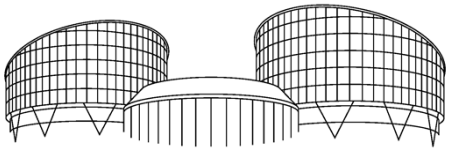

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF R.M. v. LATVIA

(Application no. 53487/13)

JUDGMENT

Art 8 • Family life • Relevant and sufficient reasons for temporary suspension of parental authority and limitation of contact rights with vulnerable child, in context of applicant's refusal to cooperate with authorities • Measures falling within margin of appreciation, given applicant's full opportunity to participate in the decision-making process at all stages including repeated judicial review

STRASBOURG

9 December 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of R.M. v. Latvia,

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

Síofra O'Leary, *President,*
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Lado Chanturia,
Ivana Jelić,
Mattias Guyomar, *judges,*
Daiga Rezevska, ad hoc *judge,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 53487/13) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Ms R.M. ("the applicant"), on 12 August 2013;

the decision to give notice to the Latvian Government ("the Government") of the complaints concerning the right to respect for family life and the right to education and to declare inadmissible the remainder of the application;

the decision not to have the applicant's name disclosed;

the parties' observations;

Considering that Mr Mārtiņš Mits, the judge elected in respect of Latvia, was unable to sit in the case (Rule 28 of the Rules of Court) and that the President of the Chamber appointed Ms Daiga Rezevska to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1),

Having deliberated in private on 2 November 2021,

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

INTRODUCTION

1. The case concerns a complaint under Article 8 of the Convention about the suspension of the applicant's parental authority over her son and his placement in public care, as well as the continued suspension of her parental authority while she kept her son in hiding from the authorities. The applicant also complains under Article 2 of Protocol No. 1 about the alleged restriction on the applicant's son's right to education.

THE FACTS

2. The applicant was born in 1964 and lives in municipality B. The applicant, who had been granted legal aid, was represented by Ms I. Nikuļceva, a lawyer practising in Riga.

3. The Government were represented by their Agent, Ms K. Līce.

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

I. BACKGROUND OF THE CASE

5. The applicant's son X was born in 2000. In 2003 the applicant and the child's father went through an acrimonious divorce, which was finalised in 2006. Until the events described below, X was living with the applicant. In 2009 the child's father instituted civil proceedings seeking sole parental authority (*aizgādības tiesības*) and limitation of the applicant's contact rights (*saskarsmes tiesības*). In 2014 his claim was granted. In 2016, following an appeal by the applicant, the sole parental authority was granted to her as the child's father had withdrawn his claim in 2015.

6. Following reports of X's behaviour in school, on 21 November 2008 the director of the guardianship institution established by municipality C. (*bāriņtiesa* – a guardianship and curatorship institution established by a local municipality) (hereinafter "the C. Guardianship Institution") removed X from the physical custody (*atņēma aprūpes tiesības*) of the applicant. The director of the C. Guardianship Institution noted that X's behaviour in school had worsened. He had attempted to harm himself and he had hurt other children (references were made to incidents of poking in the eye, hurting with scissors and biting). He was placed in the psychiatric unit of a children's hospital for inpatient treatment for the same reasons. X was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct. He was discharged on 3 December 2008.

7. On 5 December 2008 the C. Guardianship Institution upheld the decision removing X from the applicant's physical custody. It relied, *inter alia*, on the following grounds. The applicant had "made serious parenting mistakes", "allowed and encouraged the child's unlawful behaviour", "ignored the advice of teachers and specialists" and "insufficiently involved X's father in the parenting". Thus, X continued to suffer emotional abuse in different life situations. As a result of "wrong parenting" by his mother, X's life and health was considered to be in danger. The Guardianship Institution decided that at that point in time it was impossible to grant physical custody over X to his father as they had not established a true father-child relationship. The father had not opposed to X being temporarily placed in a family support centre. X was placed in a family support centre and afterwards started living with his father. After a couple of months X returned to live with the applicant and on 30 October 2009 her physical custody was restored.

8. In January 2010 a hearing was scheduled before the guardianship institution established by municipality V. (hereinafter "the V. Guardianship Institution") concerning the potential removal of X from the applicant's physical custody in view of conflicts between X, now aged 9, and his

schoolmates, following reports of X's behaviour in school (references were made to schoolmates' refusal to attend school while X was present and endangered them). The case was not examined because the applicant changed her registered address and the V. Guardianship Institution no longer had jurisdiction to examine the case.

9. In civil proceedings relating to parental authority (see paragraph 5 above), on 29 March 2011 a first-instance court ordered the applicant, X and X's father to undergo a forensic psychological and psychiatric assessment. The Court has not been provided with this decision or the reasoning, and it appears that neither of the parties complied with it.

10. On 10 May 2012 X intentionally caused a fire in their apartment and broke a neighbour's window. Two neighbours sought medical aid – for poisoning by combustion and for atrial fibrillation attack. In view of this incident, the V. Guardianship Institution scheduled a hearing concerning his potential removal from the applicant's physical custody. The applicant again changed her registered address and the case was not examined, though she denied having received the summons. From 2009 to 2012 the applicant had changed her registered address twelve times.

11. Following the incident of 10 May 2012, proceedings concerning correctional measures for minors were instituted. In those proceedings, on 8 August 2012 a district court ruled that X had to undergo a forensic psychological and psychiatric assessment. On 3 December 2012 a police officer took a further decision ordering X to undertake that assessment. On 17 December 2012 the police apprehended him to carry out that assessment, but he showed resistance. He and his mother both cursed and shouted at the police officers. X spat at them. On 18 February 2013 a prosecutor concluded that the decision of 3 December 2012 had been unlawful as it had contained references to the Criminal Procedure Law (*Kriminālprocesa likums*), whereas X had been a minor and had not reached the age of criminal responsibility. Moreover, the Internal Security Bureau of the State Police (*Valsts policijas Iekšējās drošības birojs*) carried out an inquiry and, on 25 April 2013, made similar conclusions. Disciplinary penalties were imposed on the police officers concerned.

12. In February 2013 X had a fight with other children, which resulted in him being taken to hospital with a broken nose and concussion.

II. SUSPENSION OF PARENTAL AUTHORITY AND HIDING OF X

A. Incident of 25 February 2013

13. On the night of 25 February 2013, the applicant and X had a fight after which X ran out of the home in his pyjamas and slippers. He was picked up by the police on the street and taken to a police station in city B. He was seen by a paramedic, who referred him to a children's hospital in

another city; two police officers accompanied him there. No danger to his state of health was detected; he was found fit to be taken to a police unit dealing with minors. X requested to be taken home and on receiving a negative response attempted to throw a cup of tea in the police officer's face. Following that, he was taken to the psychiatric unit of that hospital in another location. X's initial account of the events to a police officer stated that the applicant had physically fought him for having refused to take some medication. In particular, she had kicked him, pinned his arms behind his back and bitten his knee. He later changed his version of events and explained to the police and guardianship institutions that he himself had become aggravated and had kicked his mother, who had been trying to calm him down. He had bitten his own knee after the fight. The applicant stated that she had tried to calm X down by holding him but denied having been physically violent. In view of these events, criminal proceedings were instituted against the applicant (see paragraph 38 below).

14. On 26 February 2013 the applicant together with her mother and her brother arrived at the hospital and demanded that X be discharged; the applicant was very agitated – she shouted and threatened the staff. On 5 March 2013 X run away from the hospital. He was found by the police on the street and taken back to the hospital, where he behaved demonstratively: claimed that he would run away again, tried to break some lamps, attempted to strangle himself with a scarf and refused to change his wet clothes. Letters and text messages from the applicant were later found encouraging X to resist the staff and emphasise his somatic complaints. On 6 March 2013 X was moved to the children's unit in a closed psychiatric hospital to prevent any contact with the applicant. He was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct.

B. Suspension of the applicant's parental authority and X's placement in public care

15. On 26 February 2013 the director of the guardianship institution established by municipality B. (hereinafter "the B. Guardianship Institution") suspended the applicant's parental authority on the grounds that she had subjected X to emotional and physical abuse. On 12 March 2013, having heard the applicant and her lawyer, the V. Guardianship Institution decided not to restore the applicant's parental authority. On the same day it also took a decision depriving the applicant of her contact rights and ordering that X be placed, first, in a family crisis centre for one month, and, subsequently, in a long-term social care institution (children's home). It referred to the prolonged and complicated situation in the family and the indications of possible physical and emotional abuse against the child. It observed that the applicant's attitude towards parenting and the childcare authorities had not changed. She had

not recognised her parenting mistakes, was evading expert assessments of herself and X and was trying to prevent the guardianship institutions from taking decisions in X's interests.

16. While X was in the hospital, on 5 March 2013, social services inspected the applicant's place of residence and gave positive assessment. They asked the applicant to cooperate and, after several unsuccessful attempts, on 10 April 2013, together with the applicant, they prepared a social rehabilitation plan (*sociālās rehabilitācijas plāns – a set of measures aimed at the renewal or improvement of the social functioning abilities*). It was aimed at restoration of the applicant's parental authority. It was agreed, among other things, that the applicant would see a psychiatrist. On 14 April 2013 that plan was marked as completed.

17. On 6 March 2013 the guardianship institution established by municipality R. (hereinafter "the R. Guardianship Institution") suspended X's father's parental authority after he had indicated that he had no possibility of providing for the child. On 19 March 2013 this decision was upheld. On 10 April 2013 the V. Guardianship Institution decided to deprive the applicant's mother and brother of their contact rights with X as they had been actively involved in preventing the child from cooperating with the specialists (reference was made to the episode of 26 February 2013, see paragraph 14 above). Following the restoration of the applicant's parental authority, their contact rights were also restored on 11 November 2014.

18. On 12 March 2013 X was discharged from the children's unit of the psychiatric hospital and placed in a family crisis centre. On 26 April 2013 he was moved to a children's home. On 11 May 2013 he was placed in a psychiatric hospital for two days as he had been aggressive towards other children. The applicant and X had contact via a social network. X also called and informed her that he had been treated violently by the director of the children's home. On 15 May 2013 the applicant visited the school, took X to the police station and subsequently, together with the police, to a hospital. X was initially diagnosed with a fractured radius of the right arm and bruising to the upper arm and chest. The fracture diagnosis was not subsequently confirmed.

19. On 22 April 2013 social services, in cooperation with the State Inspectorate for the Protection of Children's Rights (*Valsts bērnu tiesību aizsardzības inspekcija*), issued another referral for the applicant to see a psychologist. The authorities explained to the applicant that she could consult either a psychologist advised by the social services (see paragraph 16 above), or the one referred to by the Inspectorate or a psychologist of her own choosing. The applicant chose the latter option. She did not further cooperate with social services and refused to take any calls from them. The applicant consulted a psychologist on two occasions (in April and May 2013), but it was insufficient for a comprehensive assessment to be made.

