



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

FIFTH SECTION

CASE OF ALLELEH AND OTHERS v. NORWAY

(Application no. 569/20)

JUDGMENT

Art 8 • Expulsion • Family life • Expulsion order with a two-year re-entry ban against applicant guilty of immigration-law breaches and married to a national of the respondent State with whom she had four children • No insurmountable obstacles to the family moving to mother's country of origin • Possibility of having re-entry ban revised in the event of any negative development or unforeseen change and to apply for brief visits during ban • Absence of "exceptional circumstances" • Proportionality duly assessed by domestic courts in light of Court's case-law • Margin of appreciation not transgressed

STRASBOURG

23 June 2022

FINAL

23/09/2022

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

In the case of Alleleh and Others v. Norway,

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

Síofra O’Leary, *President*,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Lado Chanturia,
Arnfinn Bårdsen,
Mattias Guyomar, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 569/20) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Djiboutian national, Ms Neima Aden Alleleh; a Norwegian national, Mr Rolf Erik Kristensen; and their four children who are Norwegian citizens (“the applicants”), on the various dates indicated in the appended table;

the decision to give notice of the application to the Norwegian Government (“the Government”);

the parties’ observations;

Having deliberated in private on 31 May 2022,

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

INTRODUCTION

1. The case concerns a complaint under Article 8 of the Convention relating to the expulsion of the first applicant and its alleged consequences for the applicants’ family life.

THE FACTS

2. The first and second applicants, Ms Neima Aden Alleleh and Mr Rolf Erik Kristensen, were born in 1983 and 1967 and live in Oslo. They submitted their application also on behalf of their four children, who were born in 2005, 2009 and 2013 – the third to sixth applicants. All applicants were represented before the Court by Mr A. Humlen, a lawyer practising in Oslo.

3. The Government were represented by Mr M. Emberland and Ms H.L. Busch of the Attorney General’s Office (Civil Matters) as their Agent and co-Agent respectively.

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

I. BACKGROUND

5. The first applicant arrived in Norway and applied for asylum on 10 September 2001 under the pretext of being Somali. She gave a detailed and, as discovered later – false, account of her personal history in order to obtain asylum.

6. The Directorate of Immigration (*Utlendingsdirektoratet*) rejected her application on 13 June 2002, on the grounds that, based on the information she had given, she had no well-founded fear of being persecuted in Somalia. The Immigration Appeals Board (*Utlendingsnemnda*) dismissed her appeal on 2 January 2003.

7. The first applicant remained in Norway after the dismissal of her appeal, although it was stated in the decision that she had to leave the country, and on 22 May 2003 requested that the Board's decision to refuse her asylum be revised. In the request she stated that she had previously given false information and she gave a new and different false explanation as to why she needed asylum nonetheless – still claiming to be Somali. She also presented false identity papers. The Board made a decision not to revise the refusal on 24 November 2005.

8. In the meantime, in 2002, while the above-mentioned administrative proceedings were pending, the first applicant met the second applicant, a Norwegian citizen. The couple married on 10 April 2004, at a time when the first applicant did not have lawful residence in Norway. Less than two weeks later the first applicant applied for residence on the basis of the marriage. In that context, both on the application form and during questioning, she restated the same false information that she had provided when requesting revision of the Immigration Appeals Board's decision in 2003 (see the preceding paragraph). On 13 September 2005 she was granted temporary residence for one year.

9. In the meantime, in February 2005, the first applicant gave birth to the couple's first child.

10. On 1 November 2006 the temporary residence permit (see paragraph 8 above) was renewed for another year.

11. In 2007 the first applicant applied for and was granted Norwegian citizenship. She applied under the pretext of being a Somali citizen and signed in the application form, dated 16 August 2007, that the information she gave was correct and complete and that a decision on citizenship could be revoked if she had given incorrect information or concealed vital information relevant to the decision.

12. In 2009 the first applicant gave birth to the couple's second and third children, who are twins.

13. In 2013 the first applicant gave birth to the couple's fourth child.

14. In the context of a general inquiry into issues relating to persons who, in the course of immigration proceedings, had claimed to be Somali, the police became suspicious that the first applicant was a Djiboutian national.

When questioned in June 2014 she maintained the false information that she had previously given.

15. In November 2014 the first applicant was warned about a possible withdrawal of her Norwegian citizenship and expulsion. In a statement the following month, for the first time she gave her correct identity and the correct information about her country of origin to the authorities.

16. On 3 June 2015 the Directorate of Immigration withdrew the first applicant's Norwegian citizenship.

17. On 26 November 2015 the first applicant was expelled from Norway with a two-year ban on re-entry.

18. The first applicant lodged an administrative appeal against the withdrawal of her Norwegian citizenship and the expulsion to the Immigration Appeals Board. In a decision of 2 March 2016 the Board dismissed her appeal.

19. The Board stated that it deemed that, if the first applicant would go to Djibouti without the family, the second applicant would be able to adequately provide for the children in Norway. No information had emerged to indicate that the second applicant was not a good and capable carer for them. Moreover, the Board assessed what the children's situation would be like if the whole family chose to move to Djibouti. As a general starting point it noted in that context that parents are able to follow up on their children in settings where they know the language and the cultural codes, and where they have or quickly can establish a network. In the instant case, the children lived with their parents who were able to provide them with care and in the event of a move to Djibouti, they would still do so. They also already had a family network in Djibouti. The Board therefore considered that the parents would be able to take care of the children, regardless if they all moved to Djibouti or not.

20. In its examination of the proportionality of an expulsion, the Board also found that the burden it would entail for the children in the instant case would not exceed what would normally be the case when a parent is expelled. The Board noted that, if the first applicant's family did not travel with her to Djibouti, an expulsion would be negative for the children, if however possibly somewhat mitigated by the fact that the second applicant and the children could still go on holidays there. Based on an overall assessment, the Board still found that the factors that weighed in favour of expulsion had to be decisive and override the best interests of the children. In particular, it considered that the unlawful behaviour of the first applicant was so serious that she had to be expelled and that considerations relating to general deterrence and respect of the law weighed so heavily in the case that the interests of the applicant and her family had to yield. It also took into account that the first applicant had connections to her home country and that the second applicant would give the children the care they needed if they remained in Norway.

21. Several requests to reopen the Board's decision were since refused.

22. On 16 June 2016 all six applicants instituted proceedings before the Oslo City Court (*tingrett*) in order to have the expulsion set aside. The decision to withdraw the first applicant's Norwegian citizenship was not brought before the courts. The City Court appointed a psychologist as an expert in order to protect the children's rights during the proceedings.

23. On 27 October 2016 the City Court declared the case inadmissible as far as the second to sixth applicants were concerned, as it found that they did not have legal standing to bring the decision relating to the first applicant's expulsion for review before the domestic courts. Their appeals against that decision were fruitless – the final decision of the Supreme Court on that matter dates from 7 June 2017 – and in the subsequent course of the domestic proceedings on the merits, the second to sixth applicants therefore acted only as interveners (*partshjelpere*) in the first applicant's case.

