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

SECOND SECTION

DECISION

Application no. 36588/22
A.N.
against Norway

The European Court of Human Rights (Second Section), sitting on 26 March 2024 as a Committee composed of:

Jovan Ilievski*, President*,
Lorraine Schembri Orland,
Diana Sârcu*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 36588/22) 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") on 4 July 2022 by an Italian national, Ms A.N. ("the applicant"), who was born in 1983 and lives in Oslo, and was represented by Mr K. Sørensen, a lawyer practising in Oslo;

the decision not to disclose the applicant's name;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns child welfare measures, including, in particular, proceedings in which it was decided not to lift a care order that had been issued in respect of the applicant's child.

2. The applicant has a son, X, who was born in 2016. On 4 July 2017, the applicant called the Child Welfare Services and explained that she was tired and needed a break "to get her life back on track". Upon observation, both the applicant and X appeared emotionally flat and there was a general concern about the applicant's emotional care for X. Further assessment of the family was initiated. With the applicant's consent, X was placed in emergency care on 5 July 2017. At a meeting on 18 October 2017, where the applicant was asked to comment on how long she thought X was to live in a foster home,

the applicant stated that she wanted X to be placed in a foster home until he was 18 years old. On 18 January 2018, the applicant stated again that she wanted X to grow up in a foster home, and a care order was issued in respect of him on 18 April 2018. Contact rights were set at one hour ten times per year, in line with the applicant's wishes.

3. In 2019 the applicant applied to have the care order lifted, but she withdrew the application later the same year.

4. In the proceedings at issue, on 28 May 2021 the applicant again applied to have the care order lifted. The child welfare services appointed a psychologist to examine the case. The applicant withdrew her consent to participate in the examination and on 8 December 2021 the psychologist stated that, as a result of her withdrawal of consent, she did not have sufficient information to fulfil her mandate.

5. On 22 December 2021 the County Social Welfare Board dismissed the application.

6. On 22 March 2022, on an appeal by the applicant, the City Court gave judgment, stating that, contrary to the applicant's submissions before it, there was nothing to indicate that the initial decision to take X into public care had been agreed to on the basis of a misunderstanding. Nor was there any indication that her interests in that connection had not been attended to or that she had been pressured into consenting to the issuance of a care order. Subsequently, the City Court carried out an examination of X's care needs and the applicant's caregiving skills. The City Court found that there were serious concerns about the applicant's ability to understand and meet X's needs for predictability, stability and emotional care. It considered that X had developed adequately for his age both cognitively and socially since the placement. He nonetheless had a greater need for security, stability and predictability than other children and had a particular vulnerability in connection with his uncertainty about his gender identity, for which the City Court noted he needed extra support. Like the Board, the City Court was concerned that if X were returned to the applicant, he would reactivate developmental trauma. Therefore, it was considered essential that the applicant was sensitive and could help X emotionally to cope with the challenges a return would entail. X himself had also stated that if he had to move again, he will lose his mother one more time and that "it won't work". The applicant had, for her part, repeatedly cancelled contact sessions either because she had forgotten them, had had to work, had been late or had had to leave too early. She was informed that X became very upset and distressed when the contact sessions were cancelled at short notice. Nevertheless, she showed little ability to reflect or understand how this negatively affected X. Moreover, the City Court was concerned by her lack of understanding and reflection in connection with his uncertainty regarding his gender identity. It transpires that the applicant had been annoyed when she received pictures of him in pink clothing and had stated that she did not want such pictures.

Assistance measures were also not feasible, as the applicant had shown practically no understanding of X's challenges, had decided to discontinue the guidance that had been offered to her, had withdrawn her consent to having the case examined by a psychologist and had been, in general, dismissive of any cooperation with the child welfare services and the foster home. In addition to the considerations above, the City Court found that X, who had been removed from the applicant's home when he was 18 months old, had become so deeply rooted in his foster home that it would cause him serious harm if he were to be removed from it. The City Court noted that reunification with the applicant would initially require cooperation between the applicant and the foster home, to which X had become so attached. However, the applicant showed no ability or willingness to achieve this. Regarding contact rights, the City Court noted that X often cried and clung to the foster mother after the contact sessions. The applicant's aversion to the foster home also affected X, who stated that he did not think the applicant liked either him or the foster mother. After the last contact session before the court hearing, X was so upset that he had requested to call the child welfare services to say that he did not want to see the applicant anymore. The City Court set the applicant's contact, as had the Board, at two hours ten times per year.

7. On 9 May 2022 the High Court refused the applicant leave to appeal against the City Court's judgment.

8. On June 2022 the Supreme Court dismissed an appeal lodged by the applicant against the High Court's decision.

9. In her application to the Court, the applicant relied on Articles 8, 17 and 18 of the Convention, arguing that the domestic authorities had not only taken insufficient measures to reunite the family following the issuance of the care order, but that they had furthered measures that had been aimed at preventing reunification of the family.

THE COURT'S ASSESSMENT

10. The Court notes that the main submission underpinning the applicant's complaint was that the domestic authorities had not facilitated any reunification of the family – on the contrary, they had abused the provisions in domestic law which allowed for interference with the applicant's right to respect for her family life in order to further aims which were not legitimate under the Convention.