20. On 16 May 2013, while still in hospital, X had a conversation with his specially assigned representative in the presence of his mother. He claimed that he had suffered physical, emotional and sexual abuse from other children and the staff and that he wanted to return home to his mother. According to the applicant, he was subsequently informed that he would be taken to another children's home about 200 km away from home (see paragraph 39 below).

C. Hiding X from the authorities

21. On the evening of 16 May 2013, the applicant and X left the hospital. The applicant informed the authorities that X was safe but refused to disclose his whereabouts. On 23 July 2013 the applicant declined a proposal by social services to organise a meeting, stating that she wished to protect the child from emotional trauma and stress.

22. On 1 August 2013 the V. Guardianship Institution decided not to restore the applicant's parental authority. According to that decision, the applicant had intentionally worsened her son's living conditions and was treating him cruelly by hiding him for a prolonged period of time. Despite X's written submissions asking to be allowed to live with his mother, he had to be heard in person in order for his opinion and living conditions to be verified. The applicant was not cooperating with social services and the other authorities, and had not eliminated the reasons for the suspension of her parental rights.

23. On 17 May 2013 the police commenced their search for X. On 24 September 2013 he was found in the applicant's usual place of residence. As he behaved erratically upon his apprehension (he tried to injure himself – he bit his arm and tried to strangle himself with a scarf), he was placed in the psychiatric unit of the children's hospital. On 1 October 2013 he was taken to a social rehabilitation centre. On 4 October 2013 the applicant took X some personal belongings but was not allowed to see him. On the same day he ran away from the centre.

24. On 7 October 2013 the State Inspectorate for the Protection of Children's Rights organised a meeting with the applicant and various specialists. The applicant was asked not to hide the child and to undergo social rehabilitation together with him. She refused.

25. On 12 October 2013 X wrote letters to fourteen recipients, mostly State authorities, asking to be allowed to live with his mother. He submitted that he should not be placed in psychiatric hospitals, crisis centres or children's homes and should be allowed to live at home. He stated that he would resist police and run away from wherever he was placed. He had a home and a mother, and it was in his best interests to live with her.

26. On 23 October 2013 the R. Guardianship Institution restored X's father's parental authority. On 19 March 2014 it granted him sole parental

custody and restricted the applicant's contact rights until receipt of her forensic psychological and psychiatric assessment. In April and May 2014, the police attempted to intercept X after a bus journey in order to place him in his father's care. On both occasions X managed to run away from the police. On 21 July 2014 X was found by the police and placed with his father. The following day he ran away and returned to the applicant.

27. In October 2013 and April and May 2014 social services asked the applicant to cooperate and undergo social rehabilitation.

28. On 16 May 2014 the V. Guardianship Institution, having heard the applicant and her representative, decided not to restore the applicant's parental authority. The applicant was intentionally worsening X's living conditions by hiding him over a prolonged period of time and not ensuring his basic needs, which amounted to cruel treatment. To hide X was psycho-emotional abuse, as sooner or later he would be taken by the police, which would be an unnecessary and traumatising event in his life. The applicant was not cooperating with the authorities and was preventing X from leading a normal life in society. She had been informed on multiple occasions of the possibility for her and her son to receive social rehabilitation, but any attempts to cooperate had been one-sided. The applicant had not eliminated the reasons for the suspension of her parental authority.

D. X's education

29. In the 2012/2013 school year X attended a school in municipality R. in sixth grade. According to the Government's submissions, which were contested by the applicant, in March and April 2013, while placed in the family crisis centre (see paragraph 18 above), he had continued these studies online. From 30 April to 15 May 2013, while placed in the children's home, X had attended a school in municipality L. At the end of May 2013, the school in municipality R. issued a certificate confirming his completion of sixth grade and the school in municipality L. enrolled him in seventh grade.

30. During the 2013/2014 school year X was formally registered at the school in L., which he was not attending. The applicant enrolled him in a distance learning school. The contract with the school was signed by both the applicant and X. On 29 October 2013 the State Education Quality Service (*Izglītības kvalitātes valsts dienests*) inspected the distance learning school and concluded that X had been enrolled unlawfully. It ordered the principal of the school to annul the decision on his admission.

31. On 11 February 2014 the Ministry of Education and Science wrote to the applicant that the decision annulling X's admission to the distance learning school had been lawful, as his admission had been based on untruthful information – she had failed to disclose that her parental authority had been suspended. X's legal guardian at that time, the V. Guardianship Institution, on 30 April 2013 had enrolled him in a State school, thereby

ensuring his right to education. On 7 February 2014 the State Education Quality Service also confirmed that X was enrolled in a school in Latvia but refused to inform the applicant which school.

32. In the meantime, X was given access to the study materials from the distance learning school and completed the assignments for seventh grade. The teachers assessed his performance and on 11 April 2014 the distance learning school issued a certificate confirming his completion of seventh grade with good marks. He was then transferred to eighth grade. However, on 30 May 2014 the distance learning school annulled this certificate on the grounds that X had not been enrolled in the school.

33. On 12 June 2014 the school in municipality L. decided that X had not completed seventh grade and should repeat it over the following school year.

34. On 4 July 2014 the Ministry of Welfare wrote to the State Education Quality Service expressing concerns about the annulment of X's transfer to eighth grade. It noted that the child's best interests required a solution to be found, regardless of the shortcomings in the admission procedure. On 24 July 2014 the State Education Quality Service responded that the decision certifying his completion of seventh grade had been unlawful. X had been provided with a possibility of obtaining an education and there were no grounds for considering that the annulment decisions had not served his best interests.

35. On 22 August 2014 the B., V. and R. Guardianship Institutions organised a meeting about the situation and the fact that X was not being provided with an education for the second school year.

36. On 9 October 2014 a different distance learning school informed the V. Guardianship Institution that the applicant had sought help concerning her son's education. The school was providing consultations to X and had provided him with the necessary study materials. X was studying the curriculum intended for eighth grade, and his knowledge and skills were compatible with that grade.

37. During the 2012/2013 school year X also attended a music school. In September 2013 the music school informed the applicant that X was supposed to repeat the year, as he had not attended since February 2013. In August and September 2014, the music school informed the applicant that the possibility for X to attend would be examined once she had submitted a document showing that she was his legal guardian.

III. CRIMINAL PROCEEDINGS

38. Following the incident of 25 February 2013 (see paragraph 13 above) criminal proceedings were instituted against the applicant for cruel treatment of a minor. On 1 July 2013 they were terminated on account of

the absence of a criminal act (*actus reus*). It was concluded that X had lied in his initial account of the events.

39. After the applicant took X from the children's home to the police station (see paragraph 18 above), criminal proceedings were instituted on suspicion of him having been ill-treated at the children's home. On 27 November 2013 these proceedings were terminated as the suspicion proved unfounded.

40. In view of X's removal from the children's home, criminal proceedings were also instituted against the applicant for failure to comply with the decisions concerning her parental authority and contact rights. On 6 August 2014 these proceedings were terminated. It was found that the applicant had taken X from the children's home based on his complaints of being physically abused. The police had contacted the V. Guardianship Institution and the children's home as to where X should be placed, but neither had shown any interest about X being brought back to the children's home or to a similar institution. That is why the applicant had taken X to the hospital. The following day X had learned that he would be taken to a children's home more than 200 km away and started crying inconsolably, at which point the applicant had decided to take him away. Both the V. Guardianship Institution and the children's home had been informed of this, but neither of them had reported the need to organise a search for X. According to the applicant, X had repeatedly contacted her and asked her to take him away from the children's home as he was being abused. The police inspector concluded that the applicant had not acted in bad faith; while the applicant had acted contrary to the decisions of the guardianship institutions, she had acted in the interests of the child.

41. On 3 November 2014 the decision terminating these criminal proceedings was upheld. The prosecutor, after examining the hiding episodes that had followed X's removal from the children's home in further detail, concluded that while the applicant had violated the decisions of the guardianship institutions she had not acted in bad faith which was a compulsory element of the substance of the criminal offence involved and therefore the criminal proceedings had to be terminated. According to the prosecutor, after X had run away from the childcare institutions and his father, she had allowed him to stay with her in order to reduce his emotional suffering and stress. The prosecutor also referred to a conclusion drawn by social services on 23 September 2014 (see paragraphs 63 and 64 below) that she had provided him with proper care.

IV. PSYCHOLOGICAL ASSESSMENTS OF X AND THE APPLICANT

42. A psychological examination report of 4 March 2013 by the psychiatric unit of the children's hospital concluded that physical, emotional and sexual abuse could not be excluded. It was recommended that

psychological consultations be continued, an in-depth examination be carried out in order to exclude the possibility of abuse, and socio-psychological support be provided to the family.

43. The documentation concerning X's stay in the psychiatric unit of the children's hospital from 26 February to 6 March 2013 stated that X had been diagnosed with adjustment disorder with mixed disturbance of emotions and conduct, as the result of an atypical parental situation. The indications were that he should be under the consultative supervision of a child psychiatrist and receive psychological consultations, that he could continue his schooling and that a structured day and study regime was required.

44. The medical documentation from the psychiatric hospital to which X had been moved on 6 March 2013 included a diagnosis of adjustment disorder with mixed disturbance of emotions and conduct in a teenager with signs of psychophysical infantilism and parenting problems in the family. It was recommended that he work with a psychologist and undergo a family psychotherapy, but treatment in a psychiatric hospital was considered unnecessary.

45. On 11 April 2013 the family crisis centre where X had stayed from 12 March 2013 issued a psychological examination report. It indicated that X had suffered emotional and physical abuse at home or outside his family and parental neglect. According to X, he had suffered abuse from his father. The possibility of sexual abuse at home or outside his family could not be excluded. X had psychological peculiarities that indicated the possibility of future abuse, including poor control over his emotions, communication difficulties, a heightened desire for emotional attachment and emotional maturity below his age. The results indicated that development of a psychopathic personality with antisocial behavioural tendencies could not be excluded. The applicant had exercised excessive care, which was regarded as hidden emotional abuse against the child. At the same time, she had showed parental neglect by ignoring the indications of the need for specialist help. She lacked the ability to provide age-appropriate parenting. The report also noted that X had a symbiotic relationship with the applicant. He had asked when he would be able to return to his mother and feared that he would need to live with his father. The parental conflicts and prolonged court proceedings had emotionally traumatised the child. To prevent re-traumatising the child, repeated questioning was impermissible.

46. A forensic psychological and psychiatric assessment of X, carried out on 26 April 2013, disclosed that he was emotionally dependent on his mother and due to his infantilism wished to remain in her care. He had adjustment disorder with disturbance of emotions and conduct connected to negative changes during puberty and an atypical family upbringing. In view of these peculiarities, X was not capable of adequately assessing his mother's conduct. He was very easily influenced by her and could

uncritically mimic her behaviour. Indicators characteristic of children who had suffered emotional and physical abuse were present. Sexual abuse could not be excluded, though it could have been indirect. There had been adverse changes in his mental state, manifesting themselves as inadequate emotional development, distorted self-image, and relationships with others. These adverse changes had a causal link to his mother's conduct. Due to X's psychological state, it was advised that he should not take part in the pre-trial or trial proceedings.