24. On 27 July 2017 the City Court – having held a hearing on 14 and 15 June 2017, where four witnesses, in addition to the court-appointed expert, gave evidence – gave judgment on the merits and ruled in favour of the Government.

25. In its judgment, the City Court stated, *inter alia*, that it was beyond doubt that the first applicant's gross and repeated violations of the Immigration Act were intentional and serious, and that the number of her different acts and the length of her behavioural pattern over approximately 13 years substantiated the seriousness. To the City Court it was pertinent to point out that, upon having established a first false identity and presented a first false story, the first applicant had established another false identity and presented another false story, and that she had methodically obtained and used false documents.

26. In respect of the first applicant, the City Court did not consider the expulsion disproportionate. It took into account that she had her mother and a sister in Djibouti and that she had been visiting in Djibouti after she came to Norway. She knew the culture, spoke the language and would do fine there. She could receive visits from Norway or meet her family in other places outside the Schengen-area during the time of the ban from re-entry. When the ban would lapse, she could apply for family reunification. Moreover, it was possible to exercise family life in Djibouti if her family wanted to take residence there.

27. As to the second applicant, the City Court considered that he could choose to go to Djibouti and keep the family together there. If he chose to remain in Norway he would have a considerable task in providing all the four children with care, but it was not a task that was either insurmountable or entirely unusual. The family was established in a good local environment where it was safe and simple to live, and they would have access to public services should they need any. The second applicant would probably have to adjust his working situation and perhaps the family's financial situation, but

that could be considered neither disproportionate nor unreasonable, given that they had established their family based on serious violations of the law, which the second applicant had been aware of for a very long time, from before they had the three last children.

28. Turning to the children, the City Court stated that being separated from their mother for a longer period of time would lead to sadness, confusion, longing and insecurity. This type of strain was obviously undesirable in respect of any child and would not promote the child's development. It was however the consequence that would follow for any child in any family where a primary care person was expelled and in that sense not a burden that was particularly heavy and disproportionate in this individual case. There was no doubt that the children had had a secure upbringing by their parents in a local environment, with kindergarten, school, hobbies and friends, which they knew and in which they felt safe. The first applicant had been the central care person in the home, but the children were also closely attached to the second applicant.

29. It was clear, moreover, that the second applicant was a good parent and that the children had not suffered any particular stress in their upbringing. In that sense their situation was different from that of the children in the case of *Nunez v. Norway* (no. 55597/09, 28 June 2011), where the Court had found that an expulsion had entailed a violation of Article 8 of the Convention on the basis of "concrete and exceptional circumstances" which had consisted of the children already having suffered separations from and moving between the parents.

30. The oldest son was at the time of the City Court's judgment 12 years old. He was a normally functioning boy without any unusual needs or problems and it was undisputed that he was very sad because his mother might have to leave them. The City Court considered that the threshold for disproportionality had not been passed, as he was well functioning, resourceful and would continue to live with his father and his siblings in the environment that he knew where he had school and leisure activities.

31. The twins were seven years old. One of them appeared as a somewhat vulnerable and worried boy, who had had nightmares after having learnt of the fact that his mother might have to leave. He had always been particularly close to his mother and had told a court-appointed expert that he would like to come with her if she had to go away. The City Court found that the threshold for disproportionality had not been passed in respect of him either, having regard to the considerations relating to immigration control. Moreover, it took note that the parents could let him follow along with the mother, and, did they not, he would also be in his usual environment with his father and siblings, school and leisure activities.

32. The other twin had some issues with concentrating which had deteriorated lately. He needed more help and support with schoolwork and other tasks than his twin brother. He had not expressed himself clearly to the

expert about the topics of the case, but the City Court without further ado deemed that he wanted to have his mother with him and his family life preserved. It found that the threshold for disproportionality had not been passed in respect of him, having regard to the considerations relating to immigration control and taking account of the fact that his difficulties were not serious. The City Court also gave importance to the fact that he would be surrounded by his father and his siblings in his ordinary environment with school and leisure and that his father had good capacity to provide him with the necessary follow up in cooperation with his school and possibly other services.

33. The youngest child was four years old. She had been home with the first applicant and not attended kindergarten, partly for financial reasons and partly because the first applicant had wanted to have company during the daytime. She was closely attached to her mother and to be without her on a daily basis for two years would be a clear strain on her. The City Court nonetheless found that the threshold for disproportionality had not been met in respect of her either; she was well functioning and had normal resources, she would stay with her father and her brothers in her usual environment, and possibly go to kindergarten during the daytime. The first applicant had argued that it had to be taken into account that she would bring the daughter with her to Djibouti and that a risk of female genital mutilation could arise there. The City Court did not agree as it pointed out that they could alternatively let the girl remain with the father in Norway where she would be cared for adequately.

34. The first applicant appealed against the Oslo City Court's judgment, and the Borgarting High Court (*lagmannsrett*) reappointed the psychologist to act as an expert (see paragraph 22 above). It held a hearing on 12 and 13 March 2019, where the first and second applicants gave evidence. Two witnesses, in addition to the court-appointed expert, also gave evidence.

35. On 8 April 2019 the Borgarting High Court gave a declaratory judgment to the effect that the expulsion decision was invalid, as it considered it disproportionate vis-à-vis the children. The High Court reiterated that the Court had stated, in *Nunez* (cited above, § 70), that where family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host State would from the outset be precarious, the removal of the non-national family member would be incompatible with Article 8 only in "exceptional circumstances". It found however that no elevated threshold of disproportionality could be applied to the case because of the precariousness of the applicant's family life, as the second applicant had only learnt of the first applicant's having given false information after they had married and had the third applicant. The High Court stated that it would instead carry out a concrete balancing of the competing interests.

36. In so doing, the High Court found that, in contrast to the case of *Nunez*, cited above, the children in the case before it had a stronger connection to their mother than their father. The first applicant had been and was at the time of the High Court's judgment the daily provider of care to the children. She had been at home for a long time, while the second applicant worked a lot and late hours. It was the first applicant who helped the children with their homework and who cooked dinner. It was to her that the children related on a daily basis at home. Although the children had a good relation to the second applicant, it appeared to the High Court that an expulsion of the first applicant would entail a disruption from their closest care person.

37. The expert psychologist (see paragraphs 22 and 34 above) had spoken with the children on two occasions. In January 2017 they had expressed that they were so connected to where they lived that they wanted to remain there. In October 2018 they had all expressed that they would come along if the first applicant had to move, but they wanted in that case also that the second applicant came along. The psychologist had gotten the impression that the children had little knowledge as to what a move to Djibouti would entail. According to her, the children had all expressed that if the first applicant were to move without them, they did not know how matters would turn out since the second applicant worked all day.