11. The Court considers that these complaints fall to be examined under Article 8 of the Convention alone. It finds that the domestic courts' decision not to lift the care order and to limit the applicant's contact rights with her child entailed an interference with the applicant's right to respect for her family life for the purposes of Article 8 § 1 of the Convention. That interference was in accordance with the law, namely the 1992 Child Welfare

Act, which was applicable at the material time. It pursued the legitimate aim of protecting X's "rights" and his "health". The remaining question is whether the interference was "necessary" within the meaning of Article 8 § 2 of the Convention.

12. The general principles relevant to the necessity test were extensively set out in *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, §§ 202-13, 10 September 2019) and have since been restated in a number of cases, including *Abdi Ibrahim v. Norway* ([GC], no. 15379/16, § 145, 10 December 2021). From those principles, it follows that the Court must determine whether, in the light of the entirety of the case, the reasons adduced to justify the measures in question were relevant and sufficient for the purposes of Article 8 § 2 and whether the applicant has been adequately involved in the decision-making process seen as a whole (see *Strand Lobben and Others*, cited above, §§ 203 and 212).

13. As to whether the reasons adduced to justify the domestic courts' decision not to lift the care order were relevant and sufficient the Court observes that in the applicant's submission, the care order should have been lifted as her rights had been violated when X was placed in public care. She argued that she had been pressured by the child welfare services to consent to the placement. On that point, however, the Court, whose task is not normally, in a case such as the present one, to set aside the evidentiary assessments of the domestic authorities, does not find any basis for considering that the City Court's conclusions that there had not been any misunderstandings on the part of the applicant or pressure by the child welfare services when she first consented to X's being placed in public care (see paragraphs 2 and 6 above) were erroneous.

14. As to the other reasons provided by the City Court, the Court notes that that court carried out a broad assessment of both X's care needs and the applicant's ability as a caregiver before concluding that the applicant would be unable to meet X's needs and that it would cause X serious harm if he were to be removed from his foster family (see paragraph 6). In its assessment, the City Court noted in particular that X was particularly vulnerable; he had previously suffered a relationship breakdown, and there was uncertainty about his gender identity. It transpires from the City Court's reasoning that the applicant had not shown sensitivity for X's situation over the years, and it found that there was a serious risk of re-traumatisation if X was returned to the applicant at the relevant time. It was also taken into account that X had become deeply rooted in his foster home even though he had had relatively frequent contact with the applicant. In that connection, the Court considers that the applicant has not substantiated her allegation that the child welfare services had taken particular measures to prevent contact between her and X. On the contrary, it appears that on several occasions the applicant did not attend scheduled contact sessions, which had also been a strain for X. Bearing in mind the wide margin of appreciation afforded to domestic authorities in

respect of care orders, the Court finds that the reasons advanced in respect of the decision not to lift the care order were both relevant and sufficient.

15. In so far as the applicant's complaint under Article 8 of the Convention also encompasses the contact arrangements that were decided, the Court bears in mind that it has recently given judgments in several cases involving the respondent State in which it found a violation of Article 8 of the Convention relating to the justifications provided by the domestic authorities for the establishment of particularly restrictive contact regimes (see, for cases where shortcomings in relation to decisions on contact rights in themselves led to the finding of a violation, *K.O. and V.M. v. Norway*, no. 64808/16, §§ 67-71, 19 November 2019, and *A.L. and Others v. Norway*, no. 45889/18, §§ 47-51, 20 January 2022; see also, for cases where similar shortcomings formed important parts of the context in which violations had occurred, *Strand Lobben and Others*, cited above, §§ 221 and 225; *Pedersen and Others v. Norway*, no. 39710/15, §§ 67-69, 10 March 2020; *Hernehult v. Norway*, no. 14652/16, §§ 73-74, 10 March 2020; *M.L. v. Norway*, no. 64639/16, §§ 92-94, 22 December 2020; and *Abdi Ibrahim*, cited above, § 152).

16. The Court considers, however, that there are important differences in the facts of this case compared to those cited in the previous paragraph. In the present case, it appears from the decisions of the Board and the City Court that the initial contact arrangement was determined in agreement with the applicant. When contact rights were subsequently challenged, the Board and the City Court made individual assessments and balanced the different interests involved. The City Court examined evidence given by different witnesses on how successful the contact sessions had been in the past. In this connection, the Court notes, *inter alia*, that the City Court gave importance to the fact that the applicant had not attended many of the contact sessions scheduled. The Court cannot find any indication that any restrictions on contact between the applicant and X were a result of the visiting arrangements established by the authorities.

17. Furthermore, the Court takes note of the assistance measures offered to the applicant over the years, in particular to improve the contact sessions (see paragraph 6). The Court does not find grounds for considering that the authorities, in the first years following the placement, had in general paid insufficient regard to the ultimate aim of reuniting the family. In this connection, the Court notes, *inter alia*, that several meetings were arranged with the applicant after the placement to clarify her situation and wishes.

18. As regards the decision-making process, the Court observes that the applicant, throughout the proceedings, was represented by her legal aid lawyer, and she had the opportunity to be present, give statements, and present evidence. Both the Board and the City Court heard several witnesses. The applicant was thus adequately involved in the decision-making process seen as a whole. Having considered the reasons provided, which were

detailed and thorough, and in turn reviewed by the High Court, the Court finds that these were both relevant and sufficient also as concerns the contact rights.

19. In view of the above, the Court considers that the interference with the applicant's right to respect for her family life was proportionate to the legitimate aims pursued and thus was "necessary in a democratic society" for the purposes of Article 8 § 2.

20. On the basis of the foregoing, the Court concludes that the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It follows that it must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 25 April 2024.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President