47. A report of 11 July 2013 by psychologist I.L. disclosed that the applicant's relationship with her son showed confused roles. She had an insufficient ability to understand the needs of her child and take his interests into account. Due to her psychological particularities, the applicant was unable to understand and ensure the needs of her child. There was a risk of abuse against the child.

48. A report of 24 July 2013 by psychologist I.P. stated that the applicant's alleged negative attitude towards the specialists had not been confirmed. The applicant understood the peculiarities of her son's age group and had the necessary knowledge on questions of childcare and discipline. It was also noted that in order to assess whether the applicant's psycho-emotional state was negatively affecting her son, they would need to be observed together.

49. A psychological assessment of 30 September 2013 carried out by the children's psychiatric hospital where X had been placed following his apprehension by the police (see paragraph 23 above) concluded that he had the appropriate cognitive abilities for his age, that he did not have depression and that he did not require medication. X had changing and exaggerated emotions; his well-being depended on his situation and his thoughts on suicide changed rapidly. The dominant desire was to return to his mother. It was recommended that he receive long-term psychotherapy and stay in a stable, safe, calm and unchanging environment.

50. On 21 March 2014 psychologist M.Z. stated that during a consultation X had indicated that he wanted peace and wished to live with his mother at their current place of residence. He had expressed a wish to continue attending extracurricular activities – music school, singing, dancing, and painting lessons. This opinion had been expressed without the applicant being present.

V. ADMINISTRATIVE PROCEEDINGS SEEKING RESTORATION OF PARENTAL AUTHORITY

A. Proceedings against the decision of 12 March 2013

51. The applicant challenged the decision of 12 March 2013 refusing to restore her parental authority before the administrative courts. She relied on

Article 110 of the Constitution (*Satversme*), which guarantees the protection of family, as well as various domestic and international documents protecting the rights of the child. On 28 June 2013 the Administrative District Court, following a hearing in the presence of the applicant, officials of the B. and V. Guardianship Institutions and social services, and the X's specially assigned representative, refused to restore the applicant's parental authority, concluding that she had abused her parental authority and committed physical and emotional abuse against X. The court referred to prolonged and inadequate emotional treatment of the child and the applicant's inability to understand his emotional needs, which had harmed his development. The applicant lodged an appeal and an application for an interim measure.

52. On 13 September 2013 the Administrative Regional Court, by means of a written procedure, dismissed her application for an interim measure. It considered that she continued to ignore the child's interests and was hiding him in spite of his need for specialist help. On 29 October 2013 the Senate of the Supreme Court, after having examined the submissions made by the applicant, the official of the V. Guardianship Institution and X's specially assigned representative by means of a written procedure, upheld the refusal to order an interim measure. It referred, in particular, to the psychologist's report of 11 July 2013 (see paragraph 47 above), the meeting of 7 October 2013 (see paragraph 24 above), the forensic psychological and psychiatric assessment of 26 April 2013 (see paragraph 46 above) and X's conduct on 24 September 2013 when apprehended by the police and taken to a psychiatric hospital (see paragraph 23 above). It also noted that the applicant continued to refuse to cooperate with the specialists and was hiding the child. In his mother's care, from 16 May to 24 September 2013, X's conduct had remained self-destructive and his psycho-emotional state had not improved. The child's opinion was known to the court, though it could not be considered objective. The reasons behind the decision to suspend parental authority had not ceased to exist. With regard to the applicant's complaint of restriction of X's right to education, the Senate of the Supreme Court noted that it was the applicant who had prevented her child from receiving an education, as while X had lived in the children's home he had attended school.

53. On 19 December 2013 the Administrative Regional Court, following a closed hearing that had taken place on 28 November 2013 in the presence of the applicant, the official of V. Guardianship Institution and the X's specially assigned representative, examined the applicant's appeal in the main proceedings and dismissed the request for parental authority to be restored. Reiterating the reasoning of the Senate of the Supreme Court (see paragraph 52 above), it found that the circumstances for the suspension had not ceased to exist. There were no grounds to question reliability of the psychologist's report of 11 July 2013 (see paragraph 47 above) as she had

drawn her conclusions on the basis of ten different assessment methods. The court also referred to the forensic psychological and psychiatric assessment of 26 April 2013 (see paragraph 46 above). The court established that the applicant continued to hide her child. There was a high risk of X being subject to abuse. The following factors were taken to confirm that the applicant did not have an adequate understanding of his needs: (i) hiding of the child, (ii) failure to cooperate with the authorities, (iii) failure to ensure that X received adequate medical care (as X had not been registered with a general practitioner), (iv) her own aggressive behaviour (such as threats and cursing), and (iv) denial of problems and failure to work on resolving them. According to the court, the applicant had acted in an abusive manner towards X and had not changed her attitude. The court examined other psychological assessments submitted by the applicant (see, amongst others, paragraph 48 above) and dismissed their significance as they had been made following simple consultations and no particular assessment methods had been applied.

54. As to the best interests of the child, it was not disputed that X wished to stay with the applicant. However, his views had been influenced by her; they were not decisive. X was not aware of his own interests. In a neutral setting, he had expressed a wish to stay with his mother or father and not to be sent to a children's home (reference was made to a conversation with a social worker in a hospital, paragraph 23 above). The circumstances for separating the family had not ceased to exist.

55. The court added that a decision to suspend parental authority was a compulsory administrative act, which the authorities were required to adopt whenever the circumstances set out in section 203 of the Civil Law (*Civillikums*) were established. Parental authority could only be restored when those circumstances had ceased to exist. The applicant lodged an appeal on points of law.

56. On 3 March 2014 the Supreme Court in a preparatory meeting by means of a written procedure refused to institute proceedings on points of law. It noted that the suspension of the applicant's parental authority had been based on her attitude and conduct, and that it was up to her to remove these obstacles by constructively cooperating with the authorities. While the Supreme Court agreed with the applicant that the child's placement in a child-care institution may be emotionally hard on the child, it considered that there were no less restrictive measures to protect the best interests of the child.

B. Proceedings against the decision of 1 August 2013

57. The applicant's appeal against the decision of 1 August 2013 (see paragraph 22 above) was not examined separately, as it concerned the same subject matter as in the proceedings against the decision of 12 March 2013 –

the restoration of the applicant's parental authority. Accordingly, the decision of 1 August 2013 and the developments following that date were assessed in the proceedings against the decision of 12 March 2013.

C. Proceedings against the decision of 16 May 2014

58. In proceedings against the decision of 16 May 2014 (see paragraph 28 above), the applicant relied on various documents guaranteeing the rights of the child. On 4 September 2014 the Administrative District Court refused to restore her parental authority, having assessed the situation since 28 November 2013 when the previous case had been heard by the appellate court (it referred to the 19 December 2013 judgment, see paragraph 53 above). X whereabouts remained unknown, as the applicant refused to disclose them. The case file contained no conclusion of certified experts prepared since 28 November 2013 with respect to the applicant and X, but the court referred to the psychologist's report of 11 July 2013 (see paragraph 47 above) and noted the applicant's continued failure to cooperate with the authorities. There was no information that the applicant had received a prolonged psychotherapy treatment. There was no evidence about the applicant's current psycho-emotional state and its effect on the child. The termination of criminal proceedings against the applicant did not mean that her parental authority should be restored. The applicant had not tried to resolve the underlying problems and her conduct remained confrontational. In her appeal the applicant relied, *inter alia*, on Articles 110 and 112 of the Constitution, which guarantee the protection of family and the right to education.

59. The appeal was examined after the restoration of the applicant's parental authority (see paragraph 67 below). Accordingly, in its judgment of 17 April 2015 the Administrative Regional Court reduced the scope of the review to the legality of the decision of 16 May 2014 in view of the circumstances obtaining from 28 November 2013 to 16 May 2014. It dismissed the claim, considering that in the period concerned there had been no indications that the applicant's parental authority should be restored. No appeal on points of law was lodged against this judgment and it took effect on 19 May 2015.

VI. RESTORATION OF THE APPLICANT'S PARENTAL AUTHORITY

A. Views expressed by the Ombudsperson and social services

60. On 27 February 2014 the Ombudsperson suggested that the V. Guardianship Institution should either restore the applicant's parental authority or ensure that the decision concerning out-of-family care be enforced.

61. On 22 September 2014 social services wrote a letter to the V. Guardianship Institution suggesting it to urgently review the decision to suspend the applicant's parental authority. It noted that the decision had been taken on the basis of alleged abuse in February 2013; however, this fact had not been confirmed.

62. On 23 September 2014 the director of the V. Guardianship Institution met up with X to obtain his opinion about the situation. She later stated that X had been in a good mood and had confirmed that he had a very good relationship with his mother. On the same day the V. Guardianship Institution wrote to the applicant and social services, stating that the decisions taken so far had been lawful and had served the interests of the child. It invited the applicant to cooperate and to submit any new material that would be relevant for the restoration of her parental authority.

63. On 23 September 2014 social services wrote another letter to the V. Guardianship Institution, the State Inspectorate for the Protection of Children's Rights and the Ministry of Welfare. At this point in time it had become known that since May 2013 the child was together with his mother; in their opinion it was inappropriate to blame the applicant for failure to comply with the decision suspending her parental authority, as the authorities had also failed to ensure compliance with that decision for more than eighteen months. In the meantime, X, who had already turned 14, had repeatedly expressed the wish to live with his mother at their place of residence, to attend school, music school and arts lessons. There was no information that X's placement in a family-like setting had ever been sought. Placing a child in a children's home was a last resort and could only be used as a short-term solution.

64. Social services noted that even though the initial decision to suspend the applicant's parental authority following the incident of 25 February 2013 had been well-intended, in their view in practice it had not served the interests of the child; the alleged abuse had not been proved in the criminal proceedings and the mother had not been convicted. The child had suffered most from this decision – he had been separated from his mother, deprived of the ability to live at his family home, and could not attend school and music school. Social services were convinced that any further separation of the child from his mother would be emotionally traumatising to both the child and the mother and would only worsen the situation. X's family doctor had also emphasised the stress both the mother and child had been facing. Furthermore, after X's stay at the psychiatric hospital it had been recommended that he stay in a stable, calm and unchanging environment (see paragraph 49 above), which was not possible if there were continued risks of the child being separated from his mother and being placed in various institutions. While social services acknowledged that the family had problems that required long-term cooperation, the questions of the child's education and safety had to be resolved as a matter of priority.

65. Social services also emphasised that all the authorities involved agreed that X's right to education was not being ensured. During this period X had attended a distance learning school, but the certificate of studies had been annulled on formal grounds.

66. On 13 October 2014 social services wrote another letter to the B., V. and R. Guardianship Institutions, pointing out that X's right to education was still not being ensured despite the fact that various authorities had identified the problem almost two months earlier. While in practice X was following studies at a distance learning school, his education status remained legally unregulated.