38. The High Court deemed that all of the children were generally well functioning and had developed normally. However, the twins were somewhat vulnerable. They had each had their challenges, one with anxiety, nightmares and dependency issues, the other with motor issues and bullying. The first and second applicants had stated that the twins' problems had been accentuated by their thinking about the first applicant's departure, which according to the High Court was ordinary for vulnerable children. To the High Court it appeared that the children's development had been positive. However, the High Court stated that this could be due to their age and development and it was therefore uncertain whether this could shed light on what had been the situation when the expulsion had first been decided. The youngest child had been described as very closely attached to the first applicant.

39. On the basis of the evidence given by the expert psychologist viewed in conjunction with the children's ages and care situation, the High Court concluded that it was most likely that they would be strongly emotionally marked by an expulsion of the first applicant with a ban on re-entry for two years. That would particularly apply to the three youngest children, of whom two had been described as somewhat vulnerable. The children would also be affected in more practical matters, as they would during the two years only have one care person who would take care of cooking, dressing, helping with homework, transporting them to and from leisure activities and putting them to bed.

40. Furthermore, the High Court considered it likely that were the first applicant expelled, the children would be marked by the separation from their principal care person in a manner that would lead them to require more care than normal. For that reason the High Court deemed that in the event of the first applicant's expulsion, the second applicant would be the sole carer for four children who had more extensive care needs than normal. The situation could therefore not be fully compared to that of other single parents.

41. The High Court deemed that the second applicant had ordinary good care skills. It was however likely that his caring skills would be reduced as a consequence of the first applicant's expulsion. In addition to the strain an expulsion would entail on him personally, he would be the sole carer for four children, for whom the task of caring would be particularly challenging following their separation from their closest care person. Information had not been given to the High Court about relatives or others who could relieve the second applicant of his caring responsibilities in a manner that could impact the proportionality assessment. The second applicant had a management position that required long working days. The High Court deemed that it would be possible for him to get another position with reduced working hours. This would however impact on his income and accordingly the family's financial situation. Though this was not in itself decisive, it was a relevant factor in the overall assessment of the care situation. The High Court was of the view that there was a risk that the second applicant would be unable to handle the problems that an expulsion of the first applicant would entail for the children and the care for them in a sufficiently good manner, to the effect that the hardship imposed on the children by the expulsion would be extraordinarily heavy.

42. In the High Court's assessment, the circumstances of the case were special because the expulsion would lead to a long lasting separation of the primary care person from four children, of whom two were somewhat vulnerable and one only a few years old, with the consequences that would in turn have for the other parent's ability to provide them with care.

II. THE SUPREME COURT'S JUDGMENT

43. The Government appealed against the Borgarting High Court's application of the law. The Government submitted that the High Court had erred when considering against which legal standard the proportionality assessment was to be carried out and had misunderstood the Court's judgments relating to "exceptional circumstances" (see paragraph 35 above). The Supreme Court (*Høyesterett*) granted leave to appeal and delivered a judgment on 9 December 2019.

44. In its judgment, starting with the legal framework and the scope of the review it was to carry out, the Supreme Court first set out that the expulsion decision had been adopted in accordance with section 66 of the Immigration Act (see paragraph 75 below). Under that provision, a foreign national

without a residence permit could be expelled, *inter alia*, if the foreign national “provided materially incorrect or manifestly misleading information”, and there was no doubt, nor was it disputed between the parties, that this applied to the first applicant’s case. The question was whether the expulsion was disproportionate in relation to the four children. It had not been invoked that the decision was disproportionate in relation to the first or second applicants. By reference to *Jeunesse v. the Netherlands* ([GC], no. 12738/10, 3 October 2014) the Supreme Court noted that a “fair balance” had to be struck between “the competing interests of the individual and of the community as a whole”.

45. Proceeding to the main elements of the proportionality assessment, the Supreme Court set out that the interests to be considered would to some extent vary according to the specific circumstances in each case. Some key factors were often recurring in this type of case, however, and the Supreme Court went on to describe those factors in more detail.

46. Firstly, the Supreme Court emphasised the interests of the community: the seriousness of the offence and expulsion as a sanction. It stated that the proportionality assessment had to use the basis for the expulsion as its point of departure; reference was made to section 66 of the Immigration Act (see paragraph 75 below). The more serious the offence, the more weight should be given to this factor in the overall assessment.

47. The Supreme Court pointed out that in the preparatory works to the Immigration Act, it had been particularly important that the immigration administration was based on trust, and that a sanction in the form of expulsion was necessary in order to uphold respect for the regulations and deter from future contraventions – general deterrence. In the Supreme Court’s assessment, this Court had concurred in the opinion that expulsion could be an important measure against contraventions of the immigration legislation. Reference was made to *Antwi and Others v. Norway*, no. 26940/10, § 90, 14 February 2012.

48. The Supreme Court restated that, according to section 70 of the Immigration Act (see paragraph 75 below), the seriousness of the offence had to be weighed against the foreign national’s connection with the realm. The balancing exercise had to take account of, *inter alia*, the child’s best interests and the right to respect for family life under Article 8 of the Convention.

49. Thereafter, the Supreme Court discussed “the child’s best interests” in more detail. It stated in that context that, in cases that raised the question of whether expulsion would be a disproportionate measure in relation to the foreign national’s children, the best interests of the child were of key importance. Reference was made to Article 3 of the United Nations Convention on the Rights of the Child (see paragraph 78 below) and the corresponding provisions in Article 104 of the Norwegian Constitution and the second sentence of the first paragraph of section 70 of the Immigration Act (see paragraph 75 below).

50. As to Article 8 of the Convention, the important question was whether the authorities, following an overall assessment, had struck a “fair balance” between the interests of the community as a whole and the interests of the individuals involved (citing *Nunez*, cited above, § 68, and *Jeunesse*, cited above, § 106). Moreover, the Supreme Court set out that the Court had highlighted some factors that had to be taken into account in cases that raised questions relating to both immigration control and the right to respect for family life. Reference was made to *Jeunesse*, cited above, § 107, where the Supreme Court noted that, at that location, the Court had stressed that the State’s obligation to allow a person to stay in the country would vary “according to the particular circumstances of the persons involved and the general interest”. The Court had gone on to state:

“Factors to be taken into account in this context are the extent to which family life would effectively be ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of the alien concerned and whether there are factors of immigration control (for example, a history of breaches of immigration law) or considerations of public order weighing in favour of exclusion [...]”

51. The Supreme Court stated that it would go on to consider one particular factor that, according to both the Supreme Court’s and the Court’s case-law, had a bearing on the protection afforded to the respect for family life: whether the basis for residing in the country of residence was precarious, for example because the foreign national did not have lawful residence or held a residence permit based on having provided incorrect information.

