in seven cases and in the context of the discussion of discretion of the Member States and the tasks of the Court in Article 8 cases. Further, it provides a basis for analysing the effect of the passing of 'considerable time' for the family relations (both usually referred to together with *K. and T. v. Finland* (GC, 2001)). *Olsson v. Sweden* (No. 1, 1988)²⁷ has seven references, as it acknowledges that there have to be relevant and sufficient ground for child protection intervention, the removal has to be a temporary measure and that the removal does not terminate family life. All the same five judgments are also referred to in the *Strand Lobben v. Norway* (GC, 2019).

²¹ The European Court of Human Rights (2019), Grand Chamber, *Strand Lobben v. Norway*, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=001-195909> (accessed October 21, 2019)

²² From the 20 judgments it makes references to *Johansen v. Norway* (1996), *Aune v. Norway* (2010), *Hasan v. Norway* (2018), *R. and H. v. UK* (2011), *S.H. v. Italy* (2015), and *Y.C. v. UK* (2012).

²³ The European Court of Human Rights (2010), Grand Chamber, *Neulinger and Shuruk v. Switzerland*, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=001-99817> (accessed October 21, 2019)

²⁴ The European Court of Human Rights (2001), Grand Chamber, *K. and T. v. Finland*, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=001-59587> (accessed October 21, 2019)

²⁵ The European Court of Human Rights (2000), *Gnahoré v. France*, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=001-58802> (accessed October 21, 2019)

²⁶ The European Court of Human Rights (2002), *Kutzner v. Germany*, HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=001-60163> (accessed October 21, 2019)

²⁷ The European Court of Human Rights (1988), *Olsson v. Sweden* (No. 1), HUDOC. Available from: <http://hudoc.echr.coe.int/eng?i=001-57548> (accessed October 21, 2019)



Table 3: References within the 10 core court judgments on adoptions from care

	Johansen v. Norway	E.P. v. Italy	Aune v. Norway	R. and H. v. UK	Y.C. v. UK	R.M.S. v. Spain	S.H. v. Italy	Strand Lobben v. Norway	Hasan v. Norway	S.S. v. Slovenia
Johansen v. Norway (1996)										
E.P. v. Italy (1999)	1									
Aune v. Norway (2011)	1									
R. and H. v. UK (2011)	1		1							
Y.C. v. UK (2012)	1			1						
R.M.S. v. Spain (2013)	1									
S.H. v. Italy (2015)	1		1		1	1				
Strand Lobben v. Norway (2017)	1		1	1	1					
Hasan v. Norway (2018)	1		1	1	1					
S.S. v. Slovenia (2018)			1	1	1		1			
In how many judgments	8	0	5	4	4	1	1	0	0	0
Total possible references, %	88 %	0 %	71 %	67 %	80 %	25 %	33 %	0 %	0 %	0 %
Total possible references, N	9	8	7	6	5	4	3	2	1	0

Search was conducted in NVIVO using the Text search functions. Full name of each judgment was searched in the collection of 20 judgments excluding the judgment that was searched for. The search was only conducted in the Court's reasoning on Article 8. The search result indicates the number of times a particular judgment was referred to in other cases. The search was limited to 10 cases previously identified as child protection adoption core cases.

Table 3 shows references between the ten core judgments

Table 4: Substantive consideration of family-related factors in the Court's argumentation on Article 8 in 20 judgments.

	Art. 8 both parent and child	Best interests "paramount"	Individual child	CRC	Child's <i>de facto</i> family	Adoption as child protection measure	Considerable time	Relation to new family	Lack of relation to birth family	Parent's engagement in services	Vulnerable child	Contact
B. v. UK (1987)	-	-	Yes	NA	-	-	-	-	Yes	Yes	-	-
H. v. UK (1987)	-	-	-	NA	-	-	-	-	-	-	-	-
O. v. UK (1987)	-	-	-	NA	-	-	-	-	-	-	-	-
R. v. UK (1987)	-	-	-	NA	-	-	-	-	-	Yes	-	-
W. v. UK (1987)	-	-	-	NA	-	-	-	-	Yes	-	-	-
McMichael v. UK (1995)	-	Yes	-	-	-	-	-	-	-	-	-	-
Johansen v. Norway (1996)	Yes	Yes	-	Yes	-	Yes	-	Yes	-	Yes	Yes	-
Bronda v. Italy (1998)	-	-	Yes	-	-	-	-	Yes	-	Yes	Yes	-
E.P. v. Italy (1999)	-	-	-	-	-	-	-	-	Yes*	Yes*	-	-
P., C. and S. v. UK (2002)	-	-	-	-	-	-	-	-	-	-	-	-
X v. Croatia (2008)	-	Yes	-	Yes	-	-	-	-	-	-	-	-
Aune v. Norway (2010)	-	-	Yes	-	-	Yes	-	Yes	Yes	-	Yes	Yes
R. and H. v. UK (2011)	Yes	Yes	Yes	-	Yes	Yes	-	-	-	-	-	Yes
Y.C. v. UK (2012)	-	Yes	-	-	Yes	-	-	Yes	Yes	Yes	-	-
A.K. and L. v. Croatia (2013)	Yes	Yes	-	Yes	-	-	-	-	-	-	-	-
R.M.S. v. Spain (2013)	-	-	Yes	-	-	-	-	Yes	Yes*	-	-	-
S.H. v. Italy (2015)	Yes	-	-	-	-	Yes	-	-	Yes*	Yes	-	-
Strand Lobben v. Norway (2018)	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Hasan v. Norway (2018)	-	Yes	-	Yes	Yes	Yes	Yes	Yes	Yes	-	Yes	-
S.S. v. Slovenia (2018)	-	-	Yes	Yes	Yes	-	-	-	Yes	Yes	-	-

* - Government failure; "-" - not an issue discussed