B. Decision taken by the relevant guardianship institution

67. On 4 November 2014 the B. Guardianship Institution restored the applicant's parental authority. It concluded that the applicant was now cooperating with social services and that the child's opinion had been established in person. All the parties involved recognised that in the current circumstances the child's right to education was not being ensured. The guardianship institution then reiterated the reasoning of the letter from social services of 23 September 2014 (see paragraphs 63-65 above). It also referred to the psychological assessment of 30 September 2013 that X required a stable, safe, calm and unchanging environment (see paragraph 49 above) and the psychologist's report of 24 July 2013 stating that the applicant understood the parenting issues relevant to her son's age group (see paragraph 48 above). While X's father had expressed the opinion that the applicant's parental authority should not be restored, he was not prepared to take care of X and was of the opinion that he should live in a crisis centre. The B. Guardianship Institution concluded that the reasons for the suspension of the applicant's parental authority had ceased to exist.

C. X's further education

68. On 10 November 2014 X was accepted into the distance learning school in seventh grade. On 19 November 2014 he was issued a certificate confirming completion of seventh grade with good marks and was moved to eighth grade. He was praised, among other things, for being actively involved in the study process, for participating in extracurricular activities (e.g. representing the school in a televised quiz show) and for his creative approach to studies. On 29 May 2015 he was issued a certificate confirming completion of eighth grade and was transferred to ninth grade. He completed ninth grade at the same school before continuing his education in a State secondary school. As of 13 January 2015, X started to take piano classes in the music school.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

69. The relevant provisions of the Constitution read as follows:

Article 110

"The State shall protect and support marriage – a union between a man and a woman, the family, the rights of parents and rights of the child. The State shall provide special support to disabled children, children left without parental care or [those] who have suffered from violence."

Article 112

"Everyone has the right to education. The State shall ensure that everyone receives primary and secondary education free of charge. Primary education shall be compulsory."

Section 30(1) of the General Education Law (*Vispārējās izglītības likums*) provides that primary education is obtained in nine years.

70. At the relevant time, section 203 of the Civil Law provided:

"Parental authority shall be suspended if a guardianship institution concludes that:

(1) there are actual obstacles preventing the parent from caring for the child;

(2) the child's health or life is endangered due to the fault of the parent (through intentional or negligent actions ...);

(3) the parent abuses his or her rights or does not ensure care and supervision of the child;

...

(5) parental abuse against the child has been established or there is reasonable suspicion of parental abuse against the child.

In such cases, care shall be ensured by the other parent, but if there are also obstacles [to this], the guardianship institution shall ensure out-of-family care for the child.

The suspended parental authority shall be restored if the guardianship institution finds that the circumstances referred to in paragraph 1 of this section no longer apply. If it is not possible to restore parental authority within one year of its suspension, the guardianship institution decides on bringing court proceedings (*lemj par prasības celšanu tiesā*) for removal of parental authority, except when it is not possible to restore parental authority owing to the circumstances beyond parental control.

The guardianship institution shall have a right to decide on bringing court proceedings for removal of parental authority before the expiry of the above-mentioned [one-year period] if it is in the interests of the child."

71. The relevant parts of section 27(1) of the Law on the Protection of Children's Rights (*Bērnu tiesību aizsardzības likums*) provide that a child may be separated from the family if his or her life, health or development

are seriously endangered due to abuse or if there is reasonable suspicion of abuse, as well as due to a lack of care or other circumstances at home (social environment). Section 27(2) provides that a child should be separated from the family if it is not possible to eliminate the circumstances adverse to his or her development if he or she remains in the family. Section 27(3) stipulates that a child who is separated from the family is ensured out-of-family care with a guardian, in a foster family or in a childcare institution, as well as State-financed emergency medical care in a healthcare facility or help in a social rehabilitation centre.

II. OMBUDSPERSON'S ASSESSMENT OF CHILDREN'S HOMES IN LATVIA

72. On 11 May 2015 the Ombudsperson issued a report on children's rights in municipal childcare institutions, which was based on visits to twenty-one children's homes. The Ombudsperson found that in practice children were placed in children's homes because no alternatives could be found, as the number of guardians and foster families was insufficient. Children were sometimes placed in children's homes far from their parents' homes, hampering the exercise of contact rights and hindering family relationships. The Ombudsperson rejected the idea that moving children to different municipalities was acceptable when they had behavioural problems. He emphasised that moving children far from their families was not an effective method to improve their behaviour and frequently only exacerbated the problems. Furthermore, the change of the child's living place could not replace the preventive work that had to be undertaken. However, the requirement to develop individual programmes to correct social behaviour was not complied with in practice. Instead, children who transgressed were administratively punished or placed in psychiatric hospitals.

73. The Ombudsperson observed that most of the children who lived in children's homes had spent two to six years there, and 12% of them had even lived there for more than ten years. It concluded that the question of reuniting children with their biological families or changing the out-of-family care model to placement with a guardian or foster family was not being re-examined. The authorities involved were not cooperating to facilitate the return of children to their families. Furthermore, most of the children had protracted behavioural, health and addiction problems, which were not being sufficiently treated. In the light of the problems identified, the Ombudsperson concluded that the rights of children who had been removed from or left without parental care were not being ensured.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

74. The applicant complained that the suspension of her parental authority, placement of her son in public care and subsequent refusals to restore her parental authority while she was hiding her son from the authorities had breached her right to respect for family life as provided for in Article 8 of the Convention, which reads as follows:

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

A. Scope of the case

75. The Court observes that even though the applicant's parental authority was suspended following the incident of 25 February 2013, the childcare authorities had been dealing with the applicant's family situation since at least 2008. The scope of a case before the Court is determined by the applicant's complaint or "claim" (see, more generally, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 123-27, 20 March 2018, and *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, §§ 99-101, 1 June 2021). In the present case, having regard to the applicant's submissions (see paragraphs 86-91 below), the Court finds it established that the factual and legal basis of her complaint related to the period when her parental authority was suspended between 26 February 2013 and 4 November 2014. The Court also reiterates that the child is not an applicant in the present case. However, this does not mean that the child's best interests and the way in which these were addressed by the domestic courts are of no relevance (see, *mutatis mutandis*, *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 208, 24 January 2017).

76. In response to the Government's argument about the applicant's contact rights (see paragraph 97 below), the Court notes that the applicant expressly mentioned that issue in the application form and subsequently elaborated on it (see paragraph 88 below). Hence, the Court concludes that the applicant's complaint also encompasses her contact rights with X.

B. Admissibility

1. *The parties' submissions*

77. The Government argued that the applicant had not exhausted the available domestic remedies in two respects. Firstly, she had not raised before the domestic courts the argument that the suspension of her parental authority and refusals to restore it had interfered with her right to family life, instead challenging the reasons for those decisions. Secondly, she had not pursued all the available domestic remedies with respect to the decision of 16 May 2014, as she had not lodged an appeal on points of law against the judgment of the Administrative Regional Court of 17 April 2015 (see paragraph 59 above).

78. The applicant observed that it was not disputed that she had exhausted all domestic remedies with respect to the decisions of 12 March 2013 and 1 August 2013. As regards the decision of 16 May 2014, she pointed out that the Administrative Regional Court's judgment had been adopted on 17 April 2015, that is, already after the restoration of her parental authority on 4 November 2014. A further appeal on points of law would have therefore been a highly formalistic step and could not have provided redress. Accordingly, she had exhausted all domestic remedies within the meaning of Article 35 of the Convention.

2. *The Court's assessment*

79. The Court reiterates that the purpose of the exhaustion rule is to afford a Contracting State the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged against it. Under the Court's case-law, it is not always necessary for the provisions of the Convention to be explicitly raised in domestic proceedings, provided that the complaint has been raised "at least in substance". This means that the applicant must raise legal arguments to the same or like effect on the basis of domestic law, in order to give the national courts the opportunity to redress the alleged breach (see *Radomilja and Others*, cited above, § 117).

80. Furthermore, the Court has frequently highlighted the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism. The application of the rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. The rule of exhaustion is not capable of being applied automatically (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 224, ECHR 2014 (extracts)).

81. The Court observes that the applicant challenged the decisions suspending her parental authority before the domestic courts and sought its

restoration. Thus, she brought issues before them concerning the very core of her right to respect for family life. In addition, in her applications and appeals before the domestic courts she relied on Article 110 of the Constitution guaranteeing the protection of family, and on various documents setting out the rights of the child. Accordingly, the Court cannot but conclude that the complaint was raised before the domestic authorities.

82. As to the Government's objection with respect to the decision of 16 May 2014, the Court observes that the applicant's complaint concerns the entire period during which her parental authority was suspended, that is, from 26 February 2013 to 4 November 2014. It has not been disputed that the applicant pursued all the available remedies with respect to the initial decision of 26 February 2013 to suspend her parental authority by the director of the B. Guardianship Institution and the decisions of 12 March and 1 August 2013 by the V. Guardianship Institution refusing to restore it (see paragraphs 15, 22, 51-54 above). She also pursued the available domestic remedies against the decision of 16 May 2014 by the V. Guardianship Institution, whereby it was again refused to restore her parental authority, until such time as her main request – the restoration of her parental authority – became moot, such a decision having already been taken by the competent institution (see paragraphs 28, 58-59 above).

83. The Court is mindful that the question of the legality of the decision of 16 May 2014 was not put before all available levels of jurisdiction; however, in the circumstances of the present case this fact cannot lead to the conclusion that the applicant had failed to provide the national authorities with the opportunity to put right the alleged violations of the Convention complained of before the Court.

84. In view of the above, dismissing the applicant's complaint for non-exhaustion of domestic remedies would be excessively formalistic. Accordingly, the Government's non-exhaustion objection should be dismissed.

85. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

1. The applicant's submissions

86. The applicant complained that the suspension of her parental authority from 26 February 2013 to 4 November 2014 had interfered with her right to respect for family life. While she agreed that the decisions had been based on legal norms, she contested the justification of the measures and disagreed that they had been taken with the aim of protecting X, as she had never endangered his life or health. The applicant emphasised that neither the expert reports nor the decisions taken by the relevant authorities

had ever established that she had been violent towards X. They had only concluded that emotional, physical and sexual abuse could not be excluded, without conclusively finding that such abuse had taken place and, moreover, without implicating her.

87. The applicant submitted that the decisions of the authorities had been based on two main reasons – X's inappropriate behaviour and her lack of cooperation with the authorities. X's interests, even if mentioned, had never been analysed in depth. His opinion, which had been expressed in writing and demonstrated by his running away from the institutions, had not been mentioned or had been disregarded. No explanation had been provided as to how the continued suspension of the applicant's parental authority would serve the best interests of the child. Instead, the focus had been on her character and conduct, particularly her lack of cooperation with the authorities. The decisions of the guardianship institutions, particularly the subsequent refusals to restore parental authority, had pursued the aim of punishing the applicant for her conduct, rather than protecting X's interests. The decisions had also repeatedly stated that the reasons for suspending her parental authority had not been eliminated, even though the allegations of abuse against X had never been established and the criminal proceedings against her had already been discontinued on 1 July 2013.