52. Thereafter, under the heading “ECHR case-law relating to precarious basis for residence – the requirement for ‘exceptional circumstances’”, the Supreme Court stated that the Court’s case-law in this area had to be seen in the light of the fact that the Convention conferred neither entry rights nor residence rights in the Contracting States. The Court had stressed in a number of judgments that the States were entitled to control and regulate foreign nationals’ entry into and residence in the country. Reference was made to *Jeunesse*, cited above, § 100. It had been explained in an earlier judgment from the Supreme Court that the foreign national could have developed such strong bonds and ties in the country of residence as to give cause for protection under Article 8 of the Convention. Such protection was according to the Supreme Court primarily applicable to “settled migrants”.

53. The Supreme Court considered that, in accordance with the above, protection under Article 8 of the Convention would be weakened if the basis for residence was precarious, for example because the foreign national had obtained his residence permit through providing incorrect information. Reference was made to *Jeunesse*, cited above, § 108.

54. The most important factor in this context was that, if the grounds for residence were precarious at the outset, expulsion would usually only be in contravention of Article 8 of the Convention where “exceptional circumstances” came into play. It noted that the Court had also used similar

wordings in several of its judgments against Norway, for example in *Nunez*, cited above, § 70. The Supreme Court then continued with an analysis of relevant case-law of the Court in cases against Norway, notably *Darren Omoregie and Others v. Norway* (no. 265/07, 31 July 2008), *Antwi and Others*, cited above, *Butt v. Norway* (no. 47017/09, 4 December 2012) and *Kaplan and Others* (no. 32504/11, 24 July 2014). Based on this analysis, it could not see that it was a requirement for using the criterion “exceptional circumstances” that all those involved were aware that one of them had a precarious basis for residence. According to the circumstances, however, it could be a factor to take into account in the overall assessment, if one party, at the time when the family relationship was established, was unaware that the right of the other to reside in the country was precarious. The Supreme Court added to this that the question of whether small children were aware of the basis for their parents’ residence hardly had any bearing on the proportionality assessment.

55. The Supreme Court then turned to discussing “possible sanctions other than expulsion” and stated that the applicants had argued that the intervention had not been necessary within the meaning of the second paragraph of Article 8 of the Convention because other sanctions were available and could have been used.

56. In response, the Supreme Court first pointed out that according to the first paragraph of section 14-1 of the Immigration Regulation (see paragraph 77 below), expulsion should not be used in cases of less serious contraventions as were specified therein, if the foreign national had children in Norway.

57. Moreover, as a point of departure, the Supreme Court stated that expulsion constituted an obstacle to subsequently re-entering Norway; that followed from the second paragraph of section 71 of the Immigration Act (see paragraph 75 below). But the prohibition on re-entry could be limited in accordance with the rules set out in section 14-2 of the Immigration Regulation (see paragraph 77 below). In the present case, the immigration authorities had chosen a duration of only two years. The Supreme Court also noted that, on application, the ban on entry could be cancelled in accordance with the second paragraph of section 71 of the Immigration Act, if warranted by a change of circumstances. A foreign national who had been expelled could, in some cases, also gain access to the territory for brief visits. Hence there was some room for differentiation of sanctions, even in cases of expulsion. In response to the applicants’ argument that the first applicant should have been sanctioned with a prison sentence instead of an expulsion, the Supreme Court found it doubtful that a significant custodial sentence – which would presumably be what was relevant in the case – would be more considerate in relation to the children. The Supreme Court also pointed out that it was the legislature’s task to consider, within the framework that followed from Norway’s international obligations, what sanctions should be

used in the case of serious contraventions of the Immigration Act where the best interests of the child indicated that one of the parents should not be removed from the country. It was noted that Parliament had made a request that the Government consider amendment of the Immigration Act to make it possible for the immigration administration to supplement the use of expulsion and prohibition on entry with a broader set of sanctions where warranted by special circumstances such as the child's best interests.

58. In a summary of the legal points of departure for the proportionality assessment, the Supreme Court stated that a broad balancing of all relevant considerations had to be carried out. There was no basis for defining absolute thresholds or norms for proportionality assessments.

59. Firstly, in the case of contraventions of the Immigration Act that had to be deemed to be very serious, community interests would carry significant weight in the proportionality assessment. Furthermore, if an expulsion decision had consequences for children, a thorough, concrete and individual assessment of the child's interests had to be carried out in each case. The child's best interests had to be fundamental and weigh heavily, but such interests alone were not necessarily decisive. A point of departure for that assessment was that, where the basis for residence lapsed as a consequence of serious contraventions of the Immigration Act, expulsion would generally only be disproportionate in relation to the children if it imposed an unusually great or extraordinary burden on them. An interference with family life that did not extend beyond what had to be assumed to be a general consequence of the expulsion decision, whether financial, social or emotional, was not as such sufficient to deem the interference to be disproportionate. Both the aforementioned preparatory works and the Supreme Court and the Court's case-law reviewed above provided further guidance on what factors should be taken into consideration and on the weight that should be given to certain, more typical, circumstances.

60. Turning to the concrete assessment of the case before it, and starting with the first applicant's contravention of the Immigration Act, the Supreme Court stated that the first applicant had repeatedly and over a long period provided incorrect information about her identity, country of origin and need for protection as a refugee. She had deliberately tried to exploit the asylum system to settle in Norway and had presented false documents. Her residence permits and Norwegian citizenship had been granted on false premises. The Supreme Court stated in that context that residency on grounds of marriage had obviously also to be based on correct information. The first applicant's contraventions fell according to the Supreme Court within the range of key control concerns that the Immigration Act was intended to address and there could be no doubt that the first applicant's contraventions were very serious.

61. On the topic of connection with Norway and the degree to which the family was disrupted, the Supreme Court stated that when the first applicant had established a family life in Norway, the basis for her residence had been

very precarious. She had submitted incorrect information, provided a false identity and her asylum application had been rejected. The first applicant appealed this decision. When she had been granted a residence permit after having married a Norwegian citizen in spring 2004, it had still been based on the incorrect information. The same had been true when she was granted Norwegian citizenship in 2007. That meant that, during her entire stay up until the expulsion decision, the immigration authorities' information about the first applicant had been incorrect, based on an incorrect country of origin and false identity. Her connection with Norway was thus formed on the basis of incorrect information.

62. In such a situation, the first applicant could in the Supreme Court's assessment clearly not legitimately expect to be able to stay in Norway and establish a protected family life there. The Supreme Court thus considered that it was faced with a "fait accompli" of the kind that this Court had referred to in several judgments as not being a basis for protection of family life under Article 8 of the Convention. It followed from the above that the Supreme Court did not attach much weight to the fact that the second applicant had only become aware of the incorrect information some time after having entered into the marriage. The key point was that the first applicant had established a family life in the country while applying for protection as an asylum seeker on a false basis and providing a false identity.

63. The High Court had found that there was a "possibility of" the rest of the family accompanying the first applicant to Djibouti and continuing their family life there. But it had seen this possibility as "unrealistic" out of consideration for the children's schooling and that they did not speak the local languages. From the other grounds for the High Court judgment, the Supreme Court understood that this probably also had to do with cultural differences, financial matters and the husband's work situation. According to the Court's case-law, one important factor was whether there was any "insurmountable obstacle" to continuing family life in the foreign national's country of origin. Even if the family's choice was understandable, the Supreme Court did not consider that there was an unsurmountable obstacle.

64. Under the heading "the child's best interests", the Supreme Court first stated that, given the seriousness of the first applicant's contraventions of the Immigration Act and the precarious basis for her residence, in balancing the child's best interests against conflicting interests, the point of departure had to be whether the expulsion of the first applicant would impose an "unusually great burden" on them and whether "exceptional circumstances" existed.

65. In that context, the Supreme Court noted that when the expulsion decision was made in 2016, the oldest child had been 11 years old, and he was at the time of the Supreme Court's judgment 14 years old. The twins had been six years old and were at the time ten years old. The youngest child had been around three years old at the time of the expulsion decision and had by the time of the Supreme Court's proceedings turned six.

66. The Supreme Court went on to state that, according to the High Court's judgment, the children had developed normally and were generally well-functioning. They had not suffered separation from either parent or been exposed to other particularly burdensome circumstances. The High Court had concluded, however, that the twins were "somewhat vulnerable", in slightly different ways. But their development seemed to be positive and the Supreme Court understood the High Court to mean that their vulnerability was at least partly due to the uncertainty and uneasiness experienced as a natural consequence of the expulsion case. Furthermore, the High Court had found that the three youngest children would be "strongly affected emotionally" if the first applicant were to be expelled. But no information had been provided on whether they would be more affected than could be expected in such a situation.

67. The High Court had found the children to have stronger ties to their mother, the first applicant, than to their father, the second applicant. The first applicant had largely been responsible for the daily care of the children, which appeared to be linked to the second applicant working a lot and coming home late from work. The children had lived with both parents all their lives.

68. According to the evidence that had been provided, the second applicant was a stable caregiver to whom the children were attached, though not as strongly as to their mother. The children lived in an established and secure neighbourhood, and the siblings would continue to live together. The second applicant would have a considerable job in caring for the children during the two years the entry ban applied. It would also possibly affect the family's financial situation. None of the above could in the Supreme Court's view be characterised as unusual or extraordinary, however.

69. In the Supreme Court's opinion, there were in the case before it no extraordinary circumstances of the kind that had been present in cases where the Court had concluded that Article 8 of the Convention had been violated. The Supreme Court referred briefly to the fact that the children in the present case had not been exposed to the same degree of "disruption and stress" as in the case of *Nunez*, cited above, and to the fact that the immigration authorities' case processing time was not censurable in the present case. Nor could this case be compared with the circumstances in the case of *Butt*, cited above. In *Kaplan and Others*, cited above, the circumstances had also been different from the present case.

70. The Supreme Court also emphasised that the ban on entry was limited to two years. It was clear that this limit had been set out of consideration for the children. Even if it did not carry much weight, the Supreme Court pointed to the possibility of the family having contact during the two-year period – during holidays, in Djibouti or in other places outside the Schengen Area, and to the possibility of communication by telephone and social media throughout that period.

71. The High Court had concluded that there was a “risk” that the second applicant would be unable to handle the problems that an expulsion would entail for the children “in a sufficiently adequate manner”, and that the burden on the children would therefore be unusually heavy. According to the evidence presented in the High Court and City Court judgments, the Supreme Court found it difficult to see any factors that stood out in any way from what had generally to be assumed to follow from expulsion of one of the parents for a relatively short period. The Supreme Court pointed out that, should a very negative development occur in the circumstances surrounding one or more of the children, there was a possibility of revoking the ban on entry in accordance with the second paragraph of section 71 of the Immigration Act (see paragraph 75 below).

72. Based on the above, the Supreme Court could not see that the children in the case before it would suffer any unusually great burden, or that there were extraordinary circumstances warranting that the expulsion of the first applicant for two years be considered a disproportionate intervention in relation to the children.

73. Following an overall assessment of the factors that in the Supreme Court’s view were relevant, of which the child’s best interests were fundamental, it concluded that the expulsion decision was valid.

RELEVANT LEGAL FRAMEWORK

74. Article 102 of the Norwegian Constitution of 17 May 1814 (*Grunnloven*) establishes that everyone has the right to respect for their family life. Article 104 sets out that children have the right to be heard in questions that concern them, and that due weight shall be attached to their views in accordance with their age and development. It is also set out in that provision that for actions and decisions that affect children, the best interests of the child shall be a fundamental consideration. It follows from the Supreme Court’s case-law – for instance its judgment of 29 January 2015 (*Norsk Retstidende* (Rt-2015-93), paragraphs 57 and 67) – that those provisions are to be interpreted and applied in the light of their international law models, which include the Convention and the case-law of the Court.

75. Section 66(a) of the Immigration Act of 15 May 2008 (*Utlendingsloven*) provides that a foreign national without a residence permit may be expelled when he or she has, with intent or gross negligence, provided materially incorrect or manifestly misleading information in a case falling under that Act. Pursuant to section 70, a foreign national may not be expelled if, in view of the seriousness of an offence and the foreign national’s connection with the realm, expulsion would be a disproportionate measure against the foreign national personally or against the closest family members. Under that provision, in cases concerning children, the best interests of the child shall be a fundamental consideration. The second paragraph of

section 71 sets out that an expulsion prevents subsequent entry into the territory and that a prohibition of entry may be permanent or temporary, but may not be for a period of less than one year. It also sets out that a prohibition of entry may upon application be lifted if warranted by new circumstances and that, if warranted by special circumstances, the expelled person may upon application be allowed to enter the country for a brief visit even if prohibition of entry is not lifted, but normally not until one year has passed since his or her departure.

76. Subsequent to the judgment in the instant case, the Government made a proposal to include the possibility of sanctioning contraventions of the Immigration Act by imposing a requirement of a three year prolonged temporariness of a residence permit before a permanent residence permit is issued. Introducing administrative fees as a sanction was also discussed, but no proposal to that effect was made as the Government had a number of reservations to the appropriateness and adequacy of that sort of sanction. A bill on these issues was adopted by Parliament on 27 April and 4 May 2021.

77. The Regulation of 15 October 2009 on the entry of foreign nationals into the Kingdom of Norway and their stay in the realm (*Utlendingsforskriften*) included the following provisions:

Section 14-1 Expulsion due to illegal stay or work where the foreign national has a child/children in the realm

“A foreign national who has stayed or worked illegally in the realm for less than two years shall as a general rule not be expelled on that basis, provided

(a) the foreign national has a child/children with whom he/she has lived permanently or to whom he/she has exercised right of access of a certain extent, see section 9-3, second and third paragraphs,

(b) the foreign national intends to live permanently with the child, and

(c) the conditions for family reunification with a Norwegian child in section 44 of the Act are met, or the other of the child’s parents is a sponsor as mentioned in section 40, first paragraph, of the Act and the foreign national meets the conditions for the right to a residence permit as a spouse or cohabitant with that person in section 40 and section 41 of the Act.