88. There had been no justification for the complete denial of the applicant's contact rights, which had pursued no legitimate aim. Nor had there been any justification for the complete deprivation of X's rights to have contact with his maternal grandmother and his uncle, denying him any possibility of having contact with his biological relatives. No effort had been made to find an effective solution and the possibility of resorting to less restrictive measures had not been considered. In particular, the possibility of leaving X in the family and providing him help to overcome his behavioural difficulties had not been addressed. In addition, other less restrictive measures, such as X's placement in the care of other family members or a foster family had not been assessed. The only alternative measure had been the restoration of X's father's parental authority, despite the fact that he had been a complete stranger to the child and had never showed any interest in his life.

89. Not only the decisions but also the actions of the authorities involved had to be considered. After the incident of 25 February 2013 X, who had been twelve years old at the time, had been placed in a psychiatric hospital. There had been no indications of psychiatric illness and the only reason for this recourse had been his behaviour – he had thrown a cup of tea at a policeman. Furthermore, although it had been clear that he was not ill, on 6 March 2013 he had been transferred to another psychiatric hospital, where he had stayed until 12 March 2013. Following that, X had been placed in a crisis centre and then in a children's home. All these institutions had been far from his usual place of residence, which had completely disrupted all his

social contact. The authorities had not ensured a stable and safe environment, as from February to November 2013 X had been placed in three different hospitals and three different childcare institutions. During this time the applicant had been denied access to her son. She submitted that all this had amounted to cruel treatment. Furthermore, she referred to the Ombudsperson's conclusions concerning the numerous deficiencies in children's homes in Latvia (see paragraphs 72-73 above) and emphasised that these facilities were incapable of providing proper care to children.

90. The actions of the guardianship institutions had also been highly ineffective after X's removal from the children's home. No State authority had really wanted to find X, analyse the situation and find the best solution for him. Article 8 of the Convention required the State to take measures with a view of reuniting a child with his family. In the present case, the authorities had acted contrary to that goal – without determining X's best interests, their actions had been directed solely at removing him from his family.

91. The applicant also argued that the administrative court's review had been ineffective, that X's views had never been heard, even though he had been 13 or 14 years old at the time, that the proceedings had been excessively lengthy and that the appellate court had refused to hear her witnesses or admit her evidence.

2. The Government's submissions

92. The Government agreed that the suspension of the applicant's parental authority had interfered with her family life but contended that it had been prescribed by law, had pursued a legitimate aim and had been necessary in a democratic society. In particular, it had been based on a reasonable suspicion that X had been subjected to emotional and physical abuse by the applicant and that continued care by her would endanger his life and health.

93. The Government disagreed that there was no evidence of abuse by the applicant against her son. Referring, in particular, to the psychological examination report of 11 April 2013 and forensic psychological and psychiatric assessment of 26 April 2013 (see paragraphs 45-46 above), they pointed out that, according to the domestic authorities, the manner in which the applicant had exercised her parental authority had seriously threatened X's health and life and had posed harm to his mental health and development. It had been expressly concluded that the unfavourable changes in X's psyche had a causal link to the applicant's conduct towards him. The obligation to care for a child encompassed not only the duty to ensure the child's basic needs, but also the duty to raise a child in such a way as to comply with his mental, physical and emotional needs, including the duty to prepare a child for an independent life in society and protect him from physical and emotional abuse. In the present case, there had been a

continued inadequate emotional attitude towards the child, and the applicant had demonstrated an inability to understand the child's needs, all of which had created long-term consequences and substantially affected X's development and socio-psychological functioning in society.

94. The refusals to restore the applicant's parental authority had been based on information which showed that the reasons for suspending it had not ceased to exist. Under domestic law, parental authority could only be restored if it could be established that the reasons for the suspension no longer applied and no other circumstances preventing restoration had arisen. In this regard, the attitude and participation of the parents was essential, as they needed to show their willingness to care for a child in an appropriate and acceptable way and actively participate in the resolution of the problematic situation. However, the applicant had persistently failed to cooperate. She had not acknowledged her mistakes in caring for X and had not displayed any readiness to improve the situation. She had systematically ignored the guardianship institutions' requests and had not complied with the recommendations about the treatment necessary for X and herself. In other words, the applicant herself had delayed the adoption of the decisions that would have allowed X's return to the family, which would have been in the best interests of the child.

95. The Government disagreed with the applicant's allegation that the competent authorities had never tried to find an effective solution to the situation or that the decisions had been aimed at punishing her for her conduct. The guardianship institutions and other authorities had taken all the reasonable steps that could have been expected of them – they had prepared the social rehabilitation plan, arranged the possibility for the applicant to meet up with social services and a psychologist, organised meetings between the different authorities and offered the applicant rehabilitation opportunities. Accordingly, the applicant could have reasonably expected her cooperation with the competent authorities to be a precondition for the restoration of her parental authority. Instead, she had at times cursed, threatened and insulted those involved.

96. The Government submitted that alternatives to placing X in a childcare institution had been explored; however, the guardianship institutions had not received any application from X's relatives regarding their appointment as his guardian. Besides, the maternal relatives had cooperated with the applicant. The guardianship institutions had also involved the law-enforcement authorities in the search for X. While they had suspected that X was with the applicant, due to her failure to cooperate they could not meet X in person and had been unable to verify his opinion and living conditions. The domestic authorities had not considered that the opinion expressed by X accurately reflected his views. The Government considered that the child's opinion was not sufficient, particularly in the

circumstances when the domestic courts had established factors that run counter to the child's opinion and provided reasoning for such findings.

97. The Government argued that the complaint about the removal of the applicant's contact rights with X had not formed part of the application lodged with the Court. In any event, the decision to deny the applicant of her contact rights had been taken after establishing that her attitude towards X had endangered his emotional development and substantially affected his socio-psychological functioning in society.

3. The Court's assessment

(a) The general principles

98. The general principles applicable to cases involving child welfare measures, including measures such as those at issue in the present case, are well-established in the Court's case-law, and were extensively set out in the case of *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, §§ 202-13, 10 September 2019). For the purposes of the present case, the Court reiterates that regard to family unity and for family reunification in the event of separation are inherent considerations in the right to respect for family life under Article 8 of the Convention. Accordingly, in the case of imposition of public care restricting family life, a positive duty lies on the authorities to take measures to facilitate family reunification as soon as reasonably feasible. Moreover, any measure implementing such temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child. The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child. Furthermore, the ties between members of a family, and the prospect of their successful reunification will perforce be weakened if impediments are placed in the way of their having easy and regular access to each other (ibid., §§ 205 and 208).

99. 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. 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 (ibid., § 204). Furthermore, 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. Moreover, family ties may only be severed in "very exceptional circumstances" (ibid., §§ 206-07).

100. 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. It must consider 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 was fair and afforded due respect to the applicant's rights under Article 8 of the Convention.

101. 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. Whilst the Court recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care, this margin is not unfettered. In certain instances, the Court has 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. 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 (ibid., §§ 210-11).

(b) Application to the present case

102. It is undisputed that the suspension of the applicant's parental authority and the limitations imposed on her contacts with her child interfered with her right to respect for family life under Article 8 of the Convention. Any such interference will constitute a violation of Article 8 unless it is "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".

103. The impugned measures conformed to the requirements of domestic law and pursued the legitimate aim of protecting the rights and freedoms of others, namely those of X.

104. The Court further notes that its examination of the case at hand is limited to the applicant's complaint concerning the suspension of her parental authority and her contact rights with her child. It has to, however, put this complaint into context, which inevitably means, to some extent, having regard to earlier events (see *Strand Lobben and Others*, cited above,

§ 148, and *Zelikha Magomadova v. Russia*, no. 58724/14, § 82, 8 October 2019).

105. The Court accepts that in reaching decisions on childcare measures, national authorities and courts are often faced with a task that is extremely difficult. The Court does not lose sight of the fact that the applicant's son was a vulnerable child and then teenage boy who it was considered may have suffered abuse. He had been involved in various conflict situations and had had prolonged and extensively monitored behavioural difficulties from a very young age. X had also made several attempts to harm himself and others (see paragraphs 6-8, 10, 12, and 45 above).

106. With respect to the incident of 25 February 2013, the Court agrees that it merited serious consideration and required action on the part of the domestic authorities. As the police picked up an inappropriately dressed, 12 year-old boy on the street at night, who claimed to have had a fight with his mother, the Court can accept that the authorities were called upon to adopt urgent measures temporarily separating the mother and child.

107. In line with the principles outlined above, the Court will examine whether the domestic authorities in the present case made an in-depth examination of the entire family situation and of all relevant factors.

108. The measures taken by the domestic authorities to separate the applicant from her teenage son were prompt and far-reaching – on the day following the incident the applicant's parental authority was suspended and two weeks later her contact rights with X were removed in their entirety (see paragraph 15 above). No temporal limits for the suspension of the applicant's parental authority were set; but – if her parental authority was not restored within a period of one year – the applicant risked to have it completely removed (see paragraph 70 above) (contrast *Wunderlich v. Germany*, no. 18925/15, § 52, 10 January 2019, where the restrictions on parental authority were partial and temporary). Since the domestic authorities established that X's father was unable to provide for him, his father's parental authority was also suspended. As X's maternal relatives were considered to have played an active role in his mother's failure to cooperate with the specialists, their contact rights with X were also removed within one month and thirteen days of the incident (see paragraph 17 above). As a result of those measures X, who for the most part of his life had been living with the applicant, was taken into public care and – within a period of two weeks – was deprived of any contact with his mother and – following a further period of one month – with his remaining closest relatives.

109. Despite the above-mentioned far-reaching nature of the measures taken by the domestic authorities, the Court considers that they cannot be criticised for having made the choice to separate the applicant from her son given the urgency of the situation. As to the decision-making process, the Court observes that the initial decision to suspend the applicant's parental

authority was taken by the director of the relevant guardianship institution on the day following the incident of 25 February 2013. The Court further notes that all subsequent decisions not to restore her parental authority were taken collegially by the relevant guardianship institutions after having heard the applicant and reviewing the available material (see paragraphs 15, 22 and 28 above). The Court does not have any basis for considering that the applicant, who attended with her lawyer or representative and gave evidence before the guardianship institutions, was not allowed to fully participate in the decision-making process or that that process did not allow her rights and interests to be taken into consideration.

110. The Court further notes that the applicant brought several sets of proceedings to seek restoration of her parental authority; her complaints were examined in three court instances. She also applied for an interim measure, which was examined in expedited proceedings in two court instances. The applicant attended hearings and made oral submissions before the administrative courts when such hearings were held. When matters were examined by means of a written procedure, the applicant made her submissions in writing. A number of witnesses, including officials of various guardianship institutions and social services as well as X's specially assigned representative, were also heard (see paragraphs 51-59 above). It is therefore clear that every opportunity was afforded to the applicant to put forward her arguments and evidence also at the judicial stage.