If the foreign national has not lived permanently with or exercised right of access to the child for a period, see the first paragraph (a), this may be given weight when considering whether expulsion would be a disproportionate measure.

The provision of the first paragraph does not apply

(a) in the event of breach of the obligation to leave the realm after rejection of an application under section 56, sixth paragraph, of the Act when the rejection was made after the applicant became the parent of a child here, or

(b) if it is not disproportionate to assume that family life can be continued in a country other than Norway.”

Section 14-2 Duration of prohibition of entry

“After an overall assessment of the individual case, see section 70 of the Act, the prohibition of entry may be set to

- (a) two years,
- (b) five years,
- (c) ten years, or
- (c) be permanent.

Entry may be prohibited under section 66, first paragraph (a), (d), (f) and second paragraph of the Act for one year, two years or five years. However, entry may be

prohibited for more than five years when public order so necessitates, or out of consideration for fundamental national interests.

In general, the prohibition of entry shall not be made permanent if the foreign national has a child in Norway with whom he or she has lived permanently for a longer period of time or to whom he or she has exercised right of access of a certain extent, and the foreign national intends to continue to live with or to exercise right of access to the child. Weight may be given to whether right of access to the child has also been exercised during the serving of a sentence or special sanction. A prohibition of entry imposed under section 66, first paragraph (a) and (d) and second paragraph, shall generally not be made longer than two years when the foreign national has a child in Norway and the conditions in the first paragraph are met.

After an overall assessment of the individual case, there may nonetheless be a basis for an expulsion decision with permanent prohibition of entry when the foreign national has a child in Norway. Factors which may particularly warrant permanent prohibition of entry are inter alia that

- (a) the foreign national has been sentenced for an offence punishable by imprisonment for a period of six years or more,
- (b) the foreign national has been sentenced for violence or abuse against close family members,
- (c) the foreign national has been convicted repeatedly of offences punishable by imprisonment for a period exceeding six months, or
- (d) it is not disproportionate to assume that that family life can be continued in a country other than Norway.

If the foreign national was not living permanently with or not exercising the right of access to the child at the time the offence that provides the basis for considering expulsion was committed, this may be given weight when considering the duration of the prohibition of entry. The same applies in the event of a subsequent interruption in family life.”

78. The first paragraph of Article 3 and Article 9 of the United Nations Convention on the Rights of the Child of 20 November 1989 read:

Article 3

“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. ...”

Article 9

“1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.”

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

79. The applicants complained that the expulsion of the first applicant with a two-year ban on re-entry entailed a breach of the family members’ right to respect for their family life enshrined in Article 8 of the Convention, the relevant parts of which read as follows:

“1. Everyone has the right to respect for his ... family life ...

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. Admissibility

80. The Government submitted that as the Supreme Court had opined on the second to sixth applicants’ victim status within the meaning of Article 34 of the Convention, albeit without formally having a mandate in that respect, and had thereby given all of the applicants reason to believe that they were entitled to apply to the Court subsequent to the Supreme Court’s judgment in the case of the first applicant, they would exceptionally take the view that all

six applicants could be considered as having exhausted domestic remedies and applied within the six-month time-limit as required by Article 35 on account of the proceedings in which the first applicant had been involved. The Government submitted, however, that the arguments now made by the applicants before the Court to the effect that the sixth applicant, the youngest child, would be at risk of female genital mutilation in Djibouti could not be admissible as they had not been relied on before the Supreme Court.

81. The applicants submitted that they had argued before the Supreme Court that all relevant factors had to be taken into consideration when assessing the proportionality of the expulsion and that the risk of female genital mutilation had been an important and relevant factor highlighted by the applicants throughout the domestic proceedings.

82. The Court observes that the Government's argument related to the applicants' failure to invoke the alleged risk of female genital mutilation on the sixth applicant in the event of her moving to Djibouti does not concern the admissibility of the applicants' complaint that there has been a violation of Article 8 of the Convention, but questions related to the merits of that complaint.

83. Furthermore, the Court notes that the Government did not raise other non-exhaustion objections. As regards the six-month time-limit, the Court finds that, as all applicants in the circumstances of the case must be considered to have exhausted domestic remedies by way of the proceedings that ended with the Supreme Court's judgment of 9 December 2019, that judgment forms the starting date for all applicants. The application must accordingly be considered as filed in a timely fashion in respect of all applicants. The Court further observes that the application is neither manifestly ill-founded nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

84. The applicants submitted that there was a real risk of the youngest child, the sixth applicant, being subjected to female genital mutilation were the family to settle in Djibouti. Furthermore, they submitted that there had been no pressing social need for expulsion; in particular, the children's best interests were of paramount importance and indicated that a criminal sanction should have been imposed instead of ordering the first applicant to be expelled in this case.

85. The applicants maintained that there were insurmountable obstacles that prevented the family from continuing their family life together in Djibouti and argued that the second applicant would be unable to provide adequate care for the children if he remained with them in Norway as the sole

carer. In the instant case, extraordinary circumstances warranted that the expulsion of the first applicant be considered disproportionate.

86. The Government submitted that the applicants had not argued before the Supreme Court that there would be a risk of female genital mutilation in respect of the sixth applicant, the youngest child, and that they had not, either, given any concrete information as to why they now, before the Court, considered that she would be at such risk.

87. As to the proportionality analysis that had been carried out by the Supreme Court, the Government submitted that that court had assessed the applicants' personal circumstances, carefully balanced the competing interests, taken into account the criteria set out in the Court's case-law and reached conclusions that had been neither arbitrary nor manifestly unreasonable.

2. The Court's assessment

(a) Preliminary observations

88. The Court observes that the application concerns the expulsion of the first applicant and its consequences for the family life of all of the six applicants. It is noted that the withdrawal of the first applicant's Norwegian nationality by the Directorate of Immigration (see paragraph 16 above) was neither challenged before the domestic courts, nor did the applicants complain about it to the Court. The Court also notes that the second to sixth applicants are all Norwegian citizens entitled to stay in Norway.

89. In the Court's view it cannot be called into question that all the applicants – the two parents and their four children – enjoyed family life in Norway and that the decision to expel the first applicant with a two-year ban on re-entry entailed an interference with the right enshrined in Article 8 of the Convention of all six applicants to have their family life respected. The Court moreover finds that the decision in question had an adequate basis in law, namely the 2008 Immigration Act (see paragraph 75 above), and pursued legitimate aims under Article 8 § 2, in particular the prevention of disorder and crime and the economic well-being of the country. The sole issue is whether the expulsion of the first applicant, combined with a two-year ban on the re-entry, was necessary in a democratic society within the meaning of that paragraph.

(b) General principles

90. Turning to the proportionality of the decision to expel the first applicant, the Court reiterates that in cases where the expulsion of a family member is ordered, circumstances relevant to the proportionality analysis under the Court's case-law generally include the extent to which family life would effectively be ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in

the country of origin of the alien concerned and whether there are factors of immigration control (for example, a history of breaches of immigration law) or considerations of public order weighing in favour of exclusion (see, for example, *Nunez v. Norway*, cited above, § 70). The Court has also held that it will have regard to the duration of the exclusion order, in particular whether such a ban is of limited or unlimited duration (see *Savran v. Denmark* [GC], no. 57467/15, § 182, 7 December 2021). Moreover, the Court has established that where “family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of the family life within the host State would from the outset be precarious” a violation of Article 8 of the Convention will be likely only in “exceptional circumstances” (see for example *Nunez v. Norway*, cited above, § 70; *Butt*, cited above, § 79; and *Jeunesse v. the Netherlands* [GC], no. 12738/10, §§ 107-08, 3 October 2014).

91. Where children are involved, their best interests must be taken into account. On this particular point, the Court has reiterated that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance. Whilst alone they cannot be decisive, such interests certainly must be afforded significant weight. Accordingly, national decision-making bodies should, in principle, advert to and assess evidence in respect of the practicality, feasibility and proportionality of any removal of a non-national parent in order to give effective protection and sufficient weight to the best interests of the children directly affected by it (see, for example, *Jeunesse*, cited above, § 109, and the references therein).

92. Domestic courts must, when assessing whether the expulsion of a family member was necessary in a democratic society within the meaning of Article 8 § 2 of the Convention, put forward specific reasons in the light of the circumstances of the case, not least to enable the Court to carry out the European supervision entrusted to it. Where the reasoning of domestic decisions is insufficient, without any real balancing of the interests in issue, this would be contrary to the requirements of Article 8 of the Convention. In such a scenario, the Court will find that the domestic courts failed to demonstrate convincingly that the respective interference with a right under the Convention was proportionate to the aim pursued and thus met a “pressing social need”.

93. At the same time, where independent and impartial domestic courts have carefully examined the facts, applying the relevant human rights standards consistently with the Convention and its case-law, and adequately balanced the applicant’s personal interests against the more general public interest in the case, it is not for the Court to substitute its own assessment of the merits (including, in particular, its own assessment of the factual details of proportionality) for that of the competent national authorities. The only

exception to this is where there are shown to be strong reasons for doing so (see, for example, *Savran*, cited above, §§ 188-89).

(c) Application of those principles to the facts of the case

94. The Court first notes that the decision to expel the first applicant and issue a two-year ban on re-entry was first taken by the Directorate of Immigration, and thereafter examined on appeal by the Immigration Appeals Board. Subsequently, a judicial review was carried out by three levels of court. During those proceedings, a psychologist was appointed to protect the best interests of the children, several witnesses were heard, and other pieces of evidence examined (see, in particular, paragraphs 22, 24 and 34 above). There is nothing to suggest that the expulsion case of the first applicant was not dealt with thoroughly and swiftly, enabling the decision makers to take into account all relevant circumstances, including those directly related to the situation of the four children.

95. As one additional initial observation the Court observes that the Supreme Court's conclusion that there were no insurmountable obstacles to the family moving as a whole to Djibouti – which relates to an aspect that under the Court's case-law is highly relevant to the proportionality assessment under Article 8 § 2 of the Convention (see paragraph 90 above) – did not touch on the applicants' argument before the Court concerning the risk of genital mutilation. Based on the materials provided to the Court, that appears to have been connected to how the applicants had structured their pleadings before the Supreme Court. Given the applicants' own limited focus on and their apparent lack of attempts to substantiate that argument before the domestic authorities, and observing that the Supreme Court in any event, in its assessment of the proportionality of the expulsion, included the assumption that the family would decide that the father and the children would remain in Norway during the ban on re-entry imposed on the first applicant, the Court does not in the circumstances of the case find it appropriate to analyse the situation in Djibouti on the basis of new material or replace the assessment of the national courts by its own on that point. It is sufficient to observe that the applicants have not shown convincingly that the Supreme Court's finding that the second to sixth applicants could also in principle go to Djibouti – either to stay (see paragraph 63 above) or at least to visit the first applicant (see paragraph 70 above) – was arbitrary or otherwise manifestly deficient.

96. The Court moreover notes the Supreme Court's meticulous examination of the Court's case-law in order to infer relevant legal standards under Article 8 of the Convention and to apply them in a Convention-compliant manner when deciding the first applicant's expulsion case. Such an approach is crucial for the distribution of responsibility between the Court and the domestic courts, in order to ensure that the proper standards have been

applied at domestic level (see, as a recent authority, *Savran*, cited above, §§ 188-89).

97. The Court also attaches importance to the Supreme Court's detailed reasoning with regard to its explanation of the weighty immigration policy arguments in favour of the expulsion of the first applicant. The Supreme Court made particular reference to the seriousness of her offences and that a sanction – as had also been emphasised by the legislature in the preparatory work to the Immigration Act (see, in particular, paragraphs 46-48 above) – in the form of expulsion was considered necessary in order to uphold respect for the immigration regulations and deter from future contraventions, that is to say for reasons of general deterrence (see, *inter alia*, paragraph 60 above). Indeed, as already found by the Court in a number of cases, a scheme of implementation of national immigration law which is based on administrative sanctions in the form of expulsion and a ban on re-entry does not as such raise an issue of failure to comply with Article 8 of the Convention (see, for example, *Antwi and Others*, cited above, § 90). Thus, the Court has in principle no objections to the Supreme Court's approach in this respect, bearing in mind, at the same time, that any such scheme must be construed and applied in a manner that is compatible with the Convention rights of all involved.

98. The Court furthermore observes that the Oslo City Court and the Borgarting High Court each examined the facts of the case with regard to what an expulsion would entail for each of the applicants, including the children (see paragraphs 26-33 and 36-42 above, respectively). The Borgarting High Court's findings as to the facts of the case, the children's situation included, formed the basis for the Supreme Court's assessment of the case within the scope of the appeal, the appeal having been limited to the High Court's application of the law. In this respect the Supreme Court considered that the proportionality analysis, unlike what had been done by the High Court (see paragraph 35 above), had to be conducted in the light of the Court's case-law according to which an expulsion of a person whose grounds for residence were precarious at the outset would only be disproportionate in "exceptional" circumstances (see, for example, paragraphs 52, 54 and 64 above). Moreover, the Supreme Court concluded that the facts of the case as established by the Borgarting High Court did not support the finding that such "exceptional circumstances" existed. In this connection the Supreme Court emphasised that there was nothing in the lower instances' findings of fact that stood out from what had generally to be assumed to follow from expulsion of one of the parents for a relatively short period (see paragraphs 66 and 71 above).