111. Regarding the reasons for the impugned measures, the Court takes note that the first-instance court essentially found that the suspension of the applicant's parental authority was necessary because there were fears that she had committed physical and emotional abuse against X and given her inability to understand his needs (see paragraph 51 above). The appellate court and the court of cassation also relied on the fact that the applicant was hiding the child and grounded their decisions on her repeated refusals to cooperate with the domestic authorities despite the child's need for specialist help. The Court cannot lose sight of the context in which the domestic authorities were operating. As indicated in paragraphs 6-12 above, X had come to the attention of the authorities at a very young age, had attempted to harm himself and had hurt other children and as a result had been an inpatient in the psychiatric unit of a children's hospital, and his custody had been the subject of proceedings involving different guardianship institutions with which the applicant had refused to cooperate, changing her registered address twelve times between 2009 and 2012. The Court therefore accepts that those were "relevant" considerations but it also has to examine whether they were "sufficient" to justify the suspension of the applicant's parental authority and the limitations on contacts as they were imposed in the circumstances of the present case.

112. At the initial stages of the proceedings there were concerns about the applicant's physical and emotional abuse against X given the child's

initial account of the incident of 25 February 2013 and the context just described. While allegations of physical abuse by the applicant were not confirmed, concerns about emotional abuse remained. As regards the applicant's inability to understand the needs of her child and emotional abuse, the Court notes that the administrative courts referred extensively to various expert reports. They reasoned that those reports, which had been made using several comprehensive assessment methods, were more reliable than simple psychological reports submitted by the applicant (see paragraphs 52-53 above). The Court can accept that the expert reports on which the domestic courts relied were relatively recent and rather comprehensive (contrast with *Strand Lobben and Others*, cited above, § 222, where expert reports had not been updated for some two years). The domestic courts, on the basis of those expert reports, had a solid basis for concern about the applicant's relationship with her child and the effect it had on his development and well-being. Moreover, the domestic courts relied not only on those reports but examined the family situation as a whole over an extended period of time.

113. The case material reveals a particularly worrying trend in Latvia for dealing with emotionally vulnerable children with behavioural problems – it appears that the domestic authorities considered placing these children in psychiatric institutions as the first resort (see, for example, paragraphs 6, 13, 23 above). In this respect, the Court notes that placement in psychiatric institutions cannot be considered conducive to the well-being of the child or in his or her best interests in the absence of a psychiatric illness or any indication that his or her state of health necessitated particular treatment. The Court also refers to the conclusions of the Ombudsperson concerning the fundamental deficiencies in Latvian children's homes including recourse to psychiatric hospitals in order to handle behavioural problems, placement in distant children's homes, failure to address individual behavioural issues, and the lack of alternative out-of-family care arrangements (see paragraphs 72-73 above). The Court, while mindful of the complexity of the situation facing the authorities at the time, and recognising that X had come to the attention of the domestic authorities at a very young age and had been placed in the psychiatric unit of a children's hospital for inpatient treatment prior to the incident of 25 February 2013 (see paragraph 111 above), considers that they may not have sufficiently considered the possibility of other placement arrangements more protective of a vulnerable child.

114. As regards the applicant's failure to cooperate, in view of the importance of parent's cooperation when measures to ensure the well-being of a child are undertaken by the competent authorities, the Court considers that the applicant's action of taking X away from the hospital, flagrantly disregarding the decision to suspend her parental authority (see paragraph 21 above), was an unlawful act of particular gravity which brought about an escalation of the situation. Even if the applicant assumed

that X's health and well-being was at risk in the children's home, there can be no justification for her taking the matters into her own hands by disregarding the law and removing X from the public care in which he had been placed. Instead she should have sought urgent intervention by the competent authorities. The Court notes in that respect that the criminal proceedings instituted on suspicion of alleged ill-treatment of X at the children's home were eventually terminated as the suspicion turned to be unfounded (see paragraph 39 above).

115. The Court rejects the applicant's argument that the refusals to restore her parental authority had been aimed at punishing her for her conduct. The case file contains sufficient material showing that the applicant's failure to cooperate over many years was a central factor which objectively limited, to the applicant's detriment, the options that the authorities had in finding the right balance between the interests involved (see paragraphs 19, 21, 24 and 27 above) and that her living in the hiding with X had harmed him (see paragraphs 22 and 28 above).

116. The Court must also examine whether the Latvian authorities duly weighed the different interests involved and, in particular, whether they sufficiently took into account X's attitude. It reiterates that, as a general rule, it is for the national courts to assess the evidence before them, including the means used to ascertain the relevant facts. The question whether the domestic courts need to hear a child in court on the issues related to the suspension of parental authority depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned (see *Sahin v. Germany* [GC], no. 30943/96, § 73, ECHR 2003-VIII).

117. The Court observes that the administrative courts did not invite the applicant's son to express his wishes. This was based on the view that he had been traumatised by the whole situation and the experts had concluded that he should not be repeatedly questioned or participate in court proceedings (see paragraphs 45-46 above). Taking into account the margin of appreciation enjoyed by the domestic authorities, who are better placed than the Court, the domestic courts could reasonably consider that it was not appropriate, given the expert advice, for them to hear the applicant's son in person. While the appellate court took note of his wish to stay with the applicant, it considered that those views had been unduly influenced by the applicant. The applicant not having substantiated concrete elements demonstrating that this finding was untenable or arbitrary, the Court cannot agree with her that the domestic courts did not take into account what appeared to be X's best interests at the relevant time and did so against a background of sustained refusal by the applicant to cooperate with the authorities (see, *inter alia*, paragraphs 8, 10-11, 14, 16, 19, 21 and 28 above); they weighed X's interests against those of the applicant and gave precedence to the child's interests in reaching their conclusions.

118. It is also noteworthy that the domestic courts were careful to rule on the applicant's claim in the light of circumstances that prevailed at that time and made it clear that they might reconsider the situation if some of the circumstances weighing in favour of separating the family would cease to exist (paragraphs 52-54 above). Since one of the reasons for the suspension of the applicant's parental authority was her failure to cooperate with the domestic authorities, the applicant could have influenced the evolution of the situation by showing her willingness to cooperate and taking further steps to accept various offers of help.

119. It is true that in the proceedings against the decision of 16 May 2014 no fresh assessment was ordered and the domestic court relied on the assessment dating from 11 July 2013. However, it transpires from the case material that the applicant did not cooperate with the authorities throughout this period (see paragraph 58 above) and, therefore, there is no indication that the court failed to have regard to potentially decisive new developments. Eventually, when the applicant started to cooperate with the domestic authorities, seeking with them to engage with measures in the best interests of X, the situation was reassessed and her parental authority was restored (see paragraph 67 above).

120. In sum, in the circumstances of the case, the Court considers that the authorities gave relevant and sufficient reasons for the suspension of the applicant's parental authority, the subsequent refusals to restore it and the limitations on contacts. Having regard, in addition, to the fact that the applicant was afforded full opportunity to participate in the decision-making process at all stages and that the impugned measures were repeatedly reviewed by the judicial authorities, the Court finds that the measures complained of fell within the margin of appreciation afforded to the respondent State and were justified under Article 8 § 2 of the Convention.

121. There has accordingly been no violation of Article 8 of the Convention as regards the temporary suspension of the applicant's parental authority and temporary placement of X in public care.

II. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 1

122. The applicant complained that her son had been deprived of the possibility to receive compulsory primary education and attend music school, in violation of Article 2 of Protocol No. 1, which reads as follows:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

123. The Government contested that argument.

A. The parties' submissions

1. The applicant

124. The applicant submitted that X's rights under Article 2 of Protocol No. 1 had been violated, as he had been denied access to (i) compulsory primary education during some of the period of suspension of her parental authority, and (ii) a specialised education (music school) during the entire period of suspension of her parental authority.

125. During his placement in psychiatric hospitals and the family crisis centre, X had had no access to any educational facilities. While placed in the children's home, X had been registered at the school in municipality L; however, he had only gone there for two weeks. Thus, even though X had formally completed sixth grade, in the period following the suspension of the applicant's parental authority he had had no real possibility of acquiring new knowledge and skills. Furthermore, in the 2013/2014 school year the State authorities had done nothing to provide X with the possibility of attending school. On the contrary, even though he had completed seventh grade in the distance learning school with good marks and had been moved to eighth grade, these decisions had been annulled on the grounds that he had been registered by the applicant while she had had no parental authority. The applicant pointed out that the contract with the distance learning school had also been signed by X. Several State authorities had also agreed that X's right to education had not been ensured (see paragraph 63 above).

126. While the applicant agreed that a solution had eventually been found for X so that he would not lose a school year, he had been required to take additional examinations to complete two grades in one school year. Furthermore, this solution had been based entirely on the goodwill of the principal of the distance learning school, who had entered into negotiations with the State Education Quality Service in order to provide X with the possibility to study even prior to the restoration of the applicant's parental authority.

127. Lastly, prior to the suspension of his mother's parental authority, X had taken piano classes in the music school and participated in other "interest education" (extracurricular) activities. After the incident of 25 February 2013 his music studies had been discontinued, even though he had repeatedly expressed his desire to attend music school.

2. The Government

128. The Government argued that the applicant had abused the right of individual application by submitting misleading information to the Court, as X has never been deprived of the right to education and his enrolment in the distance learning school for seventh grade had been unlawful.

129. The Government pointed out that in May 2013 the school in municipality R. had issued a certificate confirming that X had completed sixth grade and that the school in municipality L. had enrolled him in seventh grade. Despite that, the applicant had arranged for him to pursue his studies in the distance learning school. As X's admission to the distance learning school had been unlawful, he had been required to repeat his studies in seventh grade. Accordingly, it had been the applicant's conduct, not that of the authorities, that had prevented X from attending the school in which he had been enrolled. The applicant should have foreseen the consequences of her conduct and their effect on X's studies.

130. The Government also pointed out that the annulment of the certificate confirming completion of seventh grade had not prolonged or encumbered X's studies. His study results at the distance learning school had been taken into account, which had allowed him to complete seventh and eighth grade in the same school year, albeit following additional examinations. Thus, regardless of the shortcomings in the conduct of the applicant and the distance learning school, the competent authorities had found a solution in the best interests of the child. The Government considered that there had been no interference with X's right to education.

131. With respect to the music school, the Government contended that this issue had not been raised in the application form. In any event, it being an "interest education" (extracurricular) activity, it did not fall within the scope of Article 2 of Protocol No. 1. Nevertheless, the director of the children's home had registered X in a music school; however, as he had been arbitrarily removed from the children's home, he had not had the possibility of attending it.

B. The Court's assessment

132. The Court will proceed on the assumption that the applicant (who is the direct victim's mother) may lodge a complaint under Article 2 of Protocol No. 1 about her son's right to education.