99. Regarding the Supreme Court's legal starting points under Article 8 of the Convention, the Court notes that the first applicant was not a "settled migrant" in Norway in so far as her stay there was based on repeatedly giving incorrect information over a long period and therefore had never had a valid

legal basis. It was for that reason the Supreme Court proceeded on the basis that the expulsion was valid unless “exceptional circumstances” could be identified. Although the Court does not disagree with the Supreme Court regarding this being the starting point, the Court also notes the very particular aspect of the instant case that the sanction imposed on the first applicant impacted as much, if not more, on her family members, notably her children, all being Norwegian nationals who had been born and lived all their lives in Norway. Even if the other family members would follow the first applicant to Djibouti during the period when the ban on re-entry would be in force in order to preserve “family life”, they would have to experience a considerable unwanted change in their “private life” in moving to a country with which they had no connection, including as concerned language. This contrasted with the first applicant’s own situation, coming from Djibouti, speaking the language, having family there and even having visited there after she had arrived in Norway (see, *inter alia*, paragraph 26 above). The expulsion imposed on the first applicant to sanction her behaviour could thus, somewhat paradoxically, put an equally heavy if not heavier strain on the other family members. The Court observes in this context – as did the Supreme Court – that the Norwegian Parliament has requested that the Government consider an amendment of the Immigration Act to “make it possible for the immigration administration to supplement the use of expulsion and prohibition of entry with a broader set of sanctions where warranted by special circumstances such as the child’s best interests” (see paragraph 57 above).

100. Furthermore, the Court understands the Supreme Court’s role in being limited to correcting what had been an erroneous understanding of the law by the Borgarting High Court. Nonetheless, even an examination of whether any “exceptional circumstances” existed also required a concrete and broad examination of the whole case and how the whole family would be affected by the expulsion of one of them. It might even be particularly important that the Supreme Court demonstrate that concrete assessment in a situation where the lower court had, regardless of its misunderstanding of the law, given a detailed explanation of why it, based on evidence that had been presented to it directly during its hearing, considered the expulsion to contradict the children’s best interests, which in its assessment made the expulsion disproportionate vis-à-vis them (see paragraphs 36-42 above).

101. Turning, then, to the concrete proportionality assessment, the Court notes that the facts with regard to what impact an expulsion would have on the children had been established by way of a thorough process where an expert had been engaged and the children’s views obtained in so far as possible based on their age and maturity (see, *inter alia*, paragraph 37 above). The factual findings on that point had also been set out in detail by the Borgarting High Court in its judgment, providing a basis for the Supreme Court in its application of the law (see paragraph 98 above).

102. Against that background, the Court does not consider that it has a basis for concluding that the Supreme Court erred in its assessment that there were no concrete facts in the case before it that gave grounds for characterising the children's situation as different from what would essentially always follow with the expulsion of a parent. The Court therefore understands the Supreme Court's reluctance to qualify the circumstances as "exceptional" within the meaning of the Court's case-law. The Court notes that the case differed from those of *Nunez* and *Kaplan and Others* (both cited above), where the Court found violations of Article 8 of the Convention. It refers to *Antwi and Others* (cited above, §§ 101-02), where a five-year re-entry ban was accepted by the Court with reference to the fact that the child in question, also a Norwegian national who since birth had spent her entire life in Norway, had not been made vulnerable by previous disruption and that the duration of the immigration authorities' processing of the matter had not been so long as to give reasons to question whether the impugned measure fulfilled the requirements of swiftness and efficiency, in contrast to what had been the situation in the case of *Nunez*. The applicant children in the instant case had not either been exposed to the same degree of disruption and stress as in the case of *Nunez* (cited above). Neither can the authorities be blamed for not having dealt with the expulsion case in a timely manner. The facts of the current case also clearly differ from those in the case of *Butt* (cited above).

103. Moreover, the Court observes that the Supreme Court stressed various aspects that mitigated the effects of the expulsion on the children. First of all, the Supreme Court emphasised that it was only out of consideration for the children that the ban on re-entry imposed on the first applicant had been limited to two years in the first place (see paragraph 70 above). The duration of the exclusion order is an important element in the proportionality assessment (see *Savran*, cited above, § 182), and the Court must take into account that it did not find re-entry bans of five years imposed on parents disproportionate in cases such as *Antwi and Others* (cited above, § 104) and *Darren Omoregie and Others* (cited above, § 67).

104. Furthermore, the Supreme Court emphasised the first applicant's possibility to apply to have the ban from re-entry revised (see paragraphs 57 and 71 above). Such a revision of the re-entry ban according to the second paragraph of section 71 of the Immigration Act (see paragraph 75 above) would enable the domestic authorities to take into account any subsequent negative development, such as the second applicant not being able to take adequately care of the four children, or any unforeseen change related to the children's health or overall situation. The Supreme Court also emphasised the first applicant's possibility to apply for access to Norway for brief visits during the two-year ban from re-entry (see paragraph 57 above). Lastly, the Court finds reasons to stress not only the importance of the fact that the ban from re-entry had been limited to two years (see paragraph 103 above), but

that it proceeds on the basis that she will be allowed to resume her family life in Norway when the two years have passed.

105. Considering all of the above, the Court accepts that the present case disclosed no exceptional circumstances as such requiring the respondent State to withdraw the expulsion order so as to enable the applicants to maintain and continue to develop family life in Norway. Moreover, the Court accepts that the domestic authorities were faced with a balancing of interests that had to be done in a situation where particularly weighty interests in immigration control supported the first applicant's expulsion while at the same time an expulsion would impose considerable difficulties on the other applicants. The Court also accepts that the domestic authorities, including the Supreme Court, sought to attend to the children's interests in so far they could be reconciled with the public interest reasons in sanctioning the first applicant's behaviour.

106. Therefore, as to the final conclusion that the expulsion was not disproportionate because it did not exceed the standards indicated by the Court in its case-law relevant to the case, the Court does not find that the authorities of the respondent State transgressed their margin of appreciation when, having carefully examined the facts and adequately balanced the interests in issue (see paragraphs 92-93 above), they decided to expel the first applicant and to prohibit her re-entry for two years. Neither are there any other reasons for the Court to substitute its own assessment for that of the competent national authorities, bearing in mind in particular the domestic courts' careful examination.

107. On the basis of the above, the Court concludes that there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 23 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik
Registrar

Síofra O'Leary
President

APPENDIX

List of applicants:

Application no. 569/20

Application no. Case name Introduction date	Applicant's name Year of birth Place of residence Nationality	Representative's name Location
569/20 Alleleh and Others v. Norway 23/12/2019	Neima Aden ALLELEH 1983 Lyngdal Djiboutian	Arild HUMLEN Oslo
	Rolf Erik KRISTENSEN 1967 Lyngdal Norwegian	
	Rayan Erik KRISTENSEN 2005 Lyngdal Norwegian	
	Aaron KRISTENSEN 2009 Lyngdal Norwegian	
	Adam KRISTENSEN 2009 Lyngdal Norwegian	
	Noreen KRISTENSEN 2013 Lyngdal Norwegian	