1. X's primary education

133. The Court observes that the facts presented by the Government were included in the initial application form and accompanying documents and were therefore known to the Court at the time they were given notice of the application. Accordingly, the Court dismisses their objection as to the alleged abuse of the right of application.

134. The Court reiterates that the right to education, as set out in the first sentence of Article 2 of Protocol No. 1, guarantees everyone within the jurisdiction of the Contracting States a right of access to educational institutions existing at a given time and the right of drawing profit from the education received by obtaining, in conformity with the rules in force in

each State, official recognition of the studies completed (see *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 137, ECHR 2012 (extracts), and *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 152, ECHR 2005-XI). With respect to the present case, the Court observes that for about a year and a half year X's educational status did not correspond to the realities of the situation. Furthermore, the decision on admission to the distance learning school and certificate confirming completion of seventh grade were annulled. Accordingly, there was an interference with his right to education.

135. The Court further reiterates that, under Article 37 § 1 (b) of the Convention, it may "at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that ...the matter has been resolved...". To be able to conclude that this provision applies, the Court must establish: firstly, whether the circumstances complained of by the applicant still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have been redressed (see *Konstantin Markin v. Russia* [GC], no. 30078/06, § 87, ECHR 2012 (extracts), and *Kaftailova v. Latvia* (striking out) [GC], no. 59643/00, § 48, 7 December 2007).

136. It was not disputed by the parties that after the restoration of the applicant's parental authority in November 2014, X was accepted into the distance learning school and, following additional examinations on the curriculum of seventh grade, was able continue his studies in the age-appropriate eighth grade. Accordingly, after the restoration of the applicant's parental authority X's access to education was no longer restricted and the circumstances complained of no longer obtained. It remains to be established, however, whether the measures taken by the authorities constituted adequate redress in respect of the applicant's complaint. For that purpose, the possible effects of the situation complained of need to be assessed.

137. On the basis of the information before it, the Court has no grounds to consider that prior to X's removal from the children's home in May 2013 he was denied access to education. In particular, the Court is willing to accept that during X's placement in the psychiatric hospital no proper educational activities were feasible; during his stay at the crisis centre he continued, to the extent possible, his studies at the school in municipality R.; and after 30 April 2013, when placed in the children's home, he commenced his studies at a school in municipality L. In the Court's view, the crux of the present complaint is X's access to education during the period the applicant kept her son in hiding and, in particular, his attempts to follow studies at the distance learning school that were hampered by the legal restrictions emanating from the applicant's lack of parental authority.

138. As to that period (May 2013 – November 2014) the Court notes, firstly, that he did not miss a school year and after the restoration of the

applicant's parental authority was able to follow studies in the grade that was appropriate to his age and educational development (contrast *İrfan Temel and Others v. Turkey*, no. 36458/02, § 46, 3 March 2009, where despite subsequent annulment of the disciplinary measures, the applicant had already missed one or two study terms; see also *Enver Şahin v. Turkey*, no. 23065/12, § 32, 30 January 2018, where subsequent adjustments to accommodate persons with disabilities could not be interpreted as recognition and redress for the pervious academic years). While the Court is mindful of the applicant's contention that this solution was based entirely on the goodwill of the principal of the distance learning school who was willing to negotiate with the authorities, it cannot disregard the fact that this solution was attained. Secondly, the Court observes that it has not been argued that the situation ended up having any negative impact on the quality of the education X received. On the contrary, he was able to complete seventh grade with good marks and then went on to study in the same distance learning school before continuing his education in a State secondary school. X was clearly an intelligent and artistic child who, despite the very difficult situation in which he found himself in, strove not only to continue his education with good marks but also not lose interest in various extracurricular and artistic activities for which he had been praised (paragraphs 32, 50, 63, 68 above). While this outcome may be attributable to the applicant's efforts and X's remarkable abilities, the Court has to base its assessment on the circumstances obtaining in the particular case.

139. Having regard to all the above considerations, the Court concludes that both conditions for the application of Article 37 § 1 (b) of the Convention are met in the instant case. The matter giving rise to this complaint can therefore now be considered to be "resolved" within the meaning of Article 37 § 1 (b). Lastly, no particular reason relating to respect for human rights as defined in the Convention requires the Court to continue its examination of the application under Article 37 § 1 *in fine*.

140. Accordingly, this part of the application should be struck out of the Court's list of cases.

2. X's access to music school

141. The Court dismisses the Government's objection that the complaint concerning X's access to music school was not put forward in the initial application, as this issue was expressly raised in several parts of the application form.

142. The Court has consistently held that, while Article 2 of Protocol No. 1 cannot be interpreted as imposing a duty on the Contracting States to set up or subsidise particular educational establishments, States are under an obligation to afford effective access to educational institutions existing at a given time. This provision applies to primary, secondary and higher levels of education (see *Leyla Şahin*, cited above, §§ 134 and 136,

and *Velyo Velev v. Bulgaria*, no. 16032/07, § 31, ECHR 2014 (extracts)). Furthermore, in a case concerning the National Music Academy in Turkey, the Court held that the fact that the college at issue primarily provided education in the arts sphere was not grounds for excluding the conditions for access to it from the scope of Article 2 of Protocol No. 1 (see *Çam v. Turkey*, no. 51500/08, § 43, 23 February 2016).

143. In the present case, the Government argued that access to music school did not fall within the scope of Article 2 of Protocol No. 1, as it was "interest education". They submitted no further arguments or documents to that effect. Moreover, their claim that the director of the children's home had enrolled X in a music school was not supported by further evidence. The applicant did not respond to these objections, merely maintaining that X's music studies had been discontinued.

144. An educational establishment providing education primarily in the arts sphere does not in itself exclude it from the scope of Article 2 of Protocol No. 1 (ibid.). However, in the present case the Court has been presented with no information whatsoever allowing it to make an assessment about the place music schools have in the Latvian education system. Nor does it have sufficient facts to assess the potential merits of this aspect of the complaint.

145. In view of the lack of substantiation, this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares,* unanimously, the complaint under Article 8 admissible;

2. *Holds*, by six votes to one, that there has been no violation of Article 8 of the Convention as regards the temporary suspension of the applicant's parental authority and the temporary placement of X in public care;

3. *Decides,* unanimously, to strike out the application in so far as it concerns the complaint under Article 2 of Protocol No. 1 concerning primary education;

4. *Declares*, unanimously, inadmissible the complaint under Article 2 of Protocol No. 1 in so far as it concerns the music school.

Done in English, and notified in writing on 9 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Victor Soloveytchik
Registrar

Síofra O'Leary
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Hüseynov is annexed to this judgment.

S.O.L.
V.S.

PARTLY DISSENTING OPINION OF JUDGE HÜSEYNOV

1. I agree with both decisions concerning the complaints under Article 2 of Protocol No. 1, but regret that I am unable to agree with the majority's finding that there has been no violation of Article 8 as regards the temporary suspension of the applicants' parental authority and the temporary placement of the applicant's son in public care. For the reasons set out below, I consider that Article 8 of the Convention has been violated in the present case.

2. The impugned measures against the applicant were triggered by an incident which occurred on 25 February 2013. On that night the applicant and her son (X) had a fight, after which X ran out of the home in his pyjamas and slippers. He was picked up by the police on the street and taken to a police station in city B. After that he was taken to a children's hospital in another city, where no danger to his health was detected. X asked to be taken home, and on receiving a negative answer attempted to throw a cup of tea in the police officer's face. Following that, he was taken to the psychiatric unit of that hospital. That decision appears to have been taken in response to the attitude adopted by X, who expressed exasperation at not being taken home (cf. *O.G. v. Latvia* (dec.), no. 6752/13, § 29, 30 June 2015, in which an adult was taken to a psychiatric hospital following a physical altercation endangering the public). There is no information in the case material that an in-depth examination was carried out to establish that X's placement in the psychiatric unit was in his best interests or that his state of health necessitated such placement (see paragraph 13 of the judgment).

3. It should be noted that the criminal proceedings which had been instituted against the applicant on account of X's allegations that she had been physically violent to him on the night of 25 February 2013, were subsequently terminated on account of the absence of a criminal act (*actus reus*). It was concluded that X had lied in his initial account of events (see paragraph 38 of the judgment).

4. The measures taken by the domestic authorities *vis-à-vis* the applicant on the day following the incident of 25 February 2013 were rather harsh: the applicant's parental authority was suspended, and two weeks later her contact rights with her son were completely removed. No time-limit was set on the suspension of the applicant's parental authority, even though she risked having that authority completely removed if it was not restored within one year. As a result of those measures the applicant's son, who had lived with the applicant for most of his life, was taken into public care and – within a period of two weeks – was deprived of any contact with his mother and – after a further period of one month – with his remaining closest relatives.

5. Without underestimating the difficulties faced by the authorities in finding the best response to the urgent situation in the wake of the above-mentioned incident, it would not appear that sufficient consideration was given to the possibility of attempting, as a first step, measures that would not completely sever contact between the applicant and her son. With regard to the decision-making process leading to the suspension of the applicant's parental authority on 26 February 2013, one cannot discern from the case material that the domestic authorities provided adequate supportive measures. On the one hand, the applicant and her child had been monitored by the childcare and other social welfare authorities since at least 2008. On the other hand, she was not warned about the possible consequences of her son's disruptive behaviour if she was unable to cope with it without specialist help. Although the domestic authorities did take some steps to address the situation in the years preceding the incident of 25 February 2013, it appears that following every incident involving X, his removal from the family was immediately considered and no alternative solutions appear to have been sought (see paragraphs 6-10 of the judgment). More targeted offers of social rehabilitation, assistance by social services and various referrals for further consultations and meetings were only offered after the event (see paragraphs 19, 21, 24, 27, 42-44 of the judgment). No specific help appears to have been envisaged prior to the suspension of the applicant's parental authority. The Court has emphasised that the authorities' role in the social welfare field is precisely to help people in difficulty and that in the case of vulnerable people, the authorities must show particular vigilance and afford increased protection (see *Y.I. v. Russia*, no. 68868/14, § 87, 25 February 2020, and *S.S. v. Slovenia*, no. 40938/16, § 84, 30 October 2018).

6. The case material does not contain sufficient information to conclude that the applicant or other family members were allowed contact with X during his time in the psychiatric unit; it appears that they were prevented from seeing him on 26 February 2013 (see paragraph 14 of the judgment). X stayed in that unit for eight days, during which time he ran away but was brought back by the police. To further reinforce his separation from the family, X was moved to the children's unit of a closed psychiatric hospital, where he stayed another six days before being moved to a family crisis centre (see paragraphs 14 and 18 of the judgment). While an in-depth examination was recommended at the end of his stay in the children's hospital, there was no suggestion that it had to be carried out in any particular hospital, let alone a psychiatric one, (see paragraph 42 of the judgment). Following his stay in the psychiatric hospital, the conclusion was reached that treatment was unnecessary (see paragraph 44 of the judgment).

7. It is evident – and this is also acknowledged by the majority – that the placement of X, who was a vulnerable teenage boy, in several psychiatric

institutions cannot be considered conducive to his well-being or in his best interests in the absence of a psychiatric illness or any indication that his state of health necessitated particular treatment. The case material reveals a particularly worrying trend: it appears that when the domestic authorities were faced with X's violent or disruptive attitude – when he vehemently protested at being taken away from home or placed in yet another childcare institution – they opted for placement in the psychiatric unit or psychiatric hospital (see paragraphs 6, 13, 23 and 72 *in fine* of the judgment). Thus, the domestic authorities do not appear to have considered the possibility of resorting to less restrictive and more appropriate measures.

8. As a result of the domestic authorities' decisions, the applicant's son found himself in an unfamiliar setting in various psychiatric and childcare institutions for nearly three months. In this regard, the conclusions of the Ombudsperson concerning the fundamental deficiencies in Latvian children's homes are quite enlightening (see paragraphs 72-73 of the judgment). Many of the issues highlighted by the Ombudsperson also manifested themselves during the time X spent in childcare institutions, including recourse to psychiatric hospitals in order to handle behavioural problems; placement in distant children's homes, thereby disrupting all existing family and social contact; and failure to address individual behavioural issues. It should be noted that a decision to remove a vulnerable child from his or her family and place him or her in public care cannot be made without an assessment of whether such action would actually serve the child's interests and improve his or her situation. This is particularly true in a case such as the present one, where the problems appear to emanate from parenting and cooperation issues, rather than abuse of the child (compare *R.M.S. v. Spain*, no. 28775/12, § 84, 18 June 2013).

9. Despite the Government's assertion that alternatives to the impugned decisions had been considered, the decisions of the guardianship institutions and administrative courts comprised no indication to that effect. The case file does not show that any steps had been taken to place X with a guardian or a foster family. Even though X had protracted behavioural difficulties, it had not been established that such placement was excluded by virtue of his state of health. It appears that X was not offered alternative out-of-family care arrangements because they were not available in Latvia at the material time (see paragraph 72 of the judgment).

10. Furthermore, there is no indication that measures not involving suspension of the applicant's parental authority and X's removal from his family, such as leaving him in the applicant's care but providing adequate help to cope with his behavioural difficulties, were ever explored. The Court has emphasised that every Contracting State has an obligation to equip itself with an adequate and sufficient legal arsenal to ensure compliance with the positive obligations imposed on it under Article 8 of the Convention (see *R.M.S. v. Spain*, cited above, § 72).

11. While at the initial stages of the proceedings there were concerns about abuse on the part of the applicant, the national authorities and courts appear to have taken a rather mechanical approach, maintaining harsh measures without due regard to the details. In particular, the psychological reports did not conclude that X had suffered emotional or physical abuse from the applicant, and instead found that he showed indications of having experienced abuse, without establishing its origins (see paragraphs 42-46 of the judgment). The reports and other materials in the case file contained indications that X might have experienced abuse at the hands of others. Accordingly, it is not possible to conclude that the causes of the child's behavioural issues were properly identified by the relevant authorities. The Court has already held that the continued absence of a judicial finding of guilt where a parent has been suspected of having abused a child increases the onus on the social authorities and the courts to produce sufficient justification for maintaining the care measure (see *K.A. v. Finland*, no. 27751/95, § 119, 14 January 2003, and *Haddad v. Spain*, no. 16572/17, § 63, 18 June 2019). In the present case, which involves unconfirmed suspicions of abuse , the emphasis in the authorities' reasoning gradually shifted towards the applicant's parenting errors and her failure to cooperate with the domestic authorities.

12. The Court has held that the absence of skills and experience in rearing children, whatever reasons there might be cannot, in itself, be regarded as legitimate grounds for restricting parental authority or keeping a child in public care (see *Kocherov and Sergeyeva v. Russia*, no. 16899/13, § 106, 29 March 2016). Furthermore, the fact that a child could be placed in a more beneficial environment for his or her upbringing will not on its own justify a compulsory measure of removal from the care of the biological parents; there must exist other circumstances pointing to the necessity of such an interference (see *K. and T. v. Finland* [GC], no. 25702/94, § 173, ECHR 2001-VII; *Kutzner v. Germany*, no. 46544/99, § 69, ECHR 2002-I; and *Haase v. Germany*, no. 11057/02, § 95, ECHR 2004-III (extracts)). In the present case, the applicant was criticised for not having sufficient parenting skills to deal with a vulnerable teenage boy who had most likely suffered some form of abuse and had behavioural issues and personality disorders.

13. I agree with the majority that in such circumstances the parent's cooperation is particularly important to ensure the well-being of the child, and, therefore, I acknowledge that the applicant's action of taking X away from the hospital, flagrantly disregarding the decision taken to suspend her parental authority, was clearly an unlawful act which complicated the task of the national authorities. Even if the applicant assumed that X's health and well-being was at risk in the children's home, there can be no justification for her decision to take matters into her own hands by disregarding the law and taking X away from the hospital. That being said, it can hardly be

established that the applicant took any active steps to hide X from the authorities. Although she had changed her registered address in the past (see paragraphs 8 and 10 of the judgment), it appears that she continued to reside together with X in her usual place of residence (see paragraph 23 of the judgment).

14. In my view, in the circumstances of the present case the domestic authorities bear some degree of responsibility for not having enforced the decision to suspend the applicant's parental authority following the events of 16 May 2013. While the search for the applicant's son allegedly started on the next day, it took more than four months for the police to establish that the applicant was living with her child at her usual place of residence (see paragraph 23 of the judgment), despite the obvious fact that rapidity is crucial in enforcing child care measures. A similar chain of events as those that had taken place following the incident of 25 February 2013 unfolded: X was placed in the psychiatric unit of the children's hospital for one week, then taken to the social rehabilitation centre, where he stayed only a couple of days as he managed to run away again. Subsequently, no more steps appear to have been taken to place the applicant's son in public care pursuant to the decision to suspend the applicant's parental authority.

15. Furthermore, the steps taken by the police to ensure the child's placement with his father, following the decision to grant him sole parental custody, appear to have been highly ineffective – X managed to run away from the police or his father on three occasions in April, May and July 2014 (see paragraph 26 of the judgment). No more steps appear to have been taken to ensure compliance with the decision to suspend the applicant's parental authority until it was eventually restored on 4 November 2014.

16. I admit that the realities of policing and the need to prioritise the use of public resources may lead to some delays. However, the delays in the present case were significant and, as a whole, the domestic authorities' attitude appeared contradictory and erratic: the applicant's parental authority was suspended and her applications for its restoration were rejected on the grounds that living with her would be harmful to the child, whereas at the same time the authorities, being aware that X was living with the applicant, allowed this situation to persist for about a year and a half.

17. It is also worth noting that the criminal proceedings concerning the applicant's non-compliance with the decisions concerning her parental authority and contact rights were terminated, as it was established that by hiding her son she had acted in his interests (see paragraphs 40 and 41 of the judgment).

18. In any event, the Court has held that a parent's failure to cooperate is not a decisive factor, since it does not relieve the authorities of the duty to implement such measures as will be apt to enable the family link to be maintained (see *Gnahoré v. France*, no. 40031/98, § 63, ECHR 2000-IX). Even where the parent has shown an inappropriate and disrespectful attitude

towards the authorities, the Court will seek to establish whether the national authorities have taken all the necessary and appropriate steps that could reasonably be expected of them to ensure that the child could lead a normal family life within his or her own family (see *R.M.S. v. Spain*, cited above, §§ 75 and 82). It should be noted that in cases of this type the child's interests must come before all other considerations (see *Y.C. v. the United Kingdom*, no. 4547/10, § 138, 13 March 2012).

19. The parties disagree on whether the decisions of the domestic authorities were actually taken in the child's interests and comprised an assessment of them. In my view, a careful review of the decisions of the guardianship institutions and administrative courts allows the Court to conclude that they were all primarily based on considerations of the applicant's attitude and behaviour. It was expressly noted that it was up to the applicant to take the appropriate steps for her parental authority to be restored. The Government also submitted that the applicant, through her conduct, had delayed X's return to the family, which would have been in his best interests. While the administrative and judicial authorities considered that remaining in the applicant's care would not be in X's interests, those decisions did not include any comprehensive analysis of more suitable solutions that would serve his interests and would allow for some adequately supervised contact with the applicant. Most importantly, they did not analyse whether the measures chosen by the childcare authorities were more conducive to the child's development and interests than remaining in the applicant's care. The first such comparative assessment was made by social services more than one-and-a-half years after the suspension of the applicant's parental authority (see paragraphs 63-65 of the judgment).

20. The Court has already held that as children mature and, with the passage of time, become able to formulate their own opinions, the courts should give due weight to their views and feelings as well as to their right to respect for their private life (see *N.Ts. and Others v. Georgia*, no. 71776/12, § 72, 2 February 2016). In the present case, X was always very clear about his unwavering desire to live with the applicant. While the domestic authorities did address X's opinion, little weight was given to it despite the fact that, during the initial period of suspension of parental authority, all the medical reports and expert assessments pointed to the child's high dependence on his mother, heightened desire for emotional attachment and overriding wish to remain in his mother's care. Moreover, the relationship between X and the applicant had been described as symbiotic and, as the situation progressed, X consistently continued to assert his desire to remain in his mother's care, running away from the institutions in which he was placed on more than one occasion. Even if it was relevant to also take into account the child's immaturity and influenceability at the beginning of the process, nevertheless the authorities failed to consider the question whether

X's persistent attitude should not lead to less weight being given to that aspect with the passage of time.

21. Furthermore, following X's removal from the children's home (see paragraph 18 of the judgment) no administrative or judicial decision assessed his reportedly negative experience in the childcare institutions (apart from the assessment made within the criminal proceedings; see paragraph 39 of the judgment) or took this into account when determining his best interests. Without speculating as to what happened during the time X spent in the children's home, it should be borne in mind that he sought out his mother's help in circumstances which he himself was no longer able to tolerate. It does not transpire that the authorities took his experience and perception into account when assessing what subsequent measures should be taken. It should also be emphasised that following X's apprehension by the police after he had supposedly been in hiding (see paragraph 23 of the judgment), the expert's recommendation was for him to stay in a stable, safe, calm and unchanging environment (see paragraph 49 of the judgment). This recommendation was not assessed with respect to the realities of the situation at hand and in the light of his wishes and conduct. Insufficient regard was paid to the particular circumstances of the case – the child was not only mature enough to formulate an opinion, but also capable of arranging his escape and ensuring that he lived with the caregiver of his choice.

22. Overall, while understanding that the domestic authorities had faced an unusual and complicated situation, in the light of the above-mentioned deficiencies one cannot conclude that they paid sufficient regard to the best interests of the child. Notwithstanding the domestic authorities' margin of appreciation, the interference with the applicant's family life was therefore not proportionate to the legitimate aim pursued, and accordingly, there was a violation of Article 8 of the Convention in this case.